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Summary of responses to the consultation on proposals to widen the Environmental Permitting Regulations by incorporating Discharge Consenting, Groundwater Authorisation and Radioactive Substances Regulation

16 February – 11 May 2009

July 2009



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Environment
Agency



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1. Introduction and background

- 1.1. Government (Defra, DECC and WAG), in partnership with the Environment Agency, published proposals on 16th February 2009 to widen the Environmental Permitting Regulations by incorporating discharge consenting (DC), groundwater authorisation (GW) and radioactive substances regulation (RSR) into the permitting framework. The consultation period ended on 11th May 2009. Fifty-five responses were received from a range of stakeholders, including industry, local authorities, environmental groups and other interested parties. The list of respondents is at Annex A.
- 1.2. Twenty six proposals and ten questions were posed within the consultation document. The majority of respondents supported the principles of the Environmental Permitting Programme but many highlighted issues they felt were important in moving to a single system. A number commented that more detailed guidance is required, especially in terms of how the proposals will be implemented, to fully understand their implications. A separate exercise relating to consultation on Government guidance¹ in support of the proposed Environmental Permitting Regulations 2010 ended on 29th July. Government will take account of stakeholders' feedback from the guidance consultation and welcomes further dialogue via established stakeholder networks.
- 1.3. Government welcomes the overall response that most stakeholders support the extension of environmental permitting that is expected to deliver:
 - reduced red tape - bringing additional cost-savings to industry and allowing regulators to focus their resources on issues that matter,

¹ <http://www.defra.gov.uk/corporate/consult/environment.htm>

- continued protection of the environment and human health - maintaining current standards, and
- a clearer, simpler and quicker system allowing a better understanding of the law and its effects.

1.4. The following section provides greater detail on the views expressed for each proposal and question posed in the consultation document, together with the corresponding Government response.

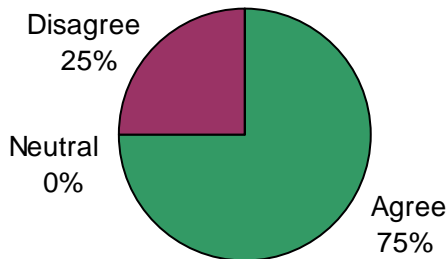
2 Summary of responses with Government responses

Question 1 – Adherence to written consultation criteria

Question 1

To what extent do consultees agree that the written consultation criteria have been adhered to?

24 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
12	6	18	6	0
50%	25%	75%	25%	0%

- 2.1 Three-quarters of those respondents who answered this question felt that the written consultation criteria had been adhered to.
- 2.2 Those who disagreed felt that the document could have had greater clarity and would have benefited from more detail in places, for example on permit requirements. The launch of the EP Regulations guidance consultation, before the close of the policy and regulations consultation was interpreted by some as a sign that the proposals would be pushed through regardless.
- 2.3 As the consultation coincided with other significant Government consultations, a small number of respondents felt that the opportunity should have been taken to consult on a wider range of candidate regimes for the second phase of the Environmental Permitting Programme in one single consultation.

Government response

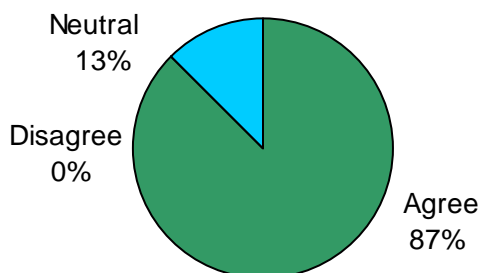
- 2.4 Government notes that the majority of respondents felt the criteria had been adhered to. It accepts the communications around the launch of the consultation on guidance could have been clearer in explaining that it was being published early as a direct response to requests made at the previous consultation stakeholder events. Government also acknowledges respondents' concerns about the number of consultations and the need to co-ordinate these wherever possible.

Proposal 1 – Geographic scope

Proposal 1

It is proposed that EP Regulations adopt the geographic scope provisions of the EP Regulations for all three candidate regimes, and in addition that offshore installations subject to regulation under RSA93 continue to be deemed to be within territorial waters and so subject to the EP Regulations.

8 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	2	7	0	1
63%	25%	87%	0%	13%

- 2.5 Almost all respondents addressing this proposal agreed with the proposed geographic scope provisions. One respondent questioned whether the EP Regulations would be able to cope with the differing interpretations of the Transfrontier Shipment of Waste (2007) Regulations in Scotland.

Government response

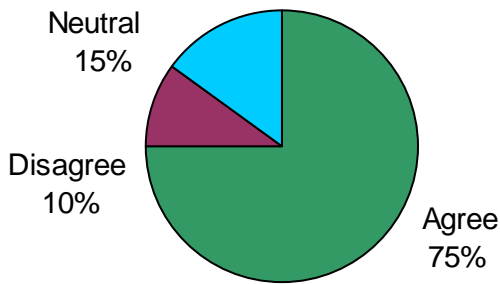
- 2.6 Government notes that all respondents addressing this proposal agreed with it. The interpretation of the Transfrontier Shipment of Waste Regulations in Scotland is a matter for the Scottish Government and Scottish Environment Protection Agency (SEPA). Nevertheless, the Government will work with the Scottish Government and guidance will make clear that the Environment Agency should work with others to minimise differences of procedures and interpretation. Government confirms that it has no current plans to incorporate Transfrontier Shipment of Waste Regulations into the EP Regulations.

Proposal 2 – Who must be permitted

Proposal 2

It is proposed that those activities subject to regulation under each of the three candidate regimes continue to be regulated and require a permit under the EP Regulations. The EP Regulations definitions of “Operator” and “Regulated Facility” will be amended to allow this. It is proposed that an open-ended transitional provision is adopted where existing GW and DC permits are held by people other than the operator, but that such permits can only be transferred subsequently to a person who would be the operator and so is in control of the activity. For RSR, it is also proposed that the restriction upon accumulation ‘with a view to its subsequent disposal’ be removed to reflect current operational practices.

20/55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
4	11	15	2	3
20%	55%	75%	10%	15%

- 2.7 Three-quarters of those commenting on this proposal were broadly supportive although some placed caveats on their support.
- 2.8 The primary concern was about the term ‘operator’, raised by more than ten respondents. These stated that facilities were frequently owned by one company which outsourced the actual operation of the facility to a contractor (in particular, but not exclusive to, water companies permitted under DC and GW). This meant that the owner and the day-to-day operator were not the same entity. A common response was that the permit should be capable of being held by the ‘owner’ or the ‘consent holder’, rather than the ‘operator’, to allow flexibility for contracting out the operation of a facility.
- 2.9 Two respondents asked for clarification on a number of other terms, including ‘person’, ‘undertaking’ and ‘activity’.

Government response

- 2.10 Government acknowledges respondents’ concerns about the term operator, but does not envisage that there will in reality be difficulties. A fundamental tenet of the environmental permitting framework is that the person holding the permit should be sufficiently in control of the environmental performance. This person is defined as the operator.
- 2.11 The Core Guidance gives more detail on Government’s interpretation of this important term. It states that an operator ‘must demonstrably have the authority and ability to ensure that the Environmental Permit is complied with’. Government expects the regulator to take a proportionate approach in how it implements the regulations, recognising that the risks vary according to the type of facility. It believes that the Core Guidance should give sufficient flexibility to accommodate the needs of the water companies in the way they operate. (The Core Guidance was consulted upon from 6 May – 29 July 2009².)

² <http://www.defra.gov.uk/corporate/consult/environment.htm>

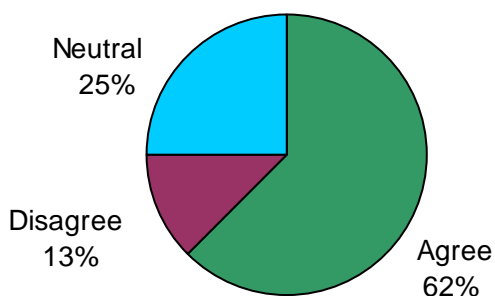
2.12 In developing a coherent system there is a need to maintain consistent terminology. The terms ‘person’, ‘undertaking’ and ‘activity’ are used across the regimes and Government will consider if the terms need to be further clarified in guidance.

Proposal 3 – What must be permitted

Proposal 3

It is therefore proposed that the term “regulated facility” is expanded to cover what must be subject to regulation under the three candidate regimes, as set out in regulation 8 of the amended EP Regulations. It is not proposed to make specific provision for mobile plant to discharge to controlled waters. It is proposed to retain the current scope of regulation of mobile radioactive apparatus within the EP Regulations. It is also proposed to maintain the current interface with the Nuclear Installations Act 1965 for nuclear sites and the current RSR provisions on Crown, defence and visiting force immunities.

16 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
4	6	10	2	4
25	38%	62%	13%	25%

2.13 Around two thirds of respondents commenting on this proposal were supportive.

2.14 Some of those who did not support the proposal thought the term ‘regulated facility’ was unclear. Two water industry respondents stated it was positively unwelcome, because it would increase the regulatory burden and financial risk on their industry. This was because of an assumption that there would be more intrusive inspections into the internal operation and management of assets, rather than a focus on the quality of effluent as under current discharge consents and groundwater authorisations.

2.15 Other respondents queried whether the exemption from permission to use radioactive substances and accumulated radioactive waste could be extended to tenants on nuclear sites; whether mobile plant would be subject to the same permitting system as other surface water activities; and whether radioactive apparatus would have its own category and schedule in the EP Regulations.

Government response

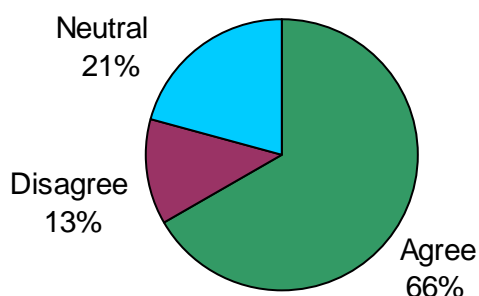
- 2.16 The term regulated facility has been used to achieve consistency in the legislative framework. Government believes that this is necessary to allow the environmental permitting framework to be robust for both current and future legislation. It does not mean that all classes of regulated facility are or will be treated in the same manner as implementation will be proportionate and targeted. For example, it would be inappropriate to expect the same management systems to operate in a process plant as in sheep dip disposal. Under the EP Regulations, Government does not expect the Environment Agency to conduct more intrusive inspections or focus on process control any more than it does under current regimes.
- 2.17 Government and regulators' Guidance will clarify and provide examples of how the terminology will apply in practice.
- 2.18 Government is committed to ensuring the requirements of the EP Regulations interface seamlessly with the requirements of the Nuclear Installations Act 1965. As nuclear site licences issued under the Nuclear Installations Act by the Health and Safety Executive (HSE) do not cover tenants, extending an exemption (from the EP Regulations) to tenants would be unacceptable as it would leave a gap in regulation.
- 2.19 Mobile Plant discharging to water will be subject to the EP Regulations in the same manner as other regulated facilities that discharge to water.
- 2.20 Regulation of mobile radioactive apparatus is covered in Schedule 22, Part 2, 5(5) and the meaning of mobile radioactive apparatus is set out in Schedule 22, Part 2, 1. The meaning is unchanged from the Radioactive Substances Act 1993 (RSA93).

Proposal 4 – Exemptions and exclusions

Proposal 4

That provision is made for discharges from certain small sewage discharges in England and Wales to be subject to general binding rules. That provision is made for the exemption from permitting of certain small quantities of GW pollutants. The current UK-wide RSR Exemption Order and RSA93 Schedule 1 review will be progressed in parallel. Consideration will be given as to whether a new Schedule or Schedules may be inserted into the EP Regulations to deliver the review outcomes for England and Wales.

24 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
2	14	16	3	5
8%	58%	66%	13%	21%

- 2.21 Two thirds of respondents who commented on this proposal were supportive overall, although the majority had some additional comments to make. The proposed provisions for the application of exemptions and associated rules for small discharges of sewage effluent received significant support. Some respondents argued that these should be proposed for more cases, suggesting a number for additional exemptions, including: low-risk discharges, temporary discharges from the test pumping of boreholes, storm water overflows and soak-aways for small sites such as concrete plants. Concerns were expressed on the vegetation cutting proposals which were considered by practitioners to be over prescriptive, could contaminate water bodies and increase flood risk.
- 2.22 On the review of other current exemptions, support was received for the removal of the current exemption on discharges from vessels to inland waters; and for the review of arrangements for the exemption of low risk radioactive materials and wastes from regulatory control. One respondent considered that the review of Exemption Orders for RSR would benefit small departments in health clinics, patient treatment centres or patient screening units using low level radioactive substances.
- 2.23 Caution was called for by a number of respondents, who noted even small discharges of sewage effluent could be potentially damaging when made into sensitive sites, waters with high biodiversity or nature value, or drinking water catchment areas. Some said that the cumulative impacts of multiple small discharges should be properly taken into account in order to limit environmental impact. Others stated that more information was needed on the risk assessment criteria and thresholds to be applied for such exemptions.

Government response

- 2.24 Government welcomes the caveated support for its proposals on exemptions, exclusions and associated rules and conditions. It notes the support for the reviews of existing exemptions. Government will encourage the Environment Agency to explore options for additional exemptions, exclusions and in particular standard permits while continuing to take account of a precautionary

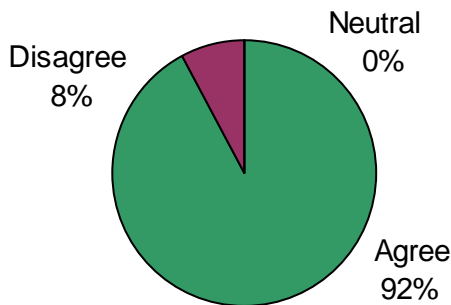
approach. Government acknowledges that its proposals on vegetation cutting would create considerable difficulties for the operators engaged in this area. Government will work with representatives of organisations responsible for vegetation cutting to bring forward alternative proposals for public consultation.

Question 2 – RSR application process and staged regulation

Question 2

Do stakeholders agree with the way in which the RSR application process would be widened to cover investigative work at sites that may be intended for the disposal of solid radioactive waste? If so, what type of solid radioactive waste disposal facilities do you consider staged regulation should be used for?

13 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
1	11	12	1	0
8%	85%	92%	8%	0%

- 2.25 Over 90% of those responding to this question did so positively, broadly supporting the proposed wider scope of the RSR application process to cover investigative work at potential disposal sites and the proposed method for staged regulation. Respondents generally felt that the application process should not be unduly bureaucratic and should be based on an element of risk albeit recognising that some degree of regulatory certainty was needed to secure investment for these types of infrastructure projects. One respondent disagreed with staged regulation.
- 2.26 Support for the method for staged regulation varied. One respondent suggested it should be used for all specialised disposal facilities for solid radioactive wastes, tailored to the type of facility and wastes in question. Another felt that staged regulation should only apply to investigative work at sites intended for geological disposal of solid radioactive waste. Specific calls were made for staged regulation not to apply to, or to be optional for, landfill sites accepting low-level radioactive waste and surface facilities for the disposal of solid radioactive waste.
- 2.27 Respondents welcomed greater clarity on environmental requirements to be applied at each stage of a facility's development, stating that there would be a need for clarity about who would be the regulator at each stage of development

and what their expectations would be. One respondent did not agree with the proposal and felt that the proposal would introduce unnecessary red tape.

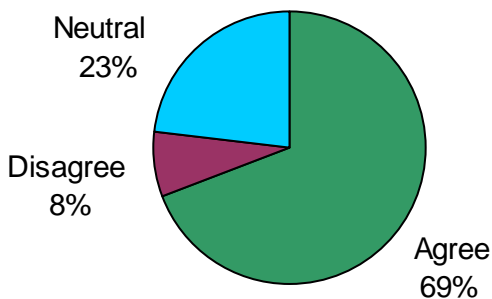
Government response

- 2.28 Government welcomes the broad support for its proposals on RSR application process and staged regulation, while acknowledging the concerns raised including the potential for confusion and additional red tape. The EP Regulations will be the mechanism to implement the policy commitment made by Government in the 2008 White Paper ‘Managing Radioactive Waste Safely’ to provide the Environment Agency with an appropriate power.
- 2.29 Government confirms that staged regulation will only be applied to the development of solid radioactive waste disposal facilities and, in particular, to geological disposal facilities. It recognises the long-term nature of the process for developing such facilities and also the need for early regulatory control to ensure the environmental performance of a facility is not adversely affected by activities during its development, operation and closure. The application of staged regulation to near-surface disposal facilities should be subject to consideration of the nature and size of any proposed facility. The Environment Agency will recognise the need for a proportionate application of staged regulation to near-surface facilities. Government is considering amending the Regulations in light of the responses about application of staged regulation to near-surface disposal facilities for solid radioactive waste to allow this to be applied for certain other types of activities, and this would be subject to Government guidance.

Proposal 5 – Applications

Proposal 5
It is proposed to adopt the common application provisions for the three candidate regimes. It is also proposed for RSR to allow for transparent staged environmental regulation of investigative work at sites that may be intended for the disposal of solid radioactive waste as well as the regulation of disposal itself.

13 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/No Opinion
6	3	9	1	3
46%	23%	69%	8%	23%

- 2.30 More than three-quarters of respondents who commented on this proposal were either strongly supportive or generally in favour. Some respondents felt that common application provisions would offer considerable advantages, for example in terms of reduced capital costs, administrative burden and ongoing operation and maintenance. One respondent from a water company agreed that common application provisions were desirable but was unconvinced that DC and GW needed to be in the EP Regulations for this to happen.
- 2.31 There was a divergence of opinion concerning the merits of common application provisions for RSR. One respondent declared strong support, whereas two respondents from the nuclear industry felt that common application provisions may not be appropriate, given the volume of material required to support such applications and the potential difficulties of making a single consistent process from the current RSR and Pollution Prevention and Control (PPC) application processes.

Government response

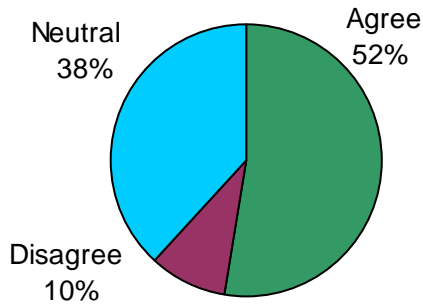
- 2.32 Government welcomes support for its proposal to adopt the common application provisions for the three candidate regimes. The Environment Agency is developing an application process including application forms that will apply to the nuclear industry for RSR permits.

Proposal 6 – Permit determination/content

Proposal 6

It is proposed that the common approaches to permit form and content are adopted, and that regulators be empowered to impose off-site conditions. It is also proposed that the single site permits and consolidation provisions with the benefits they bring are adopted (although, for RSR, Government guidance will explain that such powers might be exercised sparingly). It is proposed that the common provisions on public participation are adopted, but it is not proposed that the requirement to consult with other Member States is applied to any of the candidate regimes. Note that this does not affect the separate requirement for Member States to consult the European Commission under Article 37 of the Euratom Treaty about certain plans for the disposal of radioactive waste. It is also proposed that the common provisions on determination periods are adopted for DC, GW and non-nuclear RSR determinations but that no periods are provided for in the EP Regulations for nuclear site determinations. It is not proposed to bring the section 16(10) RSA93 requirement for a 28 day interval across into the EP Regulations.

21 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	6	11	2	8
24%	29%	52%	10%	38%

- 2.33 The majority of those respondents who commented on the proposal to have common approaches to permit form and content were broadly supportive. Only two disagreed.
- 2.34 There was a mixed response to the proposal to use standard permits. Several respondents supported their proposed use but others voiced concerns, including: a lack of information on which discharges such permits could cover; potential resource difficulties for the Environment Agency in developing, processing and reviewing standard permits; and issues over what would happen in cases of variations, surrenders and transfers if only one element of a permit were subject to change.
- 2.35 Respondents expressed roughly equal amounts of support and concern on permits for single sites and consolidated permits. Whilst some respondents supported single site permits in principle and felt they should have a beneficial impact on regulated industry, a smaller number felt there would be difficulties and confusion in the application of a single permit to a site undertaking more than one activity. Other respondents questioned the benefits of integration and consolidation of permits. Some respondents rejected the introduction of single consolidated permits for nuclear sites outright.
- 2.36 Respondents raised considerable reservations about the inclusion of off-site conditions in permits. Many sought greater clarity or guidance on what 'off-site conditions' meant and expressed concern that they may become a tool to force permit holders to undertake and bear the cost of general environmental monitoring. One respondent suggested that including off-site conditions was a positive step but warned that it was potentially contentious, in particular for nuclear sites.
- 2.37 Several respondents commented on the determination periods for permits (mostly in relation to RSR). One suggested that the four-month period for granting permits and variations where public participation was required should be qualified to show how objections would affect this. Two sought minimum determination periods for RSR on nuclear sites, while one requested a fixed determination period for nuclear sites that could be waived where there are

other regulatory requirements. One respondent asked whether there was any particular justification for keeping RSR out of the four-month determination period.

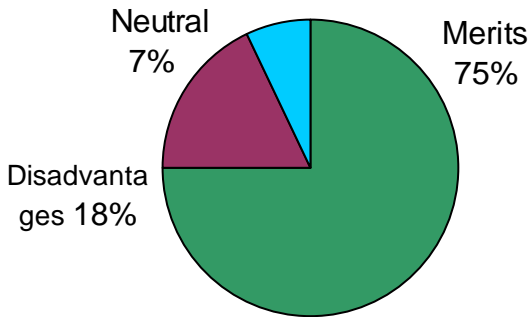
Government response

- 2.38 Government notes that the majority of respondents supported or were neutral about the proposal to have common approaches to permit form and content. It also notes the concerns that were raised about standard permits, permits for single sites and consolidated permits and can confirm that it has no intention of making standard permits, permits for single sites or consolidated permits compulsory.
- 2.39 Standard permits are suitable for low and medium risk activities where it is possible to define generic emissions controls and rules on where they cannot be located without an unacceptable risk. Specific rules sets and risk assessments are consulted upon, so should be clear. Government agrees there is more work to be done by the Environment Agency to continue to review, improve and develop rules.
- 2.40 Off site conditions allow the monitoring of the actual effects of emissions from facilities rather than rely on precautionary modelling. Off site environmental monitoring would be a condition in rare circumstances where it is not possible to obtain the information on site and the environmental risk justifies it. It would be to help an operator manage the impact of a specific facility or quite exceptionally a cluster of facilities, not for Environment Agency environmental planning purposes.
- 2.41 The 'one site, one permit' aspiration can be developed as experience in applying the EP Regulations increases. Issues that will need to be addressed in developing a single permit include the need to recognise joint regulation with HSE on nuclear licensed sites and consideration of national security restrictions on the information contained in permits, in particular those for sealed radioactive sources.
- 2.42 The four month determination period will apply to most RSR activities. However, the nature of joint regulation with HSE makes it difficult to apply a fixed determination period for nuclear licensed sites and such applications will therefore continue to have no fixed determination period.
- 2.43 By agreement with the applicant, the Environment Agency may extend the determination period, for example in the light of responses to consultation.

Question 3 – Four-year rule for discharge consenting and Proposal 8 – Variation of permits

Question 3
Stakeholders are asked to give their views on the merits or otherwise of the four year rule for discharge consenting.

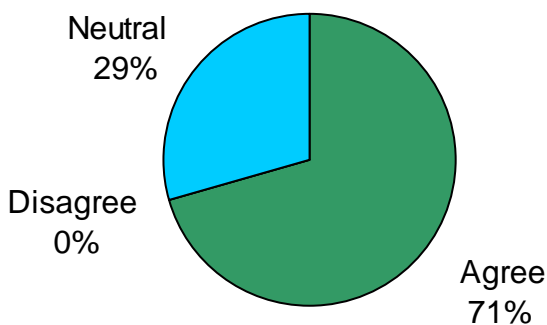
28 of 55 Respondents



Merits	Disadvantages	Neutral/ No Opinion
21	5	2
75%	18%	7%

Proposal 8
It is proposed that the common EP Regulations provisions on variations be adopted for RSR and GW. However for discrete discharge consent variations by the regulator, the Government wishes to seek views from stakeholders on the merits or otherwise of the four year rule for discharge consenting before coming to a view on whether the rule should be retained.

17 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	7	12	0	5
29%	41%	71%	0%	29%

2.44 More than two thirds of respondents saw the retention of the four year rule for DC as positive (in responses to Question 3 and Proposal 8). Outright support was received from eight with an additional four suggesting an extension to the time period, either to five years to align with the Asset Management Plan process or to six years to tie in with the cycles of River Basin Planning under the Water Framework Directive. Four respondents called for the four year rule to be extended to GW authorisations or asked for clarification as to whether it already applied. Three more suggested that it be applied to permits beyond the water industry, to enable others to benefit from greater regulatory certainty.

- 2.45 Five respondents called for removal of the four year rule for DC, or questioned the appropriateness of special protection to this sector.
- 2.46 A response from the medical sector called for the regulator to retain the ability to grant a rapid one-off RSR variation (to allow for a medical procedure to be carried out on a specific patient without having to wait for a permit variation).

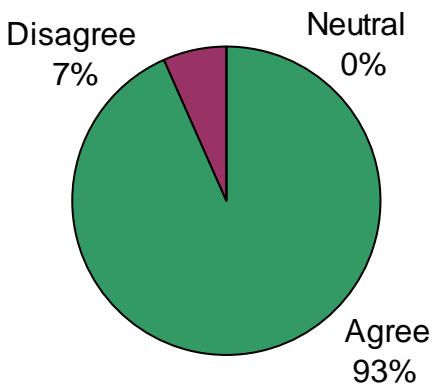
Government response

- 2.47 Government proposes to retain the four year rule for changes to DC consent conditions. It is not persuaded to alter existing policy by the arguments of those who suggested extending the time period, or that it should be extended to GW and other regimes. To ensure a level playing field for this class of activities, this rule would continue to apply to any bespoke permit for water discharge activities.
- 2.48 Where an operator has a standard permit, Government confirms that the four year rule would not apply. However, it is anticipated that in most cases, if the rules of the standard permit were to change, the operator could choose to retain their existing conditions but as a bespoke permit.
- 2.49 Government also confirms that the EP Regulations will allow the Environment Agency to retain the flexibility to issue variations to non-nuclear permits at short notice, for example, to meet medical needs.

Proposal 9 – Transfer of permits

Proposal 9
It is proposed to adopt the EP Regulations transfer provisions to allow whole and partial transfers of environmental permits for RSR, for both nuclear and non-nuclear permits. However, for DC and GW it is proposed that a joint transfer notification provision is adopted rather than the EP Regulations transfer provisions.

15 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
11	3	14	1	0
73%	20%	93%	7%	0%

- 2.50 All respondents but one supported the proposals on the transfer of permits. The respondent who disagreed preferred the EP Regulations transfer provisions to be used also for DC and GW authorisations.
- 2.51 In supporting the proposal, one respondent noted that the Environment Agency would need to have an effective permitting team to deal with joint transfer notifications for DC and GW permits.
- 2.52 Another respondent thought that the holder of an RSR permit should be required to notify the local authority of the permit transfer, and that both the local authority and the Waste Planning Authority should be informed about inter-site transfer of radioactive waste (this latter point is dealt with under proposal 14).

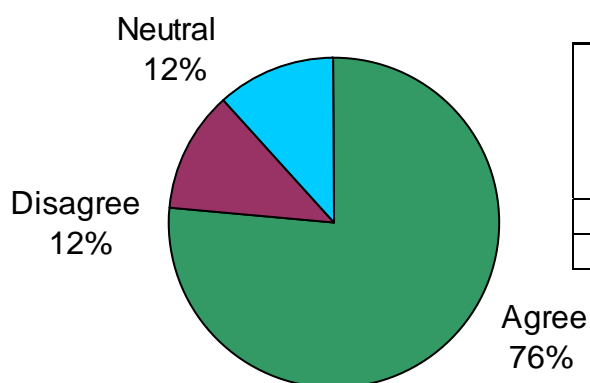
Government response

- 2.53 Government notes the support for its proposal to adopt the EP Regulations transfer provisions for RSR permits and a joint transfer notification for DC and GW. It fails to see that there would be benefit in requiring the EP Regulations transfer provisions for DC and GW.
- 2.54 The Environment Agency is currently planning for the implementation of the proposed EP Regulations. Joint transfer notifications for DC and GW will be managed by its National Permitting Centre while RSR transfers will be handled as they are now, by RSR teams and the same notifications will apply.
- 2.55 Local authorities will be notified of all EP permit transfers, including RSR permits, as part of the standard transfer process required by the EP Regulations.

Proposal 10 – Compliance/review of permits

Proposal 10
It is proposed that the common approach to review and inspections is adopted for the three candidate regimes.

17 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
3	10	13	2	2
18%	59%	76%	12%	12%

- 2.56 Three quarters of those responding to the proposal for a common approach to review and inspections for the three candidate regimes agreed with the proposals, although most made additional comments. There was support for the introduction to the DC and GW authorisation systems of a duty to review and inspect, and for a common approach to review and inspections for RSR. However, concerns were raised about how it would work in practice. The two respondents who disagreed with the proposal did so due to the absence of clear guidance.
- 2.57 A substantial number of respondents commented on the frequency of inspections. Three respondents suggested that the frequency of reviews and inspections should be proportionate to the risk posed by sites, rather than following prescribed frequencies. Two respondents suggested that the frequency of inspections should be subject to further consultation, particularly when consents affect protected areas. Finally, one respondent stated that this proposal should not undermine recent changes to the review of nuclear authorisations which the Environment Agency had introduced as part of the adoption of Better Regulation.

Government response

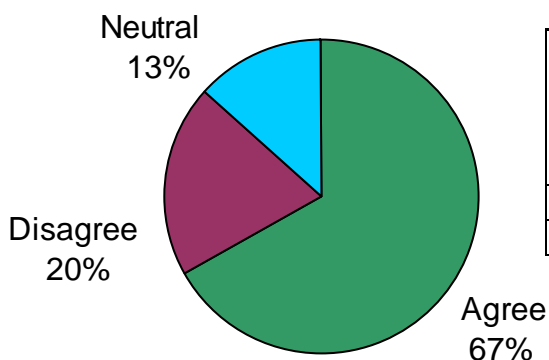
- 2.58 Government notes the support for its proposal on periodic review and inspection. It expects that the Environment Agency will continue to adopt a proportionate and risk based approach.

Proposal 11 – Enforcement

Proposal 11

It is proposed that the common EP Regulations approach to enforcement and suspension notices is adopted across the three candidate regimes. It is not proposed that the prohibition notice procedure is needed in the new system, save in a simplified manner to require a highways authority by notice to apply for a permit. Further, it is proposed that the current powers under regulation 19 of the Groundwater Regulations 1998 and under section 30 RSA93 are brought within the EP Regulations.

15 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
2	8	10	3	2
13%	53%	67%	20%	13%

2.59 Two thirds of respondents broadly agreed to this proposal. However, it was stated that it would be impractical or impossible to use suspension notices for sewage treatment plants, water supply and radioactive sources. The three responses that directly addressed the issue of prohibition notices were mixed, from support through to the removal of the prohibition notices and a call for guidance on how they would be used.

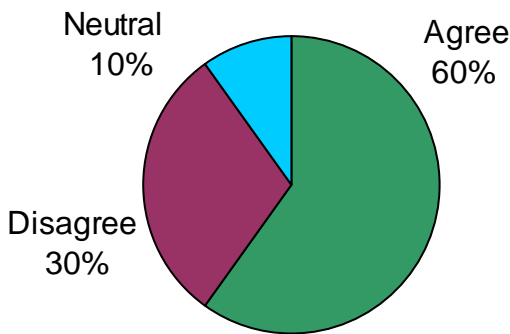
Government response

2.60 Government welcomes support for its proposals. Government accepts that there are practical difficulties in using suspension notices for sewage treatment plants, water supply and radioactive sources. Government guidance will outline when a suspension notice may be issued.

Proposal 12 – Offences

Proposal 12
It is proposed that the existing offences are brought across into the EP Regulations with the adoption of standard provisions for offences as far as possible for all three candidate regimes. It is also proposed that the emergency defence is retained for DC and GW and extended to cover RSR within the common EP Regulations. It is proposed that the current additional defences within WRA 91 be carried across into the EP Regulations. It is proposed that the obsolete disclosure of trade secrets offence in RSA93 is removed and replaced by the rules within the EP Regulations which protect information where it is or may be commercially or industrially confidential. These provide for an independent appeal process to determine whether such information should be protected or made public.

20/55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
7	5	12	6	2
35%	25%	60%	30%	10%

2.61 Three fifths of respondents supported these proposals. In particular there was a considerable support for the retention of the emergency defence, and for its extension to RSR. The remaining third of respondents disagreed with elements of the proposals.

2.62 The proposed alignment of penalties under WRA and EP Regulations came in for criticism from water companies, primarily as the current penalties under WRA were lower than the proposed penalties.

2.63 One respondent asked if the security organisations had been consulted on the removal of the disclosure of trade secrets offence in RSA93.

Government response

2.64 Government notes the support for parts of this proposal including support for the retention of the emergency defence, and for its extension to RSR.

2.65 Government wants a consistent approach to breaches of the EP Regulations. It believes that it would be unfair to apply a lesser penalty for breach of one category of activity compared with another. It thinks it would be undesirable to have a situation where an operator carrying on an activity at one facility could face a lesser penalty to that which it faced at another facility within its operations when causing the same harm to human health or the environment.

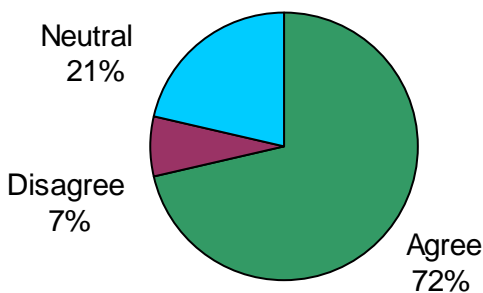
2.66 Government confirms that the rules on confidentiality are being brought in line with current practice in the existing EP Regulations and that national security restrictions will still apply.

Proposal 13 – Public registers / access to info

Proposal 13

It is proposed that the common public register provisions are adopted for all three candidate regimes, although it is not proposed that a new parallel public register for DC and GW is maintained by local authorities, as this would represent a new burden. The category of trade secrets within RSA93 would be replaced by confidential information. Confidential information is protected under the EP Regulations by an independent appeals process.

14 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	4	10	1	3
43%	29%	72%	7%	21%

2.67 Almost three-quarters of respondents broadly agreed with the proposal. A number had some concerns, namely the extent to which radioactive permitting application information would be made generally made available through public registers; and how a single public register would work in the case of a single site permit containing activities regulated by two regulators. One respondent commented on the apparent lack of compatibility of the proposed Regulations with Directive 2003/4/EC on public access to environmental information.

Government response

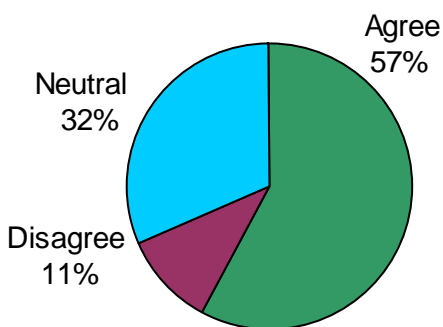
- 2.68 RSR information held on the public register will still be subject to national security restrictions in accordance with Government directions.
- 2.69 Government notes the broad support for its proposals for common public register provisions for all three candidate regimes. It confirms that no information subject to national security restrictions should be placed on public registers. The public register requirements under the EP Regulations do not change the arrangements for other regulators such as HSE.
- 2.70 The Directive 2003/4/EC on public access to environmental information is implemented through the Environmental Information Regulations 2004. These Regulations provide the basis for requesting information, independently of whether it should be on a register, and a refusal to provide it can be appealed to the Information Commissioner.

Proposal 14 – Public participation / consultation

Proposal 14

It is proposed that the common risk-based EP Regulations approach to consultation and public participation should be adopted for the three candidate regimes. It is also proposed that the Environment Agency's public participation statement should be extended to cover the three candidate regimes. It is proposed that the requirement to display RSR permits should be maintained within the EP Regulations through permit conditions, subject to overriding national security considerations. It is proposed that the requirements for regulators to send local authorities a number of RSR documents is replaced by the requirements on local authorities to maintain more comprehensive public registers. It is also proposed that regulators are required to impose permit conditions on operators of all RSR waste disposal and accumulation sites who intend to receive waste from a new consignor to inform their local authority in advance of the origin and nature of the waste. This would ensure that the transparency of the RSR system is both maintained and improved.

19 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	5	11	2	6
32%	26%	57%	11%	32%

- 2.71 Just under three fifths of those commenting on the proposal on public participation and consultation supported it, with several making additional remarks. The overall view was varied, with some respondents feeling that the proposals would result in not enough participation and consultation while a smaller number felt there might be too much.
- 2.72 Two County Council respondents raised concerns about the burden of any requirement for local authorities to maintain more comprehensive public registers. One County Council commented on the need for local authorities to be notified of inter-site transfers of radioactive waste.
- 2.73 Three respondents raised concern about the requirement to display RSR permits. This requirement was deemed by one to be obsolete when permits could now be viewed electronically. Another argued that provisions on public participation must be secondary to those of national security. On the other hand, one respondent wanted to see applications for environmental permits for RSR published both in local newspapers and on the Environment Agency website.

Government response

- 2.74 Government notes the range of views expressed on its proposals on public participation. It supports the targeted approach that the Environment Agency is intending to take to avoid overloading people with consultations. The Environment Agency's approach is outlined in its revised Public Participation Statement (on which it recently consulted³). This describes how it proposes to consult when developing standard permits and, subject to national security restrictions, on bespoke permits and the advertising of permit applications.
- 2.75 The Environment Agency intends that its environmental permit for RSR will state that an operator can only transfer radioactive waste to an operator authorised to receive such waste. The receiving operator will be required under the conditions of its permit to inform the local authority of any new consignees of radioactive waste. This will also include the appropriate County Waste Planning Authority. The Environment Agency will consult on all permits for disposal facilities. Local authorities will be informed of new consigning sites by the receiving site. Government does not see any environmental benefit in consulting on individual transfers.
- 2.76 Government considers that the amount of new information that local authorities would need to hold about RSR premises will be small and manageable.

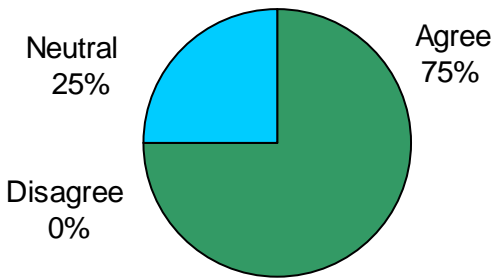
³ <http://www.environment-agency.gov.uk/research/library/consultations/106232.aspx>.

2.77 Government is not convinced that the long established requirement to display RSA93 permits (except for security reasons) should be changed.

Proposal 15 – Revocation of permits

Proposal 15
That the common EP Regulations provisions for revocations should be adopted.

12 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	3	9	0	3
50%	25%	75%	0%	25%

2.78 Respondents generally agreed with this proposal. Points of clarification were raised on the workings of the system for DC, RSR and Mining Waste.

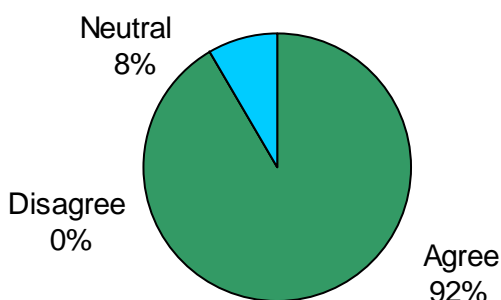
Government response

2.79 Government notes the response to its proposal that the common EP Regulations provisions for revocations should be adopted. The workings of the system are described in more detail in Government guidance, in particular in the section on revocations in the Core Guidance, the RSR Guidance and Mining Waste Guidance.

Proposal 16 – Surrender of permits

Proposal 16
For DC and GW it is proposed that the EP Regulations simple surrender notification approach is adopted so the permit automatically ceases to exist in a way that is less burdensome than at present. For RSR it is proposed that the standard EP Regulations surrender test is adopted, but that at nuclear sites its application is expressly limited in order to prevent conflict with the Nuclear Installations Act 1965 controls, so the surrender test only applies to the final disposal of radioactive waste from or on such sites to the extent that it does currently under RSA93.

12 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	6	11	0	1
42%	50%	92%	0%	8%

2.80 Respondents were generally supportive of this proposal and made comments on specific aspects. As with the revocation of permits, respondents questioned the detailed working of the system.

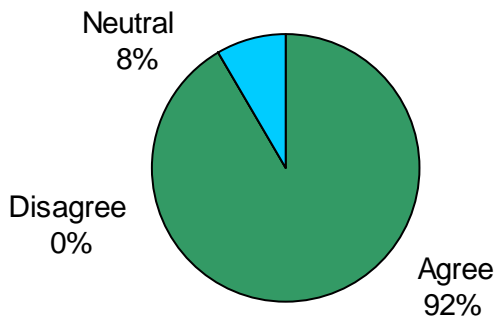
Government response

2.81 Government welcomes the support for its proposals on the surrender of permits. The workings of the system are described in more detail in Government guidance, in particular in the section on revocation in the Core Guidance.

Proposal 17 – Transitional provisions

Proposal 17
It is proposed that existing DC/GW/RSR permits automatically become environmental permits when the amended EP Regulations come into force. Only outstanding applications would continue to be determined under existing systems.

12 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	5	11	0	1
50%	42%	92%	0%	8%

2.82 Respondents agreed with this proposal. Specific comments were made on the potential time, resource and cost impacts on business of converting existing consents to the permits; the need for clarity on the status of applications in progress during the transitional period (stating this was confusing under the first phase of the Programme).

2.83 One respondent questioned whether the changeover to environmental permits would automatically result in single site permits, or multiple permits for the current discharges on a site.

Government response

2.84 Government welcomes the support for its proposal on transition to the new system. Automatic transfer (with no applications required) will mean there will not be time, resource and cost impacts beyond those identified in the Impact Assessment (IA) such as learning the new system.

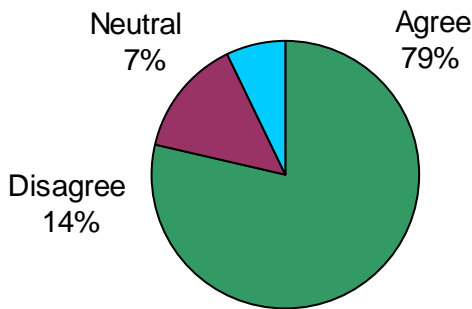
2.85 Most operators will only notice a change to the system when they apply for new permits, variations or surrenders. The benefits of the new system include

allowing operators to apply for standard permits, exemptions or single site permits. Government confirms that it will be at the operator’s discretion to have anything other than a single bespoke permit.

Question 4 – Maintaining current Discharge Consenting procedure and Proposal 18 – Appeals

Proposal 18
 It is proposed to adopt the common EP Regulations model for appeals for GW and RSR and in large part for DC. However, for a limited category of DC appeals (those against variations by the regulator and the imposition of conditions on unconditional consents) it is proposed to maintain the current DC approach so that appeals have the effect of suspending the decision pending the outcome of the appeal.

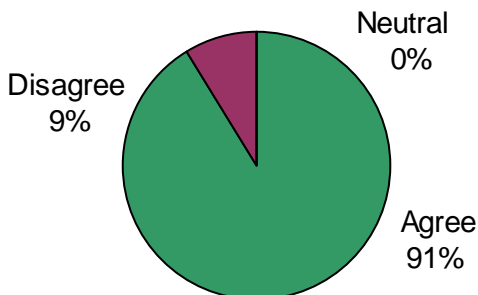
12 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
8	3	11	2	1
57%	21%	79%	14%	7%

Question 4
 Do you agree with the Government’s proposal to maintain the current Discharge Consenting procedure so that appeals against variations to discharge consents by the regulator, or against the imposition of conditions on unconditional discharge consents, continue to have the effect of suspending the regulator’s decision pending the outcome of the appeal?

23 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
15	6	21	2	0
65%	26%	91%	7%	0%

2.86 Almost 80% of respondents to proposal 18 and over 90% of respondents to question 4 supported maintaining the current procedure.

- 2.87 Respondents who disagreed said that it would result in unacceptable delays in delivering environmental improvements and that a more forceful approach was required to ensure that environmental permits subject to appeal were not suspended pending the outcome of the appeal.
- 2.88 One respondent expressed concern that the right of appeal against conditions imposed via a direction used to implement the requirements of the high-activity sealed radioactive sources and orphan sources (HASS Directive) could result in breach of the UK's obligations.

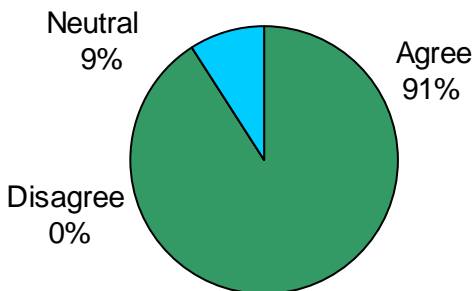
Government response

- 2.89 Government notes the high level of support shown for its proposals. In light of this support, it confirms that it will maintain the current DC approach so that appeals have the effect of suspending the decision pending the outcome of the appeal. As now, the situation will remain that where the regulator of its own volition modifies conditions in a consent and the consent holder does not appeal against all of the modified conditions, it is only the modified conditions under appeal that are suspended until the determination of the appeal, and any non-modified conditions or unappealed modified conditions remain in force.
- 2.90 When Government directed the Environment Agency to include conditions in permits to reflect obligations under the HASS Directive, no appeal was possible under section 26 of RSA93. The EP Regulations will revoke section 26 of RSA93 and operators will be able to appeal against the regulator's proposed permit conditions. However, in determining any appeal, Governments will be mindful of the UK's obligations under the HASS Directive.

Proposal 19 – Guidance

Proposal 19
It is proposed to adopt the common EP Regulations model for guidance for all three candidate regimes.

11 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	5	10	0	1
45%	45%	91%	0%	9%

- 2.91 Respondents supported this proposal and commented that guidance should be developed with stakeholders and that there should be coordination between various pieces of guidance on the same topic.
- 2.92 Several stakeholders, while supportive of EPP, are withholding their final judgment on the scheme until they have seen the content of the Government and regulator’s guidance.

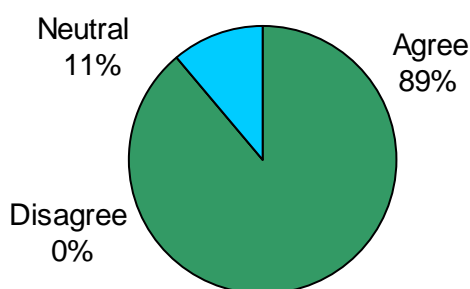
Government response

- 2.93 Government welcomes support for the proposal and notes that much of the additional detail will be contained in guidance which will be developed in consultation with stakeholders.

Proposal 20 – Documents / submission of forms

Proposal 20
It is proposed to adopt the common EP Regulations approaches to the service of documents and submission of forms.

9 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
7	1	8	0	1
78%	11%	89%	0%	11%

- 2.94 Almost 90 per cent who commented on this proposal supported it. Only two concerns were raised: that the common permit form and content might not be practicable for nuclear sites (given the amount of information that must be submitted); and that care should be taken not to become over-reliant on the electronic submission of information.

Government response

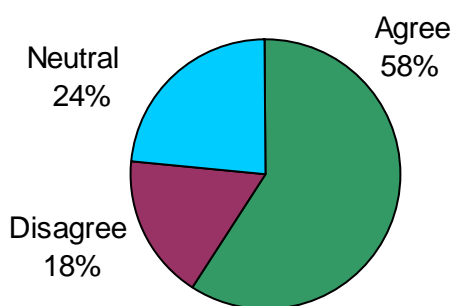
- 2.95 Government welcomes the support for its proposals to adopt the common EP Regulations approaches to the service of documents and to the submission of forms. Government guidance will require forms (including those for the nuclear industry) to be as simple as possible and based on risk. It confirms that application forms will be developed by the Environment Agency (with industry involvement though business reference groups) for each class of regulated facility, including nuclear licensed sites, and for specific activities.

2.96 Government understands that the Environment Agency is planning to allow electronic submission of forms and data but will still accept other forms of application and submission of documents. Electronic submissions will be subject to national security restrictions for some radioactive substances activities.

Question 5 – Part B air pollution regulation and Discharge Consenting for the same site

Question 5
Do consultees consider there could in the future be a demand for a power to direct that one or other regulator is responsible for Part B air pollution regulation and Discharge Consenting where both apply to the same site? Current evidence suggests there is only a small number of such cases and hence no arrangements are proposed in the EPP2 Regulations.

17 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
4	6	10	3	4
24%	35%	58%	18%	24%

2.97 The majority of respondents agreed that there were only likely to be a small number of cases of this type, and that a power as suggested in the proposal was unlikely to be needed. One respondent suggested that regulators should be encouraged to improve collaborative working through joint memoranda of understanding, rather than resorting to powers of direction. Three respondents suggested that the Environment Agency could be the lead regulator in cases of dual regulator. One respondent felt that it was appropriate for the Environment Agency to be the regulator for DC but wished to retain the ability to obtain a transfer of regulator for Part B PPC activities.

2.98 Two respondents identified the possible need for such a power in the future: one fully supported a move for one regulator to be responsible for Part B processes and DC, to avoid confusion over responsibilities and provide a consistent approach to regulation across England and Wales; the other suggested that a power of this type should be explored in the future consultations.

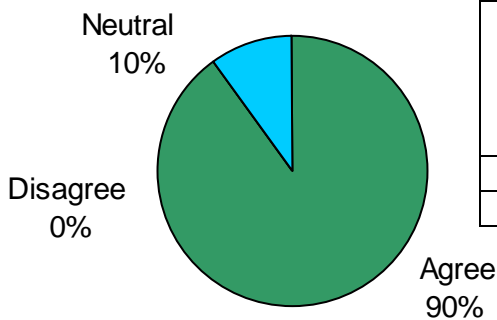
Government response

2.99 Government notes that respondents agreed there did not need to be a power in the EP Regulations to direct that one or other regulator (the Environment Agency and relevant local authority) be responsible for Part B air pollution regulation and DC where both apply to the same site. It does not therefore intend to provide this specific power of direction in the EP Regulations. However, due to the flexibility and scope of the EP Regulations this could be considered in future if it were thought to be of benefit.

Proposal 21 – Designation of regulator

Proposal 21
It is proposed that DC, GW and RSR regulation remains with the Environment Agency. It is proposed that there will not be a power under the EP Regulations to allow the transfer of regulation from the Environment Agency to local authorities for DC, GW and RSR.

10 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	3	9	0	1
60%	30%	90%	0%	10%

2.100 Respondents agreed with the proposal. There was strong support for DC and GW activities remaining with the Environment Agency and Part B being regulated by local authorities. Two points of detail were raised in connection with staged regulation for RSR: the need for a clear indication of who the regulator was, along with their expectations at each stage of a facility’s development; and concern was raised in connection with the requirement to satisfy the regulator that permit conditions had been complied with prior to the next stage of development.

Government response

2.101 Government notes the support for its proposals that DC, GW and RSR regulation remains with the Environment Agency and that there will no power in the EP Regulations to transfer regulation from the Environment Agency.

2.102 The need for the Environment Agency and HSE to collaborate is addressed in draft Government guidance for RSR. Government also notes that the

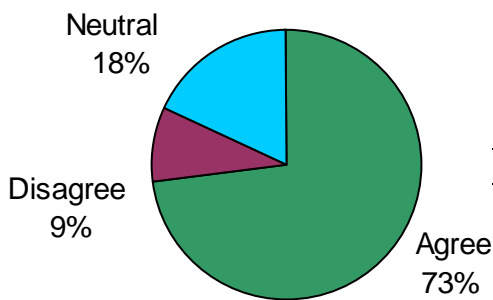
Environment Agency and HSE have published a joint statement on working together on nuclear licensed sites. This confirms they co-operate closely to ensure that these sites are regulated effectively and efficiently.

2.103 Government confirms that staged regulation will only apply to development of solid radioactive waste disposal facilities and, in particular, to geological disposal facilities. It notes that the Environment Agency has published guidance that describes the process of staged regulation for a geological disposal facility⁴. The guidance sets out the links between staged regulation and HSE's nuclear site licensing process. It also describes the submissions that a developer is expected to make to the Environment Agency at each stage of development of a geological disposal facility.

Proposal 22 – Power to require information

Proposal 22
It is proposed that the common EP Regulations approach is adopted for information notices.

11 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
4	4	8	1	2
36%	36%	73%	9%	18%

2.104 Almost three-quarters of respondents agreed with the proposal although some had additional comments. Some respondents wanted more guidance on the extent to which the power to require information will apply, on when it would be used and on what information might reasonably be requested.

Government response

2.105 Government notes the support of respondents for the common EP Regulations approach to be adopted for information notices. Chapter 5 of the Core Guidance has details on when and how they can be used.

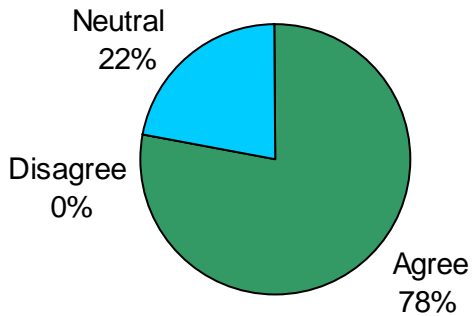
⁴<http://www.environment-agency.gov.uk/business/sectors/99322.aspx>

Proposal 23 – Power to give directions to regulators

Proposal 23

It is proposed that the common EP Regulations powers to give directions are adopted for the three candidate regimes.

9 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	2	7	0	2
56%	22%	78%	0%	22%

2.106 All respondents agreed with or were neutral to the proposal. Two respondents urged caution in the use of a general power of this nature, asking for the use of these powers to be carefully considered. One respondent suggested that the specific power in the RSA93 to 'direct regulators to restrict knowledge of applications on the grounds of national security' (Section 25 RSA93) should be retained and extended across the regimes.

Government response

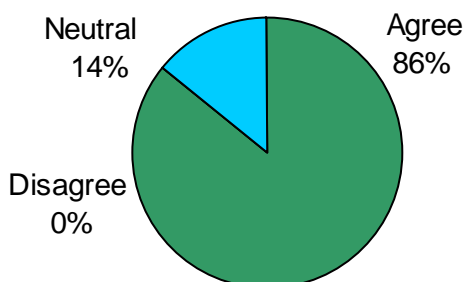
2.107 Government notes the support for its proposal that the common EP Regulations powers to give directions to regulators are adopted for the three candidate regimes. It confirms that use of such powers would always be carefully considered. Government confirms that the equivalent power to Section 25 of the RSA93 exists in the EP Regulations.

Proposal 24 – Powers of entry

Proposal 24

It is proposed to adopt the powers of entry under section 108 of the Environment Act 1995 for each of the candidate regimes.

7 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	1	6	0	1
72%	14%	86%	0%	14%

2.108 The great majority of respondents supported this proposal. One respondent commented that the operator of premises entered (under Section 108 of the Environment Act) should not be held accountable for the health and safety of an Environment Agency officer where that officer disregarded the advice of the operator regarding the safety of his or her activities.

Government response

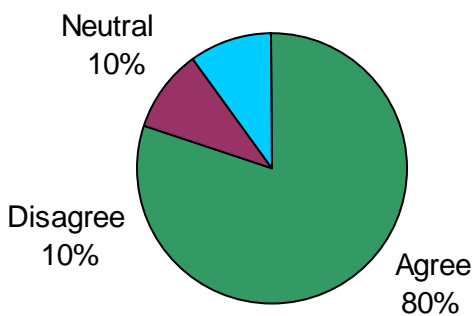
2.109 Government notes the support for the proposal to adopt the powers of entry under section 108 of the Environment Act 1995 for each of the candidate regimes.

2.110 The Environment Agency takes the health and safety of its staff very seriously, and officers are trained in dynamic risk assessment. Officers must comply with the Health and Safety etc at Work Act 1974 when visiting an operator’s premises.

Proposal 25 – Prohibition notices

Proposal 25
It is not proposed to replicate prohibition notice provisions within the proposed EP Regulations as this mechanism would duplicate the existing requirement to obtain a permit under the EP Regulations. It is proposed that the current exception for discharges from highway authorities from direct permitted control is maintained but that such discharges are controlled in future by a simple mechanism which requires those who wish to continue to make such charges to apply for a permit within a reasonable time.

10 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
5	2	8	1	1
50%	20%	80%	10%	10%

2.111 The majority of respondents agreed with this proposal. Two water companies raised concerns over the prohibition of discharges onto land. One respondent disagreed with this proposal, believing that prohibition notice provisions should be included in the EP Regulations as an additional safeguard that did not increase the regulatory burden on operators or regulators.

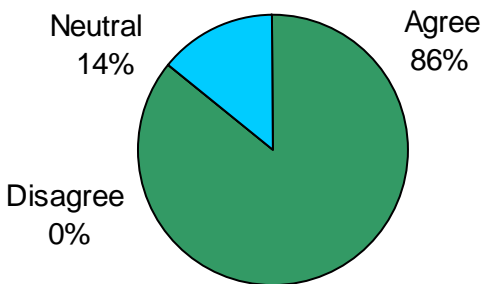
Government response

2.112 Government notes the support for its proposal not to replicate prohibition notice provisions within the proposed EP Regulations and to maintain the current exception for discharges from highway authorities from direct permitted control.

Proposal 26 – Self-regulation by the Environment Agency

Proposal 26
It is proposed to replicate the effect of the existing DC provisions for all environmental permits the Environment Agency needs to hold so that the Environment Agency continues to obtain such environmental permits in an open and transparent manner. The Government is considering whether similar provision should be made for registered exemptions.

7 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	0	6	0	1
86%	0%	86%	0%	14%

2.113 All respondents who addressed this proposal agreed that the Environment Agency should have a transparent and open system for self-regulation in terms of acquisition and holding of environmental permits for its own activities.

Government response

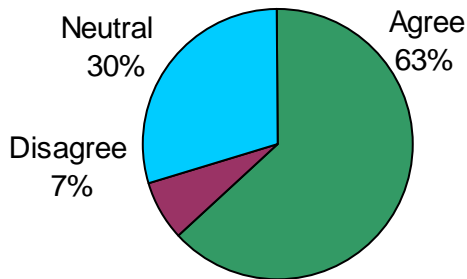
2.114 Although there was support for the inclusion of an explicit provision for Environment Agency self-regulation in the EP Regulations 2010, it has been decided not to include a provision in them at this time. Government does not wish to delay implementation of the EP Regulations whilst this provision is developed but rather to re-consider it in the context of future amendments to the EP Regulations or proposals to extend further the permitting framework. In the meantime, the Environment Agency will publish a statement on determining and complying with permits and exemptions it issues for its own operations. Government will only approve it if the Environment Agency ensures transparency and objectivity in line with how they would regulate any other operator.

Question 6 – Discharge Consenting incorporation into EP Regulations and Question 7 – Groundwater incorporation into EP Regulations

Question 6

Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate Discharge Consenting into the EP Regulations?

27 of 55 Respondents

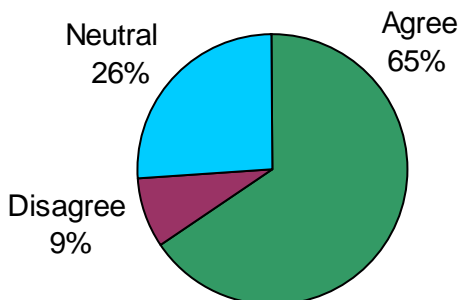


Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
4	13	17	2	8
26%	48%	63%	7%	30%

Question 7

Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate Groundwater into the EP Regulations?

10 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
6	9	15	2	6
26%	39%	65%	9%	26%

- 2.115 The majority of respondents broadly supported the incorporation of DC and GW into the EP Regulations. The two respondents who disagreed stated that there were no evident benefits for the water industry and that the existing 'end-of-pipe' regulatory approach worked very well.
- 2.116 Other points made were that the consultation concentrated on the situation of water company dischargers and made little reference to other consent holders such as farmers and growers. One respondent was concerned that integrating DC into the EP Regulations would change the charging structure from one based on the nature and volume of the discharge to an EP OPRA scheme that would include an assessment of operator performance.

Government response

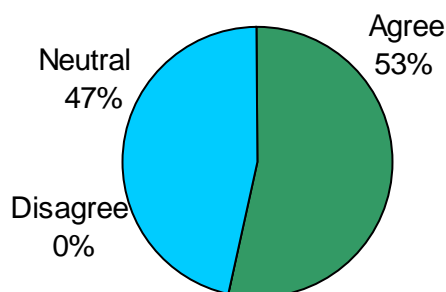
- 2.117 Government welcomes the support for the incorporating DC and GW into the EP Regulations and confirms that it intends to bring forward regulations to enable this to happen. Government considers that this will bring benefits to industry but recognises the importance of publishing supporting guidance in good time.
- 2.118 Rather than concentrating on any one industrial sector, the consultation and IA gathered information from across the DC, GW, RSR and other EPP2 sectors. The Environment Agency already uses Opra as a planning tool for DC compliance assessment and so there is no change from the current position. Any future move to use it for charging purposes would be subject to the Environment Agency's annual charging consultation and therefore outside the scope of the EP Regulations.

Question 8 – Radioactive Substances Regulation incorporation into EP Regulations

Question 8

Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate Radioactive Substances Regulation into the EP Regulations?

15 of 55 Respondents



Agree	Agree + Comment	Agree AND Agree + comment	Disagree	Neutral/ No Opinion
2	6	8	0	7
13%	40%	53%	0%	47%

- 2.119 Over half the respondents to this question supported the incorporation of RSR into the EP Regulations and no respondent was against the incorporation of RSR outright.
- 2.120 Points made were that the EP Regulations could be a good instrument to encourage close working across technical areas of the Environment Agency and with other regulators, vital during nuclear power station development and operation. The same respondent cautioned that care should be taken not to make requirements more onerous in low risk areas of nuclear power plants because of read across of more challenging expectations.

- 2.121 Another respondent expressed a concern about how the EP Regulations would consider risk reduction by nuclear clean-up and decommissioning and how or whether the EP Regulations would take account of the closure and decommissioning aspects of PPC.
- 2.122 One respondent expressed concern that the 'one site, one regulator' principle for the nuclear industry was being lost.
- 2.123 Two respondents strongly recommended that the term 'Radioactive Substances Activity' be replaced with 'Radioactive Substances Work Activity' to avoid confusion, as the term 'activity' was already in common usage with regards to radioactivity, with a different meaning.
- 2.124 At a more general policy level, one Council raised concerns over how regulators' procedures related to the planning system. It also commented that, in the assessment process for permits, economic and social impacts of radioactive wastes management could be at least as significant as the environmental impacts (in terms of public perception), meaning that the Best Practicable Environmental Option was too narrow an assessment. Sustainability Appraisal would be more appropriate.

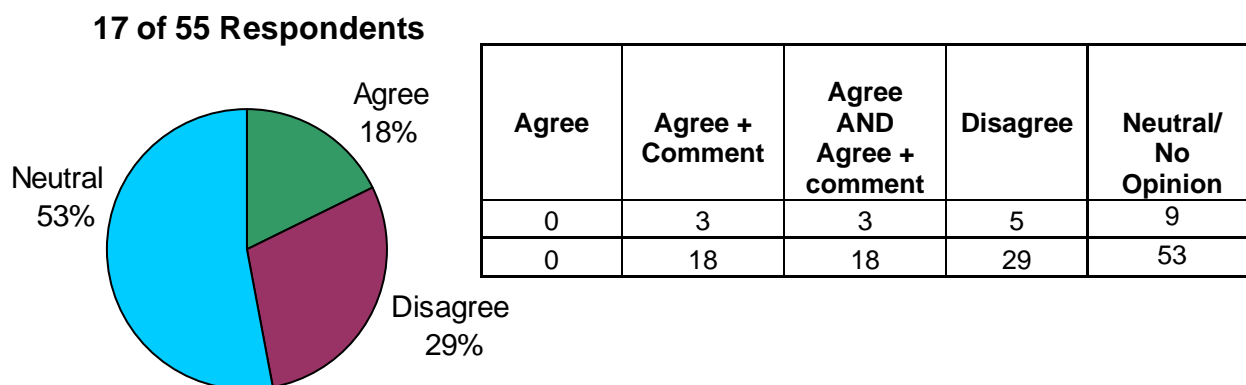
Government response

- 2.125 Government welcomes the support for the incorporating RSR into the EP Regulations and confirms that it intends to bring forward regulations which will enable this.
- 2.126 The EP Regulations are better, not increased regulation or deregulation. The scope and nature of the system is broadly unchanged from RSA93. One major change is the introduction of staged regulation which enhances powers to regulate the development of solid radioactive waste disposal facilities. This is aimed principally at geological disposal facilities.
- 2.127 The EP Regulations bring a more consistent approach to regulation across different regimes. However, there is no intention to link permits for radioactive substances activities with those for PPC activities in the near future. The closure and decommissioning requirements under an environmental permit for a PPC facility will be treated separately.
- 2.128 Government anticipates the 'one site, one permit, one regulator' principle will be introduced over time via the environmental permitting framework. Potential difficulties that need to be addressed in developing a single permit include the need to recognise joint regulation with HSE on nuclear licensed sites and consideration of national security restrictions on the information contained in permits, in particular those for sealed radioactive sources.

- 2.129 The term ‘activity’ is used across the regimes in the EP Regulations and there is a need to maintain consistent terminology. The meaning of radioactive substances activity is given in the regulations and will be further explained in guidance.
- 2.130 There is no requirement to take account of planning permission when granting a RSR permit and this maintains the position under RSA 93. The Environment Agency is a consultee under Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and in this role provides advice to the planning authority.
- 2.131 Government has issued draft ‘Statutory Guidance to the Environment Agency concerning the regulation of radioactive discharges into the environment⁵’ the main focus of which is the change from Best Practicable Means (BPM) and Best Practicable Environmental Option (BPEO) to Best Available Techniques (BAT). This will deliver a regime that is more consistent with environmental protection regimes in other countries and other regimes in England and Wales. Government plans to issue a final version of the Statutory Guidance later this year.

Question 9 – Costs and benefits in the Impact Assessment

Question 9
Do consultees agree with the forecasts of the costs and benefits given in the consultation Impact Assessment and the way in which those forecasts were arrived at?



- 2.132 There was a large measure of scepticism among respondents about the likely robustness of the forecasts of the costs and benefits in the IA, but in general respondents did not identify specific errors with the data or methodology used. Three specific issues raised were: that the DC baseline was given as £81.1 million where as the Environment Agency’s annual report shows it as £61.4

⁵<http://www.defra.gov.uk/corporate/consult/env-permitting-guidance/index.htm>

million; that making forecasts of the number of previously unconsented discharges is potentially problematic (and would increase rather than decrease costs) and that without more details (for example on the types of standard permit), it was difficult to comment on the estimates in the IA.

2.133 The IA considered the costs and benefits of the three regimes outlined in the consultation and the other EPP2 regimes (Mining Waste Directive, the Batteries Directive, Water Abstraction and Impoundment and Waste Carriers and Brokers). In covering seven regimes, the brevity of the IA caused confusion for seven respondents who expressed concerns that the IA:

- was based on large assumptions with no margin for error,
- did not consider the impacts on regulated industry instead it focused on the impacts on the Environment Agency,
- used the term “industry” when savings were actually to householders (in the discharge consenting regime),
- did not take into account the time, resource and cost impacts on regulator and industry of converting existing consents to the new permits.

2.134 Five respondents stated that the Environment Agency’s charging scheme for the proposed new system was important and that the full cost and benefit picture cannot be seen without it.

Government response

2.135 Government notes the views of respondents on the IA and also that few specific suggestions were made which would enable the analysis to be improved. The IA is based on a model which employs historic data to derive forecasts which necessarily involve a degree of uncertainty. The analysis addresses this by being relatively cautious in its treatment of benefits. In addition, the results are subjected to sensitivity analysis.

2.136 The baseline and the costs and benefits were modelled for industry and the Environment Agency for each regime (apart from the Batteries Directive where only regulators’ costs and benefits were modelled as it is anticipated that fewer than ten sites will need a batteries permit, but the Government considers that there are in reality savings for industry too). For the Mining Waste Directive, the data was drawn from the separate Mining Waste Directive IA. Government considers that the IA should include Environment Agency costs; ultimately these are recovered from industry in the form of fees and charges.

2.137 Government has reviewed the £81.1m quoted for the Discharge Consents baseline (in Table 3 of the IA) and considers it is correct, including as it does both Environment Agency and industry baseline costs.

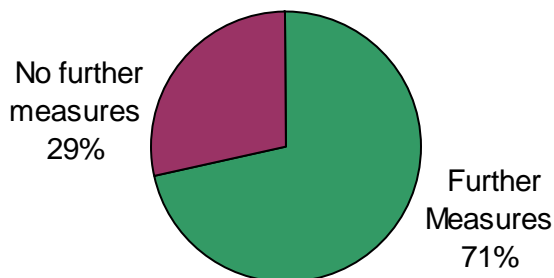
- 2.138 Government recognises that some readers found the term ‘industry’ to be misleading as an abbreviation for those regulated under the EPP2. It will consider alternatives for the final IA which will make it clear that EPP2 includes householders, farmers, industrial units and water and sewage companies.
- 2.139 EPP2 is a Better Regulation measure and Government intends that the transitional provisions in the EP Regulations will provide for conversion of existing permits into the new system without applications and operators will be able to take advantage of the additional flexible features of the Regulations immediately.
- 2.140 The Government has published separately a response to the consultation on revised waste exemptions. This explains that in the current economic climate Government has decided not to prescribe charges for the registration of exempt waste operations or to provide powers to the Environment Agency to introduce charges under the scheme agreed each year by the Secretary of State⁶.
- 2.141 For similar reasons, Government has also decided not to prescribe charges for the registration of other (non-waste related) exemptions from environmental permitting requirements or to provide powers to the Environment Agency to introduce charges under the scheme agreed each year by the Secretary of State.

Question 10 – Further relevant measures

Question 10

Can consultees identify further measures relevant to the integration of permitting regimes which would produce greater reduction in administrative burden for regulated industry while continuing to deliver the requirements of EU directives and protection of the environment and human health?

14 of 55 Respondents



Further measures	No further measures
Number	Number
10	4
71%	29%

⁶ <http://www.defra.gov.uk/environment/waste/controls/exemptions.htm>

2.142 Respondents suggested a total of eight further measures:

- a UK-wide remit for DC, GW and particularly RSR,
- a single regulator for the aggregate industry,
- bring in Groundwater Abstraction, relevant provisions of the Land Drainage Act 1991 and relevant definitions from the Water Resources Act 1991,
- the Environment Agency could:
 - demonstrate a greater degree of risk-based regulation, whereby the compliance attention given to sites was proportional to the number and consequence of events,
 - make best use of available technologies including online applications and appropriate electronic formats for permits,
 - educate regulators' staff, clients and consultants, as well as through the issuing of guidance,
 - develop additional Standard Permits, for example bund emptying
 - have more transparent invoicing to allow regulated companies to better forecast and budget for the costs of regulation.

Government response

2.143 Government notes these proposals and will consider them further when deciding on any further stage of the Environmental Permitting Programme.

2.144 Government understands the comment about a UK-wide remit for DC, GW and RSR. Government works closely with the relevant departments in Northern Ireland and Scotland to develop regulatory systems that are complementary and integrated as far as possible.

2.145 Government recognises that there can be benefits to industry from having a single regulator dealing with a range of environmental issues on a site, although equally there may be advantages from having separate, specialist regulators particularly where there are few linkages between different site activities. This can be a matter of business-specific preference. The Regulations already allow for directions to be sought transferring PPC responsibilities between the Environment Agency and local authorities.

2.146 Water Abstraction and Impoundment is part of EPP2 and Government has consulted, as part of the Floods and Water Bill, on a power to include abstraction and impoundment licensing into the EP Regulations. There are currently no plans to incorporate relevant provisions of the Land Drainage Act or other parts of the Water Resources Act 1991.

2.147 The Environment Agency actively supports risk-based regulation and focuses its activities on achieving environmental outcomes, and has passed the suggestion for bund emptying onto the Environment Agency for consideration. It is currently undertaking a major programme to implement the EP Regulations

including upgrading its application processes with online applications for many permits and training its staff to enable them to work with operators and others. It is intending to consult on additional Standard Permits in summer 2009. It will be consulting on the charging schemes for EPP2 later in 2009.

Annex A - List of respondents

- Aggregate Industries
- Anglian Water
- Associated British Ports
- Association of Drainage Authorities ADA
- Association of Geotechnical & Geoenvironmental Specialists
- Atomic Weapons Establishment
- Bedford Group of Drainage Boards
- BREY Services Ltd.
- British Energy & EDF Energy
- British Glass
- British Waterways
- Broads Authority
- Cambridgeshire County Council
- Chemical Business Association CBA
- Committee on Radioactive Waste Management CoRWM
- Confederation of British Industry Minerals Group
- Countryside Council for Wales
- Cumbria County Council
- Drinking Water Inspectorate
- E.ON UK
- Enterprise Inns Plc
- Environmental Industries Commission
- Fish Legal
- GlaxoSmithKline & Pharmaceutical Industry Radiation Protection Discussion Group
- Independent Nuclear Advisor
- Janus Nuclear Ltd
- Lancashire County Council
- Magnox North
- Magnox South
- Mineral Products Association
- National Farmers Union
- National Grid
- National public health service
- Natural England
- Northumbrian Water
- Nuclear Decommissioning Authority NDA
- Nuclear Installations Inspectorate, HSE
- Planning Inspectorate
- Public Interest Consultants
- Radiation Protection Special Interest Group - Institute of physics and Engineering in Medicine

- Rolls Royce
- RWE (Rheinisch-Westfälisches Elektrizitätswerk) Npower
- Scottish Environment Protection Agency
- Sellafield
- Severn Trent
- South West Water
- Southern Water
- SRP Medical Sector Committee
- Thames Water
- Three Valleys Water
- UK Cleaning Products Industry Association UKCPI
- UK Environmental Law Association UKELA
- Water UK
- Welsh Water Dwr Cymru
- Yorkshire Water