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## Summary of responses to our fourth consultation “Standard rules for the Environmental Permitting Regulations”

March 2010

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# Introduction

This is the fourth consultation that we have carried out on standard rules for the Environmental Permitting Regulations (EPR). During a twelve week consultation, which ran from 4 September until 27 November 2009, we asked seven questions about six new and revised sets of standard rules that we intend to make available in March 2010.

The standard rules sets were as follows:

1. The keeping or use of Category 5 sealed radioactive sources (new rules set).
2. The discharge to surface water of water from a cooling circuit or heat exchanger (new rules set).
3. The discharge to surface water of secondary treated domestic sewage (5 – 20 cubic metres per day) (new rules set).
4. The discharge to land of enzyme treated sheep dip (new rules set).
5. Composting in open windrows (revised rules set).
6. Composting in closed vessels (revised rules set).

We published the consultation on our website and emailed it directly to over 1400 stakeholders. There were 32 responses from industry, trade associations and other interested parties. A list of respondents is given in appendix 1.

Some of the respondents did not answer all seven questions as set out in our consultation response form, but instead sent a response covering the issues that were of interest to them. Their responses can be found in Section 4 “Other comments”.

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# 1 Summary of responses

- The large and often detailed response demonstrated the benefit of carrying out this fourth standard rules consultation.
- Of the farming representative organisations that were consulted, only the Farmers' Union of Wales (FUW) responded to proposals for a set of standard rules for the discharge to land of enzyme treated sheep dip. The response from the FUW was not supportive. We acknowledge the concerns of the FUW but consider the rules to offer a cost effective and environmentally beneficial option for farmers who wish to either return to dipping sheep or want to hold a permit for sheep dipping in the future.
- We have reconsidered the scope of the nature conservation screen for the proposed surface water discharge standard rules sets in line with our general conservation duties and decided to widen it to include Local Nature Reserves, National Nature Reserves, Local Wildlife Sites and Protected Species.

## 2 The consultation questions

The questions that we asked were:

**Question one:**

Have we correctly identified all the risks for each activity, as described in the generic risk assessments? If not please explain why.

**Question two:**

Have we correctly identified all the rules for each activity, as described in the standard sets of rules? Do you think there are there any rules missing?

**Question three:**

Existing standard rules and some of the rules sets we are consulting on use the term “fugitive emission”. This is defined as an emission to air, water or land from the activities from a localised or diffuse source which is not controlled by an emission limit. Do you think the term is appropriate for typical activities we regulate with surface or groundwater permits? Can you suggest a better alternative, usable across all types of activity covered by the Regulations; i.e. process industry, intensive farming and waste sectors?

**Question four:**

Are there any barriers to take-up of existing rules or other activities that you think would benefit from the standard permitting approach, for example emerging new technologies? We will consider these for a future consultation.

**Question five:**

Do you have any comments about this consultation document and the way that we have conducted this consultation?

**Question six:**

How did you find out about this consultation?

**Question seven:**

Any other comments?

# 3 Responses to questions one to seven

This section summarises the responses to the questions in the consultation.

## **Question one: Have we correctly identified all the risks for each activity, as described in the generic risk assessments? If not please explain why.**

Of the 32 replies, 21 did not respond to the question. Of the 11 responses set out below, 7 broadly agreed with the approach used in the generic risk assessments and that the risks had been correctly identified.

**1.1** The Food Standards Agency commented on the generic risk assessment for draft standard rules SR2010 No1 (category 5 sealed radioactive sources). They thought that although the probability of exposure was low, the potential consequences were medium to low and the overall magnitude of risk is low, there is no room for complacency, in that if any of these sources was to get into the wrong hands, the public's perception of the consequences might be slightly different from the assessment in the generic risk assessment.

**Our response:** The standard rules set reflects our view on the arrangements necessary to reduce the likelihood that a source will be damaged, lost or stolen – drawing on recommendations made by the International Atomic Energy Agency and on advice from our police partners. The generic risk assessment which accompanied the draft rules set did not seek to assess the consequences, actual or perceived, which could follow loss or theft – although it does confirm our understanding that sources of this type are not thought to be a terrorist target. We intend that permit holders' compliance with their obligations will continue to be examined consistent with the assessed risks.

**1.2** The Broads Authority commented on the generic risk assessment for draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

- i. One of the receptors identified in the generic risk assessment for this activity was the local human population, and bacteria and viruses were possible agents with the potential to cause harm. The Broads authority pointed out that canoeists and anglers could also be at risk and the generic risk assessment did not reflect the recreational use of potential receiving waters. They added that popular water recreation areas could be included in the area of no discharge within 1 kilometre upstream.
- ii. They also commented on another of the receptors identified in the generic risk assessment, namely the chemical and biological quality of the receiving water, with phosphorus as the agent with the potential to cause harm. They pointed out that individual discharges may have a small phosphorus discharge, but within a catchment, the in-combination effect of many small discharges of this volume may be sufficient to cause the receiving water body, or water body downstream, to fail Water Framework Directive or Habitats Regulations water quality targets. They strongly recommended a common phosphorus emission limit to be imposed.

**Our response:**

- i. The discharges that would qualify for this standard rules set are relatively small. Our evidence is that they will not cause any appreciable effect on waters big enough to qualify as a 'popular water recreation area', nor will they cause any appreciable additional risk to recreational users. We therefore do not see any need to extend the risk criteria to include this aspect.
- ii. We have determined the proposed distances to conservation receptors by modelling the 'worst case' situations to ensure there is no significant impact. This included assessing the potential maximum effect of the discharge 'alone or in combination with other discharges' as required by the Habitats Regulations. We concluded that at the proposed distance, the effect of the discharge would be individually undetectable and that it would produce no measurable change in the combined effect of all other inputs of the significant determinands. Therefore, the discharge has no potential to damage these receptors.

We accept that if a planning authority were to allow further developments to dispose of sewage to private systems, there could eventually be a cumulative effect. However, since there is, at present, no reliable treatment to reduce phosphorus in small sewage discharges, this could only be prevented if planning authorities refused planning permission for all developments that will discharge to surface water through private systems in vulnerable catchments. Interested bodies could identify the need for such action through the Water Framework Directive catchment management plans.

**1.3** The Centre for Environment, Fisheries and Aquaculture Science (Cefas) commented on the generic risk assessment for draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers) and SR2010No3 (discharge to water of secondary treated sewage). They confirmed that the risks had been correctly identified in the generic risk assessment produced for the activities, but made comments on the draft standard rules for these activities in relation to shellfish waters and classified shellfish harvesting areas. These comments are set out in the next section.

**Our response:** We are grateful for your positive comments on the generic risk assessments produced for these activities.

**1.4 One operator** commented on the generic risk assessment for draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

They commented on the following risk criteria that define the scope of the standard rules:

- i. Parameter 3 – Parameter 3 confirmed that discharges made under the proposed standard rules must only be made to a watercourse that has a flow of water throughout the year. They pointed out that for some watercourses, particularly those relating to first time sewerage schemes there may not be any flow, or flow maintained throughout the year;
- ii. Parameter 5 – Parameter 5 pointed out that to operate under the proposed rules, the discharge cannot reasonably, at the time it is first made, be made to the foul sewer. From the operator's perspective it was unclear how this parameter referred to discharges from a sewage treatment works. They asked for clarification on what was meant by "...to the foul sewer;"

- iii. Parameter 7 – For this parameter, it was stated that “The discharge shall not be made within 1 km upstream from an identified bathing water, a designated shellfish water, European Site (candidate or Special Area of Conservation, proposed or Special Protection Area or Ramsar site) or a Site of Special Scientific Interest (SSSI).” The operator thought that if the discharge is within 1km of these features, a bespoke permit would be required;
- iv. They went on to add that the generic risk assessment stated that the design of the package plant in accordance with Flows and Loads 3 should achieve nitrification. In their view, small sewage treatment works would not normally achieve full nitrification.

**Our response:**

- i. We have considered this and decided to amend this parameter and the corresponding limit in table 2.1 of the rules to ‘the discharge shall only be made to a watercourse that normally contains water throughout the year’. The introductory note to the rules and the web page providing guidance on the rules set will point out that applicants should make reasonable enquiries to ensure that this requirement is met. Once we have issued the permit, this is only likely to become an issue if the discharge to a dry channel causes significant pollution. We would not consider operators in breach of their permit solely because the receiving water body has dried temporarily;
- ii. It is the policy of both the Government and the Environment Agency that, where possible, sewage from all developments should be connected to the public sewerage system (i.e. systems owned and operated by the statutory sewerage undertakers). The rule in this standard rules set means that we will only issue a new standard permit if connection to a public sewer is not practicable;

The wording of this limit in table 2.1 is the same as that proposed for exempt sewage discharges to surface water. We agree that some external oversight of sewage disposal from new small developments is necessary. However, the method of sewage disposal from new developments is determined at the planning stage, in the same way as the provision of other services. We have little power to influence the position through the discharge permitting process after the planning decision has given permission to proceed with development;

The Government has produced guidance to planning authorities on assessing private treatment schemes (DCLG Circular 3/99) and we will advise planning authorities, where necessary;

- iii. An operator who wishes to carry out a particular activity can look at the standard rules and, if they can comply with them, they may decide to apply for a standard permit. An operator that cannot meet the requirements of the standard rules must apply for a bespoke permit;
- iv. The rules require that a package sewage treatment plant should be designed to achieve full nitrification, that is it has sufficient capacity that it will normally oxidise all ammonia in the sewage. This is a reasonable and practical design requirement and a plant sized to the specification in Flows and Loads 3 will normally comply.

**1.5** One operator commented on the generic risk assessment for draft standard rules SR2008no16 (composting in open windrows). In their view, the generic risk assessment for this activity was comprehensive.

**Our response:** We are grateful for your positive comments on the generic risk assessments produced for this activity.

**1.6** One operator commented on the generic risk assessment for draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

They commented on the following risk criteria that define the scope of the standard rules:

- i. Parameter 2 - They pointed out that the draft standard rules specified that the operator would be permitted to discharge domestic sewage with a maximum daily volume between 5 and 20 cubic metres per day. Parameter 2 of the generic risk assessment stated the total daily flow of the discharge calculated by the method specified in "Flows and Loads 3" shall not be less than 5 cubic metres per day nor greater than 20 cubic metres per day. The two figures are different and in their view this would cause a significant reduction of smaller scale works eligible for standard rules. They gave the example of a waste water treatment works discharging a maximum of 5 cubic metres per day which will discharge less than this at times, particularly in relation to diurnal flows;
- ii. Parameter 3 – In their experience there are some instances where the receiving watercourse (ditch) only flows because of the discharge from the plant, i.e. at the stream headwaters, compensation release flows or in a field ditch. They asked whether or not these plants would need a bespoke permit, which would seem overly bureaucratic and an unnecessary burden;
- iii. Parameter 6 – Parameter 6 confirmed that maintenance records needed to be kept for 5 years, but the rules themselves indicated 6 years. The operator thought that both of these figures could be considered overly prescriptive for this activity and suggested a move to a minimum period of 2 years;
- iv. They went on to add that the generic risk assessment stated that the design of the package plant in accordance with Flows and Loads 3 should achieve nitrification. In their view this was unlikely to be true and would represent a considerable tightening of approach compared to the Uniform Emission Standard should it be required.

**Our response:**

- i. EPR will provide that discharges of secondary treated sewage with a maximum volume up to and including 5 cubic metres per day are exempt discharges and do not require a permit. This standard rules set is intended to cover secondary treated sewage discharges with a maximum volume above 5 cubic metres per day up to 20 cubic metres per day. The maximum volume is not the volume actually achieved on any day, but the theoretical maximum volume that the development could achieve, based on the calculations in Flows and Loads 3;
- ii. Please see the answer to 1.4 (second point);
- iii. Thank you for pointing out this drafting inconsistency. This was a typographical error. Furthermore, after considering the relevance of including this parameter, we have decided to remove it from the final version of generic risk assessment. As

you have pointed out, our standard record keeping condition, which is used for all existing environmental permits, requires records to be kept for 6 years. In our view, keeping records for six years makes sure that there will be sufficient information if we do have to investigate an environmental incident, while avoiding an undue burden on operators. Many regulatory regimes require us to carry out formal periodic reviews of all permits, usually once every four to eight years. Keeping records for six years will ensure that there are sufficient records to do so;

iv. Please see the answer to 1.4 (fourth point).

**1.7** One operator restricted their comments to the draft standard rules for SR2010No3 (discharge to water of secondary treated sewage) and SR2008No16 (composting in open windrows). They confirmed that the generic risk assessment produced for SR2010No3 appeared to be adequate. They did however point out that the generic risk assessment for the existing standard rules set for composting in open windrows was not provided as the revisions were not considered to have any impact on risk.

**Our response:** We note your comments on the generic risk assessment produced for the proposed standard rules for the discharge to water of secondary treated sewage. We did not consider that the proposed revisions to the standard rules set for open windrow (and closed vessel) composting would have any impact on the generic risk assessments already published on our website for these facilities; consequently we did not include them on the consultation web page. We do however accept the point you have made and for future consultations, we will consider including existing generic risk assessments alongside existing standard rules sets where we are proposing revisions, regardless of whether or not the risk assessments contain any proposed amendments.

**1.8** One operator commented on the generic risk assessment for draft standard rules SR2008No17 (composting in closed vessels). They confirmed that the generic risk assessment for SR2008No17 had identified all the risks for this activity.

**Our response:** We note your comments.

**1.9** Although opposed to the proposed standard rules SR2010No4 (the discharge to land of enzyme treated sheep dip), the Farmers' Union of Wales believed that all the risks had been identified for this activity.

**Our response:** We note your comments.

**1.10** The Countryside Council for Wales (CCW) commented on the generic risk assessments produced for draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers), SR2010No3 (discharge to water of secondary treated sewage) and SR2010No4 (the discharge to land of enzyme treated sheep dip).

**(a)** In CCW's view, the generic risk assessment for rules set SR2010No2 failed to address several potential risks to plants and animals near thermal discharges.

- i. They pointed out that the formation of barriers to migration from higher than normal temperatures in the water column are a potential risk to fish such as shad and salmon (both Annex II features under the Habitats Directive) which require passage through rivers and estuaries. Thermal outputs can form a plume that fish may avoid during passage up or downstream, often to spawning grounds. There is therefore a critical portion or cross section of a watercourse, particularly narrow watercourses, which must remain within the tolerances of migrating fish in order for them to migrate unhindered. As fish features of protected sites are mobile, they

can occur outside of the boundaries of a Special Area of Conservation (SAC) for example, for which they are a designated feature. Beyond the 500m boundary to which the proposed standard rules would apply there would be the potential for thermal discharges to cause migration barriers to SAC features which would require a test of likely significance under the Habitats Regulations. CCW wished to clarify with us that we have evidence that thermal discharges of the volume and rate specified in this standard rule set, will only cause thermal regime changes of a magnitude that will not cause migration barriers for fish (particularly Annex II fish features under the Habitats Directive) outside of 500m from a protected site. They added that the absence of consultation with CCW on applications for standard permits outside of specified distances means the onus of compliance with the Habitats Regulations is entirely with us. As it stood, CCW did not wish to confirm that such standard permits are compliant with the Habitats Regulations;

- ii. They went on to say that the risk assessment for SR2010No2 also failed to address the risk to protected habitats and species from day to day temperature fluctuations that are outside of natural conditions. Furthermore, sudden changes in temperature could also cause shock to certain organisms as well as consistently elevated temperatures as stated in the risk assessment. In the same way, a sudden arresting of a thermal discharge due to critical temperature exceedance may in turn cause a sudden temperature change in the receiving environment and thus shock to organisms in the vicinity. CCW suggested a more gradual temperature reduction/increase as a response to breaches of limits would be more protective of the surrounding environment of the discharge. They suggested that this would ideally be incorporated as part of the rule set;

Thermal discharges may also cause behavioural changes in certain animals and plants. This could take the form of distribution changes and can make the affected feature more susceptible to predation or pollution or can remove their food sources. They suggested that risks for this scenario should be considered in the risk assessment;

- iii. In CCW's view, the risk assessment failed to address the possible proliferation of nuisance or pathogenic organisms because of thermal regime changes from such discharges. Non-native organisms could establish more easily in warmer conditions as could disease-causing organisms. Both could have negative effects on protected species and habitats in hydrological connectivity to the discharge. This kind of scenario highlights the issue of instigating a situation that has the potential to have adverse effect on a protected site, outside of the protected site itself.

#### **Our response:**

- i. We accept the concerns about salmon breeding. We think it unlikely that many such discharges will be proposed in salmon spawning reaches and many of these reaches are already ruled out for this standard rules set as they are designated as conservation sites. However, having considered this, we will add a rule that thermal discharges must not be made into waters at places where salmon spawn. We are satisfied that with the limits on volume, dilution and temperature increment, discharges made within the proposed rules will not cause a damaging thermal barrier to migratory fish;
- ii. The discharges that will be covered by this standard rules set are relatively small-scale. Taking account of the required dilution, they will in a worst case situation produce a maximum change in the watercourse of 2<sup>0</sup>C after mixing, which is within

the River Basin Districts Typology, Standards and Groundwater Threshold Values (Water Framework Directive) (England and Wales) Directions 2009, allowable change. Most discharges will have much less impact;

- iii. We consider that the marginal change in natural temperatures near the discharge will not provide any benefits to non-native species. The discharges will not be continuous either, which further reduces the opportunity for any changes.

**(b)** In CCW's view the generic risk assessment for SR2010No3 failed to properly address the issue of phosphorus load to waters, in combination. The risk assessment stated that phosphorus is not an issue because of the following:-

*"No action possible or needed as load of phosphorus from the permitted activity will be small."*

- i. CCW confirmed that this may be the case for the permission alone but in-combination the load of phosphorus may be significant. They suggested that this needs to be taken into consideration before the permit is issued. CCW also wanted us to confirm that a proper in-combination test was carried out before issuing standard permits, in relation to Natura 2000 sites as designated under the Habitats Regulations and SSSI sites. They pointed out that areas of intensive tourism that contain campsites and similar operations may be under pressure from many small discharges all acting in-combination to give a cumulative load to a surface waterbody or groundwater. Furthermore, should such a waterbody be in hydrological connectivity to a Natura 2000 site then the combined nutrient load going into this site, because of the discharges, may be such that damage is caused to the site's features;
- ii. CCW raised concerns over nutrient enrichment on Natura 2000 sites across Wales in relation to consented sources as well as diffuse sources. They pointed out that permitting can help to minimise nutrient loads to such sites. They have particular concerns in relation to wetland and lake habitats where nutrient enrichment can lead to long-term damaging effects. Lakes and wetlands are more at risk from nutrient enrichment and as such require stringent conditions in relation to nearby discharges. CCW suggested that the precautionary distances used for assessing significance of discharges in the recent EA Review of Consents process should be applied to SR2010No3 instead of the proposed 1km distance. These distances are stated in the CCW/Natural England/Environment Agency Joint Guidance and underline the highly protected nature of Natura 2000 sites and their sensitivity to environmental pressures;

The risk assessment for SR2010No3 states the following in relation to protected sites and nutrient enrichment:-

*"SR - discharges shall not be made within 1km upstream from specified nature conservation sites. Outside of that distance the effect of the discharge will not be detectable and therefore there is no potential for detrimental impact."*

- iii. CCW disagreed with this statement. In their view, nutrients may be detectable at 1km from a discharge to a protected site depending on the limits placed on parameters such as biochemical oxygen demand (BOD), suspended solids (SS), ammonia and phosphorus as well as river flow/hydrology. They added that this would obviously also depend on the size of the discharge, with the maximum discharge rate of 20 cubic metres per day having the greatest risk of causing

nutrient enrichment to a nearby protected site, and the number of discharges in a catchment. CCW sought confirmation from us that in-combination tests are carried out as part of all standard permitting. In addition to this CCW also sought confirmation that any modelling carried out in relation to proposed screening distances considered in-combination issues. They also added that it is a required part of a test of likely significance under the Habitats Regulations that plans or projects (such as a water discharge activity) should be tested for significance alone and in-combination.

**Our response:**

- i. We have determined the proposed distances to conservation receptors by modelling the 'worst case' situations to ensure there is no significant impact. This included assessing the potential maximum effect of the discharge 'alone or in combination with other plans or projects' as required by the Habitats Regulations. We concluded that at the proposed distance, the effect of the discharge would be individually undetectable and that it would produce no measurable change in the combined effect of all other inputs of the significant determinands. Therefore, the proposed discharge has no potential to damage these sites. This assessment of insignificance has already been accepted in the regulation 50 review of consents;
- ii. In assessing individual discharge proposals, we can only take account of known plans and projects. However, we accept that if a planning authority were to allow further developments to dispose of sewage to private systems, there could eventually be a cumulative effect. Since there is, at present, no reliable treatment to reduce phosphorus in small sewage discharges, further inputs could only be prevented by refusing planning permission for all developments that will discharge to surface water through private systems in vulnerable catchments. Interested bodies could identify the need for such action to us through the Water Framework Directive catchment management plans;
- iii. The precautionary distances used for the regulation 50 review of consents were arbitrary distances adopted to provide a highly precautionary agreed solution to enable the review to proceed. The distances in the standard rules are based on modelling and detailed assessment of 'worst case' situations and we believe that at these distances there is no possibility of any significant effect on these sites. This worst-case assessment means that we can be confident, without further assessment, that any discharge meeting the standard rules has no potential to significantly affect sites, meeting our requirements under regulation 48.

**(c)** CCW confirmed that the generic risk assessment for SR2010No4 stated the following:-

*"SR - diazinon is degraded to 99+% prior to discharge. SR - activities shall not be carried out within 50m of a European Site, SSSI, National or Local Nature Reserve, Local wildlife Site or Ancient Woodland."*

- i. CCW asked for confirmation that treatment of Diazinon to 99% degradation is to be achieved in all cases before discharge and if so, how this was to be measured. In addition they asked for confirmation that 99% degradation was sufficient to prevent the degraded Diazinon from causing damage to watercourses or protected sites at distances stated;
- ii. They went on to point out that the risk assessment entitled 'Supplementary Level 1 Risk Assessment' for SR2010No4 did not appear to be mentioned in any other documents in this consultation apart from a brief reference in the main risk

assessment. They asked how this supplementary risk assessment fitted in to the standard rules and what its purpose was. From their perspective, it appeared to contain a formula for calculating a score in order to inform an applicant if the spreading of sheep dip is allowable or not in relation to a number of criteria. They could not see how the score related to the standard rules as it does not state in the rules that the score should be obtained as a condition of being issued a permit.

**Our response:**

- i. Significant and extensive scientific testing has gone into the production of the Landguard OP-A enzyme treatment product to ensure its efficacy and effectiveness in treating Diazinon. We are confident that given the dose rates proposed and the minimum time periods for treatment, as stipulated in the standard rules, 99%+ degradation of dip will be achieved. Furthermore, we consider that this level of degradation will be sufficient to prevent damage to the environment when used in accordance with the rules;
- ii. In developing standard rules sets, we carry out a single assessment of risk for a commonly undertaken activity. We have done so in this instance, however for added reassurance as to the appropriateness of developing this standard rules set, we expanded the generic risk assessment approach with a modified version of our “Prior Examination” Level 1 risk assessment methodology that we currently apply to un-treated sheep dip discharge applications. This is the Supplementary Level 1 Risk Assessment referred to above. Given the common controls specified in proposed standard rules set, the Supplementary Level 1 Risk Assessment also indicated favourable results, adding to our belief that this proposal is acceptable.

**1.11** One operator commented on the generic risk assessment for draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers). In their view, the risks appeared to have been identified adequately. However, they did query whether there were circumstances under which the water could be returned to a different water body.

**Our response:** This requirement is to prevent water being abstracted from a water body of lower quality than the receiving water, thereby introducing undesirable and possibly polluting discharges to the receiving water. We would want to assess the potential for this through a bespoke permit application.

**Question two: Have we correctly identified all the rules for each activity, as described in the standard sets of rules? Do you think there are any rules missing?**

Of the 32 replies, 15 made significant comments, 1 broadly agreed that we had identified all the rules for the activities they had reviewed and 16 did not respond to the question.

**2.1** The Food Standards Agency commented on the draft standard rules SR2010 No1 (category 5 sealed radioactive sources). They pointed out that RSR regulators usually consider “Open sources of equivalent risk” as part of the assessment, as this was currently the yardstick for open sources as well as high activity sealed sources.

**Our response:** This standard rules set concerns only category 5 sealed sources. We are now working to develop the suite of conditions we think should be included in bespoke permits – in respect of larger sealed sources, open sources and the accumulation and

disposal of waste. We intend that our rules and conditions will form a consistent suite, capable of selection and use across all permitting circumstances.

**2.2** The Minerals and Waste Development Control Planning Advisory Group commented on the draft standard rules SR2008No16 (composting in open windrows). They welcomed the proposed exclusion of hazardous wastes from the table of permitted wastes.

Our response: we welcome your support for this proposed amendment to the existing set of standard rules.

**2.3** The Broads Authority made a number of comments on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage):

- i. As regards the table of permitted activities in the draft standard rules, they believed that more clarity was required on whether the receiving watercourse needs to be flowing, or purely a need for the presence of standing water. In their view, checking by Environment Agency officers was needed to determine the year round water availability/flow in the receiving water. In the Broads, many receiving water bodies are controlled by the inland drainage boards, so water levels may fluctuate (including down to very low levels) without the applicant's knowledge. They wanted to know how this is accounted for;
- ii. They pointed out that the reasonable distance to connect to mains sewer needed clarification. In their view, being a more expensive option than installing private treatment is not the only consideration. Sensitivity of the catchment to Phosphorus for example, as identified through the review of consents, should be a driver to increase the reasonable distance to reach main sewage provision. They also thought that water framework directive implications of local phosphorus sources needed to be considered;
- iii. From their perspective, sensitive receptors also include canoeists and anglers. The proposed standard rule 2.2.2 does not reflect recreational use of potential receiving waters. They thought that popular water recreation areas could be included in the area of no discharge within 1km upstream;
- iv. Draft table 3.1 described point source emissions to water, emission limits and monitoring requirements. The Authority thought that greater guidance was needed for operators to correctly determine adverse impacts. They suggested that pictorial guides may be useful for non-specialists.

**Our response:**

- i. Please see the answer to 1.4 (first point);
- ii. Please see the answer to 1.4 (second point). We accept that if a planning authority were to allow further developments to dispose of sewage to private systems, there could eventually be a cumulative effect from phosphorus. Since there is, at present, no reliable treatment to reduce phosphorus in small sewage discharges, further inputs could only be prevented by refusing planning permission for all developments that will discharge to surface water through private systems in vulnerable catchments. Interested bodies could identify the need for such action to us through the Water Framework Directive catchment management plans;
- iii. Please see the answer to 1.2 (first point);

- iv. We have considered this and decided to change the parameter in table 3.1 to “visual appearance and other environmental effects”. “Adverse visible effect” is defined in the interpretation section of the standard rules. We will also add a maximum BOD limit of 40 mg/l to table 3.1. We will not require operators to monitor compliance against this limit, but we may take samples to check compliance with that limit to support enforcement action, if a discharge causes pollution.

**2.4** Cefas commented on the draft standard rules for SR2010No2 (discharge to surface water: cooling water and heat exchangers) and SR2010No3, (discharge to water of secondary treated sewage) with specific reference to rule 2.2.2 in each case.

**(a)** As regards SR2010No2, Cefas would like to see designated Shellfish Waters afforded the same level of protection as European sites and suggest changing the draft rule to:

*‘The discharge shall not be made directly to or within 500 metres upstream of a European site, a SSSI, or a designated Shellfish Water.’*

They went on to say that under the Shellfish Waters Directive (2006/113/EC) “a discharge affecting shellfish waters must not cause the temperature of the waters to exceed by more than 2 °C the temperature of waters not so affected”. [Noting that the Shellfish Waters Directive will be revoked in 2013. When this occurs, the Water Framework Directive must provide at least the same level of protection to shellfish waters (which the WFD classifies as protected areas) as the Shellfish Waters Directive currently does].

**Our response:** We have considered the comment about designated shellfish waters and have decided to add them to the nature conservation screening criteria.

We are satisfied that any discharge made under this standard rules set will, even under the worst case situation, cause a temperature rise less than 2 °C after mixing.

**(b)** For SR2010No3

- i. Cefas’ view was that this rule should include a requirement that the discharge should not be made within 1km upstream of an area classified for the production of bivalve molluscs under EC Regulation 854/2004<sup>1</sup>. They pointed out that in the generic risk assessment, the consumption of shellfish harvested from sewage contaminated waters can cause illness. In addition, the classification status of shellfish harvesting areas, as determined by routine microbiological monitoring of shellfish, can affect the economic viability of the shellfish harvesting industry. They went on to say that whilst it is the Government’s intention to maintain a broad match between designated Shellfish Waters and areas classified for the production of bivalve molluscs under EC Regulation 854/2004, newly classified shellfish harvesting areas may not necessarily be within existing Shellfish Waters;
- ii. In their view draft rule 2.2.2 suggests that discharges of secondary treated domestic sewage made directly to tidal waters that are close to the boundary of, but not directly to, a designated shellfish water, European Site, Ramsar site, or Site of Special Scientific Interest (SSSI) would not require a bespoke permit. Cefas recommended that this rule is reworded to ensure that such discharges would require a bespoke permit. They added that that the Shellfish Waters Directive will

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<sup>1</sup> Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

be revoked in 2013. When this occurs, the Water Framework Directive must provide at least the same level of protection to shellfish waters (which the WFD classifies as protected areas) as the Shellfish Waters Directive currently does.

**Our response:**

- i. Areas designated under the Shellfish Waters Directive are generally larger and therefore more protective than the shellfish bed areas identified under the Shellfish Hygiene Directive. We are also the responsible body for the Shellfish Waters Directive and we have a duty to protect the waters designated under that Directive. We therefore propose to retain the reference to the Shellfish Waters designated waters. However, we are considering the protection of identified shellfish beds before they are designated under the Shellfish Waters Directive;
- ii. We have considered the issue of discharges made directly to tidal waters and have decided to amend the definition of 'downstream' as it applies to tidal waters. The amended rule will make it clear that for sites in tidal waters, 'downstream' means the nearest distance over water between the boundary of the site and the proposed discharge, in any direction.

**2.5** One operator thought it would be useful to consider the proposed standard rules SR2010No3, (discharge to water of secondary treated sewage) for discharges to groundwater. They presumed that standard rules for such discharges would be available once the Groundwater Regulations were made.

**Our response:** We have no plans at present to develop a similar set of standard rules for discharges to groundwater of secondary treated sewage. Our initial view is that discharges of this volume should be subject to bespoke permitting, with individual technical assessment. Groundwater is inherently more complex and less predictable than surface water and the legislative requirements in relation to hazardous substances and non-hazardous pollutants are not well suited to common controls supported by a generic risk assessment.

**2.6** Commenting on the proposed revisions to standard rules SR2008No16 (composting in open windrows) one operator suggested the inclusion of the following waste codes:

**19 08 Wastes from waste water treatment plants not otherwise specified**

**19 08 01** – screenings

**19 08 02** – waste from desanding

**19 09 Wastes from the preparation of drinking water or water for industrial use**

**19 09 02** – sludges from water clarification

**19 09 03** – sludges from decarbonation

**Our response:** This is one of a number of suggestions for additional waste types to be included in the standard rules sets for open windrow and closed vessel composting. We will add the proposed waste types only where it has been demonstrated that:

- the wastes are similar in nature and composition to waste types already listed;
- the characteristics of the waste have been described and characterised; and
- the Generic Risk Assessment does not need to be altered.

We will not add waste types that are not suitable for the activity. We will work with the industries involved to consider these wastes for future updates to the standard rules sets if appropriate.

**2.7** One operator made a number of comments on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage):

- i. They pointed out that the water industry does not work to Flows and Loads 3 and uses their own methodology to determine the appropriate flows and loading calculation which is acceptable to Ofwat (The Water Services Regulation Authority) for funding purposes. They believed that this was recognised within the said document in the third paragraph where it states it is only relevant to “non-mains” drainage. As the water industry only operates “mains” drainage, it was questionable whether these standard rules were intended to be applicable to the water industry / sewerage undertakers. They asked what provision was to be made for standard rules for “mains” drainage;
- ii. They welcomed the upstream qualification to the 1km rule, as emissions to water must follow the water course. They presumed that this recognised that it was not appropriate for a 1km “as the crow flies” approach to be taken. They thought that consideration must also be given to:
  - a) the nature of the receptor, as geological sites are unlikely to be impacted by the discharge;
  - b) obvious dilution afforded by the receiving water course, for example small waste water treatment works and large water courses, which may make 1km unnecessary;
  - c) in their view an operator should not be penalised and required to upgrade the operation or apply for a bespoke permit merely because a 3<sup>rd</sup> party has re-designated an area bringing the permitted site within the 1km zone. The impact of the permitted site on the environment does not change and the re-designation should not be used as driver for change;
  - d) they also argued that the same argument for c) was true if the 1km distance was increased for one reason or another. Any upgrade or application for a bespoke permit in these circumstances would be viewed as a new obligation and need to be funded with appropriate timescales allowed;
- iii. With reference to the accompanying standard rules consultation No 4 document – Management Rules – they did not believe that the need for an accident management plan should be singled out from any of the other management system documents required by General Management for these small sites. They considered that there should be no need for a separate accident management plan for each site, being unworkable and bureaucratic. They asked that draft rules 1.2 be removed and suitable guidance issued that recognises a more generic general accident procedure that is applicable to any number of small sites. They added that review every 4 years should not be necessary unless there is an accident;
- iv. They welcomed the fact that the monitoring in draft rule 3.2.1 also contained the phrase “unless otherwise agreed in writing with the Environment Agency”;
- v. The operator did not believe that it was reasonable to expect “all records plans and management systems” to be held on site. They pointed out that many sites are

unmanned and with no heating/electricity or storage facilities. For the water industry, the vast majority of these types of documents will be held in various locations. They considered it undesirable to agree the location of each of these documents in writing. Consequently, the rule should be removed and something more appropriate included within the guidance;

- vi. From their perspective, rule 4.3.2, requiring notification within 24 hours of a pollution incident is not practicable on many of these sites since they may only be visited on weekly basis. It should read “within 24 working hours of the detection of a pollution incident”.

#### **Our response:**

- i. Almost all treatment plants that will qualify for these standard rules will be new package treatment plants. We have therefore aimed the requirements at these plants and the design requirements that the Environment Agency has agreed with the package plant manufacturers. We are satisfied that 20 m<sup>3</sup>/day is the right upper flow limit and discharges above that flow should be subject to individual determination. The majority of treated sewage discharges are lower than that figure. We have no plans at present to extend the range of standard rules sets for discharges to surface water, however, we will consider any suggestion for standard rules sets for groups of discharges where the volume of potential permit applications for selected activities is sufficient to make the effort spent on development worthwhile;
- ii. When we included SSSIs within the nature conservation site distance screening criteria, we made no distinction on the different types of designation. We will raise this with Natural England and the Countryside Council for Wales and seek their advice on whether we could potentially exclude specific types of SSSI from the nature conservation screen;

As regards dilution afforded by receiving watercourses, the standard rules must apply in all cases and may therefore be over precautionary for some situations;

Standard rules are just that, standard and the sets of rules are fixed. If a change in the status of the local environment meant that the facility did not meet the requirements of the standard rules, an operator may be required to upgrade the operation to maintain adequate levels of environmental protection or apply to vary to a bespoke permit. If improvements or other changes to a discharge are required, then these would be implemented over an agreed timescale;

- iii. In the main consultation document, we stated that we were considering minor administrative changes to the management rules to make them clearer and appropriate for surface and groundwater discharges and radioactive substances regulation. One aspect of this was potentially to incorporate accident management plans into the management rules. After considering this matter we have decided to pursue this approach and apply it to all existing standard rules too. We will still expect operators to have accident management plans but our guidance on how to comply with permit conditions will be amended to say how this should be done;

Management systems must be reviewed to keep them up to date. We expect operators to review them at least once every four years. We do not consider this excessive. It should ensure that they have done at least one review of their systems before we formally review permits. We do agree that relevant parts of the

system should be reviewed following an accident or if operators find a non-compliance, in an audit perhaps, to establish the root cause;

We consider that all operators should have an accident management plan that can be put into action when required to minimise the risks of pollution. We are developing specific guidance to help operators understand how to comply with the requirements of the management rules. The guidance will contain example environmental management systems, which can be tailored for use for a variety of regulated facility types;

- iv. We are grateful for your comments;
- v. After considering the issue of records storage for this standard facility, we have decided to remove the rule requiring records, plans and the management system to be kept on site, unless otherwise agreed in writing with us. We will of course expect operators to make these records available if we request them;
- vi. Rule 4.3.2 must be read in conjunction with 4.3.1. We expect written confirmation of actual pollution incidents to be submitted within 24 hours, following detection. We consider that 24 hours is an appropriate, common time limit for this facility types and other types of standard facility to supply us with written notification of actual or potential pollution incidents and breaches of emission limits following detection. Where time is of the essence, operators should feel comfortable to pick up the phone and call a local Environment Agency office or use our incident hotline. Written reports and notifications can be submitted electronically.

**2.8** One operator made a number of comments on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage) and SR2008No16 (composting in open windrows):

**(a)** As regards SR2010No3

- i. Rule 1.1.3 (access to standard rules) – it was suggested that we should adopt a pragmatic approach to document location for copies of standard rules, for example they may be stored in electronic systems which are not always available on remote sites;
- ii. Rule 1.2 (accident management plan) – the operator considered that this section was not required as it was already covered in the general management rules, which already cover incidents and accidents. They added that four years for the review of an accident management plan or appropriate management systems may be overly precautionary for low risk activities;
- iii. Table 2.1 stated that “The discharge shall only be made to a watercourse that has a flow of water throughout the year.” They thought this would be impossible to prove conclusively at small sites in remote locations discharging into a small watercourse. They believed that many facilities of this size with secondary treatment will be in areas where the receiving watercourse will be stream headwaters or ditches which will not have flows in low flow conditions;
- iv. In their view, the use of “Flows and Loads 3” may not be used in all cases. Other methods for assessing flows and loads may be used. They questioned whether or not this would be prohibitive to meeting the requirements of the proposed standard rules set;

- v. Rule 2.2.1 (the site) – the operator considered that by defining the boundary of the site within the permit, any upgrades to either service new development within the catchment or as part of any capital maintenance project would need a permit variation, even if the improved site still met all the other criteria for the standard rules. They did not consider this to be a pragmatic solution and would not want to pay for a permit variation in this case;
- vi. Rule 2.2.2 (proximity to sensitive receptors) – From their perspective, the 1km distance screen to bathing waters, shellfish waters and SSSIs was too restrictive and would eliminate many potential sites in the South West;
- vii. Table 3.1 (point source emissions to water) – The table did not allow for any discharge as a storm overflow as part of the operation of the standard facility. In their view this appeared to mean that all facilities with a storm overflow would require a bespoke permit, which may not be best practice or in accordance with Better Regulation principles. They wanted to see a qualifying comment on visual impact, such as “no significant adverse visible effect.”
- viii. Table 3.2 (monitoring requirements) – They thought that weekly monitoring may be excessive for a small plant, depending on the process used and the remote operating equipment installed on site. They wanted this to be site-specific, depending on location, sensitivity, performance and reduced if telemetry was installed. They also considered that in the future there may need to be a refinement of the banding categories for standard rules for discharges so that control measures can be more accurately aligned with risk;
- ix. Rule 4.1.2 (records) – From the operator’s perspective, sites of this size were unlikely to be suitable for the storage of records, plans and management systems since above ground kiosks will be small. They considered that documents would need to be stored off site in most cases and also stored electronically;
- x. Rule 4.3.3 – (notification of changes in operator circumstances) – They thought that there was a risk of confusion regarding the term “operator” as individuals responsible for maintaining sewage treatment works are known as “operators”;
- xi. Rule 4.4.2 (interpretation) - The operator wanted to see the use of electronic media as acceptable under “written” reports and notifications. They thought that these would also then be useful for “without delay” notifications subject to data and information quality control;
- xii. They thought that “secondary treatment” was defined to achieve the discharge quality requirements of Schedule 3, Table 1 of the Urban Waste Water Treatment Directive 97/271/EC (UWWTD). In their view this was a tightening of the currently used uniform emission standard approach of 40 BOD and 60 SS for small plants. They considered this to be regulatory creep and not in accordance with the purpose of transferring to the Environmental Permitting regime.

**Our response:**

- i. Our guidance note currently entitled “Getting the basics right – How to comply with your environmental permit”<sup>2</sup> contains both basic technical guidance and guidance

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<sup>2</sup> The document can be found on our website at: <http://www.environment-agency.gov.uk/business/topics/permitting/32320.aspx>

on complying with permit conditions. We are currently reviewing the document in preparation for the second phase of the Environmental Permitting Programme. Guidance on how operators can meet the requirements of this rule will advise that staff or contractors whose work may have an impact on the environment must be easily able to see a copy of the standard rules, displayed near or readily available electronically where they work. They should have ready access to the information they need to ensure they act in a way to comply with the permit;

- ii. Please see the answer to 2.7 (third point);
- iii. Please see the answer to 1.4 (first point);
- iv. Please see the answer to 2.7 (first point);
- v. EPR requires that environmental permits for site-based activities must include a map, plan or other description of the site showing the geographical extent of the site of the regulated facility. Linking the site plan to a rule allows us to consider proposed increases to the size of the regulated facility through a variation to the permit as opposed to a new permit application, which is the alternative;
- vi. We recognise that because we have to define a risk boundary within which the rules can be used, and that risk boundary will include location controls, there will be certain parts of England and Wales that will be disproportionately affected. This is one of the limitations of standard rules. We are committed to working with the nature conservation agencies to ensure that all nature conservation distance screens reflect the relevant nature conservation legislation and are proportionate. Although these controls may restrict the uptake of standard rules in particular locations, we do not think they are excessive or overly precautionary in this instance. As regards the visual appearance parameter in this table, please see the answer to 2.3 (fifth point);
- vii. Small package treatment plants are not designed to take large flows of rainwater. The manufacturers' recommendations and our requirement is that operators do not discharge significant amounts of surface water to package plants. They are not designed to accept such flow increases, which will damage the treatment process and cause environmental pollution. We will therefore only grant permits for storm discharges from small plants in exceptional circumstances. We have decided to the discharge limits to specifically exclude sewage containing large amounts of surface water. As regards "adverse visible effects", please see the answer to 2.3 (fourth point);
- viii. We consider the monitoring requirements in the standard rules to be appropriate for this activity. Site-specific monitoring requirements are not compatible with standard rules because they are common controls. Please also see the answer to 2.3 (fourth point). We are not considering any form of additional banding for this activity;
- ix. Please see the answer to 2.7 (fifth point);
- x. Regulatory Guidance notes are Environment Agency guidance on policy and legal interpretation issues associated with implementing the Regulations. A number of these are published on our website. Number 1 in the series provides guidance on understanding the meaning of "operator". We are currently reviewing the document in preparation for the second phase of the Environmental Permitting Programme in order to answer the type of question that you have raised. The key point that the

guidance will explore is that the Regulations define “operator” as the person who has control over the operation of a regulated facility;

- xi. Our technical guidance note on complying with permit conditions will confirm that electronic media are acceptable under “written” reports or notifications. We agree that this method of communication would be useful for “without delay” notifications subject to appropriate quality assurance checks;
- xii. We can confirm that the Directive only requires appropriate treatment for sewage discharges to surface water below 2000 population equivalent. The reference to the Regulations was solely to define what we mean by ‘secondary treatment’.

**(b) As regards SR2008No16**

- i. Rule 1.2.1 (accident management plan) – This rule was thought to be unnecessary because it was already covered by rule 1.1.1 (general management), which requires operators to have a management system that covers accidents and incidents;
- ii. Table 2.1 (permitted activities) – The operator suggested that the table should make clear that the storage of finished product (beyond the maturation stage) is permitted;
- iii. Rule 2.2.1 (waste acceptance) – The rule does not permit the acceptance of liquid waste, since liquid wastes cannot be composted. However, from their perspective, liquid waste could be received and de-watered prior to composting provided the site meets the requirements set out in the introductory note relating to point source and fugitive emissions and under rule 3.1.1 (fugitive emissions of substances);
- iv. Table 3.2 (appropriate measures for odour emissions) – In their view this table was not required as the fugitive emissions rules address this by the requirement to maintain and implement an odour management plan.

**Our response:**

- i. Please see the answer to 2.7 (third point);
- ii. The finished product from the composting activity may or may not be considered to be waste depending on the circumstances. If it is still considered to be waste, then storage of this material is allowed under rule 2.1.1, which refers to Table 2.1. If it is not considered to be waste, then it is not controlled under the rules. We do not therefore consider that any changes need to be made;
- iii. The response does not provide sufficient information on the waste types being referred to and whether this would be typical for a composting activity. The rules have been developed for common composting activities, with well understood risks and control measures. We consider that the acceptance of liquid wastes for composting would be more suited to a bespoke permitting approach;
- iv. We have re-considered the use of default standards for the processing of wastes to prevent or minimise odour emissions from the activities. We agree that this is a matter that should be properly dealt in the operator’s odour management plan. The table will be deleted from the rules set before publication.

**2.9** A trade association made a number of comments on the draft standard rules SR2008No16 (composting in open windrows) and SR2008No17 (composting in closed vessels)

**(a)** In the draft revisions to SR2008No16 they welcomed the confirmation that no composting of animal by-products or catering waste may take place in the open air. They believed that for the sake of clarity, effective odour control and bio-security, the rules should confirm that this restriction also applies to processed and part-processed animal by-products.

**Our response:** This set of standard rules does not permit the acceptance of animal wastes that are covered by the Animal By-Products Regulations.<sup>3</sup> No additional qualification is necessary.

**(b)** As regards SR2008No17

- i. In their view, SR2008No17 sets out to be a set of standard rules for composting in enclosed vessels yet contains multiple references to activities taking place in the open. They considered that, as is the case for a rendering plant dealing with animal by-products, the rules should make it clear that all storage, process and transfer of materials containing animal by-products must take place indoors;
- ii. The trade association commented that the general and broad nature of the rules in this rules set are at variance with the very specific and focussed Best Available Techniques (BAT) standards set for the rendering of animal by-products in guidance note SG8. Furthermore, in the interests of ensuring consistent odour control they recommended that the general rules be made more specific for sites handling animal by-products and ensure that the BAT standards in SG8 are applied to all processes subjecting animal by-products to processing operations;
- iii. Their understanding was that the purpose of standard rules is to set a minimum standard of management and operation that would ensure identified risks are properly controlled and to be effective this must involve the setting of defined physical measures. They thought that at the moment the guidance is for the use of ill-defined management plans and is open to interpretation. In their opinion this would lead to inconsistency and should be corrected. They considered that the standard rules should contain specific measures and went on to list an example of the specific requirements, as per the requirements in guidance note SG8 set out below –

26 The operator should have a clear diagrammatic record of the routing of all installation drains, subsurface pipe work, sumps and storage vessels including the type and broad location of the receiving environment.

27 The operator should identify the potential risk to the environment from drainage systems recorded by [BAT 26](#) and should devise an inspection and maintenance programme having regard to the nature and volume of waste waters, groundwater vulnerability and proximity of drainage systems to surface waters.

28 The operator should ensure that all operational areas are equipped with an impervious surface, spill containment kerbs, sealed construction joints, and connected to a sealed drainage system or such alternative requirements as approved by the regulator. The condition of the impervious surface should be checked regularly and the results of inspections and intended maintenance arising should be recorded in the log book.

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<sup>3</sup> The Animal By-Products Regulations 2005 (SI No. 2347) and The Animal By-Products (Wales) Regulations 2006 (SI No. 1293, W.127)

They added that if the composting process is to be permitted subject to a series of management plans then the permit should be a bespoke permit allowing the full justification, assessment and approval of the necessary BAT measures. In their view anything less is not consistent with the requirement to apply BAT to permitted processes since it does not fully address potential risks;

They also made a number of specific comments about SR2008No17

- iv. In their view, table 3.2 (appropriate measures for fugitive emissions) should state that any storage of catering waste or animal by-products must take place in an enclosed building with suitable extraction to abatement plant;
- v. They went on to say that Paragraph 3 of the same table is tautological. It could be written as “maturation should take place inside a vessel or not”. The rule could not be described as demonstrating control of an identified risk. In their view the last clause of the sentence should be removed;
- vi. They added that at paragraph 4 the operator should be required to demonstrate the design standards of the biofilter. Furthermore, the phrase “industry standard” was not helpful unless some example of this standard can be stated in guidance;
- vii. It was recommend that table 3.5 (monitoring requirements) should also have a requirement to measure the resistance to flow of bio-filters;
- viii. In line with other permits and good practice for sites of this nature, the trade association believed that the operator should be required to produce an annual fugitive emissions inventory and submit this to the regulator.

**Our response:**

- i. We have made it clear in the introductory note to these rules that animal by-products must be handled and treated in accordance with the Animal By-Products Regulations. The rules are not intended to duplicate or replace the requirements of these Regulations, which are regulated by Animal Health as the competent authority.
- ii. Please see the above answer.
- iii. Please see the above answer.
- iv. We will amend the wording in table 3.2 to confirm that the storage and treatment of wastes prior to composting, must be in a contained system.
- v. It is correct to say that the intention of the rules is to give operators the flexibility to carry out maturation either in enclosed vessels or in the open. We consider the risk management provisions to be suitable in both cases.
- vi. We note your comments and will amend this paragraph to make it clear that the biofilter must be specifically designed and maintained for the process undertaken and be fit for purpose.
- vii. We consider that resistance to flow would be a function of design and subsequent maintenance by the operator, which would be already be covered in the standard rules through the management system and the requirements of table 3.2.

- viii. We do not consider that the production of an annual fugitive emissions inventory is appropriate for a standard facility that is supported by a generic risk assessment. Furthermore, it is not in line with other permits issued for this sector.

**2.10** One operator commented on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage)

- i. Rule 1.2.1 (accident management plan) – They believed that the requirement for an accident management plan was excessive for facilities of this size. They thought that the management of operational issues should be included in the management system as set out in rule 1.1.1;
- ii. Rule 4.4.2 (interpretation) – The operator was concerned about the definition of secondary treatment that has been included in this section of the draft standard rules. They added that approach to emission standards that is typically used for small works is to use limits of 40/60 milligrams per litre (mg/l) BOD/SS. The secondary treatment requirements of UWWTD Schedule 3 Table 1 are equivalent to 25/35 mg/l BOD/SS. In their view, this was, in effect, a significant tightening of the standards currently used.

**Our response:**

- i. Please see the answer to 2.7 (third point);
- ii. Please see the answer to 2.8 (a) (twelfth point).

**2.11** Commenting on the proposed revisions to standard rules SR2008No17, (composting in closed vessels) one operator suggested the inclusion of the following waste codes:

**02 01 wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing**

**02 01 01** - sludges from washing and cleaning

**02 02 wastes from preparation and processing of meat, fish etc**

**02 02 01** - sludges from washing and cleaning

**03 03 wastes from pulp, paper and cardboard production and processing**

**03 03 05** - de-inking sludges from paper recycling

**03 03 07** - mechanically separated rejects from pulping of waste paper and cardboard

**03 03 08** - wastes from sorting of paper and cardboard destined for recycling

**03 03 11** - sludges from on-site effluent treatment other than those mentioned in 03 03 10

**17 08 gypsum-based construction material**

**17 08 02** - gypsum-based construction materials other than those mentioned in 17 08 01

*They added that Gypsum can be beneficial to the uptake by plants of essential nutrients as well as improving soil structure.*

**20 03 other municipal wastes**

**20 03 03** - street-cleaning residues (*Seasonal leaf litter*)

**Our response:** Please see the answer to 2.6.

**2.12** The Farmers' Union of Wales commented on the draft standard rules SR2010No4 (the discharge to land of enzyme treated sheep dip).

They believed that the rules as outlined totally preclude any discharge taking place in many parts of Wales, which was both impractical and unrealistic. Whilst the Union was aware that there has been no change to the basic wording of this section, there should be a pragmatic approach to dealing with this issue.

They went on to say that there needs to be greater clarification of the fifth paragraph of the introductory note of the standard rules and rule 2.3.9, so that farmers are clear that more than one discharge within a disposal site is possible, providing it has been split into individual areas.

**Our response:** We recognise that because we have to define a risk boundary within which the rules can be used, and that risk boundary will include location controls, there will be certain parts of Wales that will be disproportionately affected. This is one of the limitations of standard rules. We are committed to working with the nature conservation agencies to ensure that all nature conservation distance screens reflect the relevant nature conservation legislation and are proportionate. Although these controls may restrict the uptake of standard rules in particular locations, we do not think they are excessive or overly precautionary in this instance.

As regards multiple discharges within a disposal site, we will confirm that this is possible and clarify the standard rules set accordingly.

**2.13** The Countryside Council for Wales (CCW) commented on the draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers), SR2010No3 (discharge to water of secondary treated sewage) and SR2010No4 (the discharge to land of enzyme treated sheep dip).

**(a)** Standard rule set SR2010No2

- i. CCW advised that the standard rule set SR2010No2 should contain a rule specific to salmonid spawning rivers, particularly in lieu of the fact that such rivers are often protected sites (SAC or SSSI). They confirmed that the Afon Teifi SAC is designated with Atlantic salmon (*Salmo salar*) as a feature. This species is mobile and can be found in tributaries off the main river that are not designated under the Habitats Regulations. As such, no distance screen would apply to such tributaries. However, any thermal discharge sited in such a tributary would be likely to have some degree of effect on spawning salmon through avoidance of high temperatures and thus cause an off site impact to the SAC. CCW suggested that any thermal discharge qualifying under these standard rules should be limited by more stringent conditions, should that discharge be to an upstream section of a salmon spawning river. CCW would suggest standards under the Freshwater Fish Directive are appropriate for SAC rivers/estuaries with Atlantic Salmon features, as follows;

*The deviation from 'normal' must not exceed 1.5°C for salmonid fisheries. Furthermore, the 98 %-ile at the edge of the mixing zone should not exceed 21.5°C for salmonids.*

- ii. In their view, an in-combination test is a required part of a test of likely significance under the Habitats Regulations. CCW considered that for permissions issued via standard permits, an in-combination test must be carried out to assess the significance of that permission in relation to any SAC, SPA or Ramsar sites it may affect. Taking the example of rule set SR2010No2; a single thermal discharge into a river for example, was far less likely to have a likely significant effect than 10 thermal discharges into the same river. CCW therefore wished us to confirm that we carry out an in-combination test of likely significance on ALL standard permits, before they are issued;
- iii. They confirmed that Natura 2000 sites are highly protected and often come under pressure from an array of factors. The highly protected nature of such sites means great care must be taken in the permitting of any plan or project that could have an effect on them, no matter how seemingly insignificant. They went on to say that for discharges such as those covered by these standard rules, there is an inherent risk should the discharge occur in a watercourse/body that is in hydrological connectivity with a SSSI or Natura 2000/Ramsar site. Furthermore, any test of likely significance as required by the Habitats Regulations in assessing a plan or project must take factors such as this into consideration. They added that standard rules sets such as this do not allude to how such a test is carried out should the permission be issued beyond the statutory consultation distance, as stated in the rule set. CCW wanted to clarify the scope of any significance tests that are carried out for such permissions outside of bespoke permitting. As standard permits would not be consulted on with statutory nature conservation bodies in this situation, CCW wanted to assess the robustness of our test of likely significance for such permits.

**Our response:**

- i. We consider that most salmon spawning is protected by the proximity of designated sites. Furthermore, the rural nature of salmon spawning areas means there is unlikely to be much demand for such discharges in those areas. However, having considered this we have decided to include a rule to prevent this standard rules set being used in areas where salmon spawn;
- ii. The limit on the maximum temperature of the discharge effectively limits any cumulative effect of successive discharges. In addition, the small watercourses that could show a measurable temperature effect will rapidly adjust back to ambient temperature, which will limit the cumulative impact. However, to make the effective restriction clear, we have decided to include a rule that will prevent this standard rules set being used within 200 metres of an existing heating/cooling discharge;
- iii. We are satisfied that even under worst-case conditions; any temperature effect on the receiving water will have dissipated within the specified distance.

**(b) Standard rules set SR2010No3**

- i. CCW sought confirmation that the EA's 'No Deterioration Policy' applies to permits issued under SR2010No3. They also sought confirmation that a package treatment plant that conforms to BS 12566 is certain to meet the BOD:SS:NH3 levels of 20:30:20 mg/L, as suggested in previous discussions on this issue. CCW would, in most cases, like to see prescriptive consents applied when in hydrological connectivity to sensitive receptors;

- ii. CCW added that any modelling used to inform the 1km screening distance in the rule set SR2010No3 would have considered BOD, SS and ammonia at particular concentrations. In their view, these concentrations should therefore be specified as limits in the standard rules. They added that failure to specify these limits would mean any such modelling would not be applicable to the rules and would require a more precautionary screening distance than 1km away from Natura 2000 and SSSI sites. In their view, such limits would be applicable and enforceable in presumably the same way as the discharge volume limits placed on these permits;
- iii. CCW suggested retaining screening distances used for assessing significance of discharges under the recent Environment Agency review of consents process. Due to the presence of sensitive receptor sites across Wales (lakes, wetlands, rivers) and the standard nature of the rule sets used in such permitting, a precautionary set of screening distances was requested in order to protect all Natura 2000 sites from damage caused by discharges. We were reminded that all standard rule sets should be in keeping with our duties under the Natural Environment and Rural Communities (NERC) Act 2006.

**Our response:**

- i. Our 'no deterioration' policy applies to these discharges and we consider treatment designed to meet the requirements of Flows and Loads 3 as BATNEEC. We expect the effluent from such plants to be within 20:30 (ATU-BOD and SS) and to nitrify (that is to say reduce ammonia well below 20 mg/l) for most of the time;
- ii. We do not normally include numeric limits in current discharge consents for small discharges. The requirements on design and maintenance mean that if these are met, the discharge will be within acceptable limits. However, having considered this, we will add a limit of 40 mg/l ATU-BOD to the rules to aid in the event of enforcement action;
- iii. Please see the answer to 1.10(b) (third point). We have re-considered the scope of the nature conservation screen in line with our duties under the NERC Act 2006 and our general conservation duties. Consequently we have decided to widen the screen for the proposed surface water discharge standard rules sets to include Local Nature Reserves, National Nature Reserves, Local Wildlife Sites and Protected Species.

**(c) Standard rules set SR2010No4**

- i. CCW sought confirmation of how a 50m 'buffer' zone was calculated in relation to the spreading of enzyme degraded sheep dip adjacent to all protected sites. They were aware that such treatment was a fairly recent development in sheep dip disposal and as such there is relatively little experience of its effectiveness or the impacts of land spreading products resulting from the process. Consequently CCW was concerned that a 50m buffer to all protected sites and a 10m buffer to any watercourse may not be sufficiently protective to prevent damage protected sites and their features. They added that designated sites often rely on undesignated areas in close proximity for maintaining their integrity and achieving Favourable Conservation Status. Rivers such as the Dee and Towy have large networks of tributaries that are undesignated under the Habitats Directive but are upstream of the designated (as SAC) main channels. In their view a 10m buffer from a watercourse would not be sufficient to prevent land spreading products from entering the watercourse even following the controls set out in section 2.2 of the rule set. Consequently, CCW wanted confirmation, with supporting evidence, that

the products of the enzyme treated sheep dip present no risk to aquatic flora and fauna when washed into watercourses. If such information is unavailable then CCW suggested extending to the 10m buffer to watercourses due to the risks of land spreading materials washing into watercourses and them causing mortality to invertebrates, many of which are vital for maintaining food webs in aquatic ecosystems;

- ii. Additionally, CCW was concerned about the effects of spreading sheep dip on land adjacent to terrestrial Special Protection Areas (SPA) that are used by foraging birds. In their view, invertebrate populations in these areas could be adversely affected by the spreading of the products of this process which in turn, may adversely affect SPA bird populations that rely on invertebrates for food. They added that this can also be said of terrestrial Special Areas of Conservation (SAC) with Lesser or Greater Horseshoe Bat features which also rely on invertebrate food sources. CCW accepted that disposal of the products of 'Landguard' treated sheep dip have seemingly far less chance of causing invertebrate mortality than untreated sheep dip disposals. However, they still wanted further reassurance that 'Landguard' treated sheep dip will not cause invertebrate mortalities likely to affect foraging SPA and SAC features when spread on land within 1km of the aforementioned sites;
- iii. CCW sought confirmation of whether current guidelines as stated in Appendix 5 of the Habitats Directive Joint Guidance (Environment Agency /CCW/Natural England), are to be retained when assessing likely significant effect from sheep dip disposals that do not meet the criteria of standard rule set SR2010No4;

SR2010No4 stated that treated dip shall not be discharged to a piece of land more than once a year. CCW assumed that responsibility for ensuring compliance with this would fall to ourselves and, as such, wanted to know if there was any framework in place for checking compliance on such permitted activities or would this rely on complaint driven investigations only. We were reminded that if complaint is relied upon this usually means the damaging event has already taken place and retrospective action is usually difficult to implement;

- iv. CCW wanted to know what safeguards there were to ensure that enzyme treatment has been successful. They added that as the 'Landguard' product is an enzyme based treatment it would require storage and use in line with the parameters at which the enzyme would not be de-natured. They wanted confirmation that treatment with 'Landguard' will be effective enough to mitigate the damaging nature of sheep dip to conservation interests in all cases where the rule set SR2010No4 is complied with.

#### **Our response:**

- i. A 50m "buffer" zone is considered appropriate given the fact that we are dealing with waste Diazinon sheep dip that has been degraded to less than 1% of its original working strength concentration. For un-treated sheep dip discharges, authorised under bespoke Groundwater Permits, we have for many years maintained a standard 10m "buffer" distance from watercourses. Again, given the treated nature of the dip we feel a 50m buffer to protected sites is acceptable and this is supported by examination of pollution incidents. We have no records of any serious water pollution incidents arising from the disposal of sheep dip made in accordance with Groundwater Authorisations, which include the 10m "buffer" distance from a watercourse. (There will have been around 100 serious pollutions arising from other causes, other than disposal onto land in accordance with an

Authorisation). Given that the proposal under consideration here involves the treatment of the used dip before disposal, with essentially the same conditions for disposal as for treated dip, then the risk to both water and terrestrial environments will be reduced compared to past and current practices. We cannot confirm “no risk” since that is impossible. We are however satisfied that given the nature of the treated dip and the standard rules that will be applied to its application, the risks are minimal and acceptable;

We do however recognise the need to screen for protected species. We will add these to the nature conservation screening criteria to ensure that they are suitably protected;

- ii. We feel that there are sufficient safeguards against adverse effects on invertebrate populations in the situation described, primarily because the waste Diazinon sheep dip has been degraded to less than 1% of its original working strength concentration;
- iii. The current guidelines, set out in Appendix 5 of the Habitats Directive Joint Guidance (Environment Agency /CCW/Natural England) are to be retained for discharges that cannot meet the requirements of the standard rules. These discharges will require a bespoke permit. Compliance assessment visits are a function of all environmental permits. In addition, cross-compliance obligations will also feature for these inspections as the discharges occur on farms;
- iv. The effectiveness of the treatment process is a key issue and we are in discussions with the manufacturer / supplier to ensure this matter is fully addressed. For example, it is vital that the label / instructions for use of Land Guard are clear, unambiguous and must be followed.

**2.14** Commenting on the draft standard rules SR2010No2, (discharge to surface water: cooling water and heat exchangers) one operator thought that we had correctly identified all the rules for this activity.

**Our response:** We note your comments.

**2.15** An operator made a number of comments on the draft standard rules SR2008No17 (composting in closed vessels):

- i. Rule 2.2.1 (waste acceptance) – The operator suggested it would be preferable to allow for some suitable liquid wastes to be accepted where these can be used to irrigate the composting waste in preference to fresh water which is really a waste of that water. They pointed out that re-use of condensate is not always allowed by Animal Health and added that the import of liquid wastes appears to be anticipated by waste codes 19 06 03 and 19 06 05;
- ii. Further to the response regarding permitted waste types, in addition to those listed in red in the draft they suggested that the following should also be added:

**02 01 wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing**

**02 01 01 - sludges from washing and cleaning**

**02 02 wastes from preparation and processing of meat, fish etc**

**02 02 01** - sludges from washing and cleaning

**02 02 04** - sludges from on-site effluent treatment

**03 03 wastes from pulp, paper and cardboard production and processing**

**03 03 07** - mechanically separated rejects from pulping of waste paper and cardboard

**03 03 08** - wastes from sorting of paper and cardboard destined for recycling

**03 03 11** - sludges from on-site effluent treatment other than those mentioned in 03 03 10

They added that most of the 07 category where these would be conducive to the composting process

**18 02 wastes from research, diagnosis, treatment or prevention of disease involving animals**

**18 02 03** - wastes whose collection and disposal is not subject to special requirements in order to prevent infection

**19 05 wastes from aerobic treatment of solid wastes**

**19 05 01** - non-composted fraction of municipal and similar wastes

**19 05 02** - non-composted fraction of animal and vegetable waste

**19 08 Wastes from waste water treatment plants not otherwise specified**

**19 08 12** - sludges from biological treatment of industrial waste water other than those mentioned in 19 08 11

**20 01 Separately collected fractions**

**20 01 10** - clothes

**20 01 11** - textiles

**20 02 Garden and park wastes (including cemetery waste)**

**20 02 02** - soil and stones

- iii. Table 3.2 (appropriate measure for fugitive emissions) – The operator thought that the wording in paragraph 2 should be amended to say “connected to” rather than fitted with as one bio-filter might well serve a number of vessels. They added that the same argument applies to the scrubber or scrubbing system and that this applied to paragraph 3;
- iv. In their view, the wording in paragraph 4 should be changed as the substrate might not always be carbon based but could be zeolite or silica in which case the carbon would need to be provided by the incoming air or by direct injection. They went on

to say that some carbon-based bio-filters require nutrient injection into the air to maintain their effectiveness;

- v. They thought that the appropriate measures for odours table should be re-numbered 3.3;
- vi. From their perspective, the stipulation to process all wastes within one week was not compatible with the efficient management of a composting process. In their experience, it was not uncommon to accumulate and store woody waste in the summer to act as amendment in the later part of the year for food and other wastes. They thought this should be encouraged rather than not allowed as it was good management of the natural resources. They added that composting was of course a biological rather than physical or chemical process which needs to be managed properly. They suggested that putrescible wastes should be processed within a week;
- vii. Table 3.5 (monitoring requirements) – The operator considered that the measurement of temperature could be expanded to allow digital temperature measurement, which was more accurate. They added that it is not usually possible to monitor moisture content continuously and recommended that the wording be altered to reflect this. Their final comment on the table of monitoring requirements was to point out that it was not necessary to monitor the moisture content of a properly operated bio-filter every day. Consequently, they advised that this should be reduced to appropriate monitoring to be able to prevent drying out occurring;
- viii. Rule 4.2.3 (bio-filter reporting) – In their view the penultimate sentence was misplaced, as the clause is about reporting. They added that the requirement to look after the bio-filter although self-evident, should be under 1.1.1 (general management or 3.3.2 (odour). They also pointed out that the last sentence could be made clearer;
- ix. The operator thought that the definition of bio-filter was not quite correct as the medium could be inorganic. Furthermore, odours and volatile organic compounds were not necessarily filtered in the conventional physical sense but are reduced by the action of the bacteria. They also thought that the definition of enclosed reactor vessel also needs to be re-drafted.

**Our response:**

- i. We acknowledge that some liquids may be suitable for this activity. We have proposed the inclusion of specific types of liquor from the anaerobic treatment of wastes. We cannot provide for the acceptance of unspecified liquid wastes, with unknown properties but we will work with the industries involved to consider other liquid wastes for future updates to the standard rules sets if appropriate;
- ii. Please see the answer to 2.6;
- iii. We are grateful for your comments. We will amend table 3.2 in accordance with your request;
- iv. We will amend the wording of paragraph 4 in table 3.2 to reflect the fact that the substrate used in biofilters will not always be carbon based;
- v. This was a typographical error. Please also see the answer to 2.8 (b) (fourth point);

- vi. Please see the above answer.
- vii. As drafted, the rule does not preclude the digital measurement of temperature. We note your comments about the continuous measurement of moisture content. We will remove this requirement from the table. As regards the monitoring of biofilters, rather than require monitoring on a daily basis, we will amend the wording of the table to ensure that they are checked regularly to ensure appropriate temperature and moisture content;
- viii. We agree that the requirement to maintain the biofilter is not appropriate for a rule concerned with reporting and we will remove the sentence you refer to. We will also amend the overall wording of the rule to make it clearer;
- ix. We note your comments about the definition of biofilter and enclosed reactor vessel. We will consider these and amend the definitions if necessary.

**Question three: Existing standard rules and some of the rules sets we are consulting on use the term “fugitive emission”. This is defined as an emission to air, water or land from the activities from a localised or diffuse source which is not controlled by an emission limit. Do you think the term is appropriate for typical activities we regulate with surface or groundwater permits? Can you suggest a better alternative, usable across all types of activity covered by the Regulations; i.e. process industry, intensive farming and waste sectors?**

Of the 32 replies, 12 made suggestions and 20 did not respond to the question.

**3.1** The Food Standards Agency commented on the draft standard rules SR2010 No1 (category 5 sealed radioactive sources). They confirmed that RSR regulators at a Thames Radiological Protection Advisors meeting usually referred to such an event as an “adventitious release.” They thought that either term would be satisfactory and added that another term that might describe such an event could be an “orphan release”.

**Our response:** This draft standard rules set did not contain “fugitive emissions” rules. Our conclusions about how best to reference this feature of other regulated facilities are set out in the response to 3.12.

**3.2** The Broads Authority thought that “diffuse pollution” was a more suitable phrase when dealing with chemical/nutrient sources from widespread and uncontrolled emissions. They went on to say that the impact of numerous small permitted activities needs to be addressed, as the total discharge may be greater than single, large discharges. An analysis of pathway and receptor is required for all small discharges in a catchment; especially to safeguard water bodies and catchments with no or little mains sewage provision, as occurs in the Broads.

**Our response:** We note your comments about the potential impacts of small discharges of treated sewage in the Broads. We believe that the risk management provisions in a standard rules set for this activity will ensure that your concerns are addressed. As regards “fugitive emissions”, for the purposes of standard rules we are talking about emissions from the permitted activities from localised or diffuse sources which are not controlled by emission limits. For localised sources, these will either be whole emission points or a substance(s) from a point. Because there are no emission limits, we expect operators to use appropriate measures to prevent these emissions from causing pollution.

We set out these measures in our technical guidance note series. Given the above, the term “diffuse pollution” is not really appropriate but we are grateful for your suggestion.

**3.3** The Ministry of Defence thought that while the term “fugitive emission” clearly related to surface and groundwater activities, it appeared as though the intention was to adopt the terminology throughout EPR permitting, including for radioactive substances activities, when incorporated into EPR. They went on to say that it was unclear how “fugitive emissions” will translate to radioactive substances.

**Our response:** Please see the response to 3.1. Please also note that the term is not compatible with the regulation of radioactive substances, now, or when radioactive substances activities are incorporated into EPR.

**3.4** One operator thought that “fugitive emission” needed further clarification, as for sewage treatment works this could refer to a substance received in the influent, as well as an emission from the process; the former could also impact on the latter. They strongly suggested that an alternative description is sought.

**Our response:** An example of such an emission from a water discharge activity would be copper in a sewage discharge. This substance would not be subject to an emission limit and would therefore be a “fugitive emission”. If not specified in a permit, the measures used to prevent pollution from a substance not controlled by an emission limit will depend on the industry sector/regime and individual circumstances. We will expect operators to consider the options based on balancing costs and environmental benefits. The measures that operators decide to use will be up to them, but they will have to meet the objective of the condition/rule.

Schedule 21 paragraph 6 of EPR will repeat the Water Resources Act S.87 defence for water companies where the substance is discharged by somebody else.

**3.5** One operator suggested that the words “incidental” or “miscellaneous” could be considered as alternatives.

**Our response:** Please see the answer to 3.12

**3.6** One operator commented that in our consultation document we stated that “fugitive emissions” were referred to as “any localised or diffuse source which is not controlled by an emission limit”. In their view, this was not strictly true as there are emissions recognised in permits that do not have emission limits set on them. They are still permitted but are not considered “fugitive.” They went on to welcome the fact that the “fugitive emission” rule seen in other standard rules sets was not present in the draft standard rules set SR2010No3 (discharge to water of secondary treated sewage). They believed this to be a proportionate approach and asked for it to be removed from other standard rules sets.

**Our response:** ‘Fugitive emissions’ means emissions from the activities, either from emission points specified in the permit or from other localised or diffuse sources, which are not controlled by an emission or background limit. Point source emissions from permitted activities will be listed in tables in permits or standard rules sets, together with emission limits. Point sources listed in these tables (which will be either a whole emission point or a substance from a point) for which an emission limit is not set are treated as “fugitive emissions.” Furthermore, any emissions from the permitted activities not listed in a table are considered as “fugitive emissions.”

After considering the responses to this consultation we intend to include a rule covering emissions of substances not controlled by emission limits for the standard rules set for the discharge to water of secondary treated sewage to secure appropriate levels of environmental protection. We have no plans to remove such rules from any existing standard rules sets. We will also provide better guidance to operators on how to comply with their permits in our revised generic technical guidance note for the second phase of the Environmental Permitting Programme (EPP2). Please also see the answer to 3.12.

**3.7** One operator suggested replacing the term “fugitive emission” with “un-permitted discharges” or “un-consented discharges.”

**Our response:** Please see the answer to 3.12

**3.8** One trade association felt that the term “fugitive emission” may have an unnecessarily negative connotation and suggested the term “unregulated emission” as a potential alternative. They went on to say that the definition itself appeared to be satisfactory, provided that it is also linked to some form of environmental harm or risk of harm.

**Our response:** Please see the answer to 3.12

**3.9** One operator thought that the existing term was suitable.

**Our response:** Please see the answer to 3.12

**3.10** The Farmers’ Union of Wales considered that the term “fugitive emission” was not relevant to sheep farming.

**Our response:** This draft standard rules set did not contain fugitive emissions rules. Given the scope of the permitted activities, we do not intend to include these rules in the published version. Please also see the answer to 3.12

**3.11** One operator thought that the term “fugitive emission” usually had a different meaning and should therefore be preserved. They did however suggest “non-limited emission” as an alternative.

**Our response:** Please see the answer to 3.12

**3.12** One operator considered the existing term to be adequate and was now becoming common parlance, so it would be unfortunate to change it as that wording may well appear in existing performance specifications and contract documents.

**Our response:** Whilst some respondents are content that the term “fugitive emission” adequately describes emissions from permitted activities that are not controlled by emission limits, it is also clear that other are not. Furthermore, there appears to be some confusion over whether or not some emissions are “fugitive” or not. In our answer to 3.6, we have committed to improving our guidance on how to comply with environmental permits. We also need terminology in our standard rules and bespoke permits that will be clear to existing operators of regulated facilities under EPR and those for surface water and groundwater activities going forward.

Consequently, we have decided to stop using the term “fugitive emission” for standard rules and bespoke permits. Rather than use the term “fugitive emission”, rules/conditions will simply refer to emissions of substances not controlled by emission limits. Example rules are set out below.

### 3.X Emissions of substances not controlled by emission limits

- 3.X.X Emissions of substances not controlled by emission limits (excluding odour, noise and vibration) shall not cause pollution. The operator shall not be taken to have breached this rule if appropriate measures, including, but not limited to, those specified in Table 3.X below and in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions.
- 3.X.X The operator shall:
- (a) if notified by the Environment Agency that the activities are giving rise to pollution, submit to the Environment Agency for approval within the period specified, an emissions management plan;
  - (b) implement the approved emissions management plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.

For further clarification, “emissions of substances not controlled by emission limits will be defined in standard rules as:

“.....emissions of substances to air, water or land from the activities, either from the emission points specified in these rules or from other localised or diffuse sources, which are not controlled by an emission limit.”

We will revise all existing standard rules sets and will write to the existing holders of permits affected by the change. We consider the change to be a minor administrative change and do not consider they each need to be consulted in advance. Their obligations are not changing. These changes will not affect existing operators with bespoke permits that use the term “fugitive emissions.”

**Question four: Are there any barriers to take-up of existing rules or other activities that you think would benefit from the standard permitting approach, for example emerging new technologies? We will consider these for a future consultation.**

Of the 32 replies, 8 raised issues and 24 did not respond to the question.

**4.1** The Food Standards Agency commented on the draft standard rules SR2010No1 (category 5 sealed radioactive sources). They confirmed that they could see no obvious barriers to the proposed rules being taken up. They added that they did not consider that there were other activities that would obviously benefit from the standard permitting approach.

**Our response:** The current review of exemption orders made under the Radioactive Substances Act 1993 (RSA93) led by the Department of Energy and Climate Change will establish those activities which do not need an Environmental Permit. We will review the scope for additional standard rules sets when that review is completed.

**4.2** One operator thought that “fugitive emission” needed further clarification, as for sewage treatment works this could refer to a substance received in the influent, as well as an emission from the process; the former could also impact on the latter. They strongly suggested that an alternative description is sought.

**Our response:** Please see the answer to 3.4.

**4.3** One operator thought that proximity to Site of Special Scientific Interest and residential properties and the emission standards for SR2009No4 (combustion of biogas in engines at sewage treatment works) could be a barrier.

**Our response:** The distance screens for the above standard rules set for both nature conservation sites and off-site buildings used by the public was derived from detailed emissions modelling. The modelling was based on parameters discussed with industry representatives. We do not consider that we can justify lower distances unless fresh evidence is provided to us to re-consider. We were able to reduce the scope of the nature conservation screen in agreement with the nature conservation agencies to exclude sites of special scientific interest (SSSIs) designated solely for geological features.

**4.4** One operator commented on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage):

- i. They thought that an application for a standard permit would be difficult for waste water treatment works where there is no proof or understanding of whether they meet BS112566. They went on to say that there will be a large quantity of these sites and this could lead to a number of small works failing to take up standard permits that would otherwise qualify. Furthermore it had not been made clear how this would be applied retrospectively;
- ii. They considered that 20 cubic metres per day did not seem in keeping with a risk-based, proportionate approach to regulation that the descriptive consents already show for greater flows. 50PT as referenced in the British Standard equates to a dry weather flow of 12 cubic metres per day (150 l/h/d/ G with I of 100 l/h/d). Therefore, the 20 cubic metres per day cut-off would indicate an almost complete absence of any “rainfall related inputs” to system i.e. a “foul only” system. They did not consider that 20 cubic metres per day was an appropriate cut-off point since these plants are unlikely to receive foul only flows. They urged either:
  - Reconsidering the 20m<sup>3</sup>/d limit upwards, to capture the large number of descriptive consented works being able to have a standard permit – for them this was approximately 80%, or
  - A “combined system” standard template for “mains” drainage is developed
- iii. From their perspective, the standard rules appeared to be limited to “secondary treated” effluent. However there are a number of small works serving a population equivalent of less than 250 with “appropriate treatment”. They are consented with descriptive consents and are compliant with the Urban Waste Water Treatment Directive (UWWTD) but do not have secondary treatment. They viewed the requirement to have secondary treatment as a tightening of standards and would need to be upgraded and funded to take advantage of these standard rules. They posed the question; will those sites without secondary treatment have a standard permit of their own? If the answer to this question was no, they believed that large numbers of the potential works could need bespoke permits. They did not consider this to be in keeping with a risk based, proportionate approach to regulation.

**Our response:**

- i. The main beneficiaries for standard permits are applicants for new permits, in that they have known requirements and can benefit from a cheaper and simpler application process. The requirements of the standard rules are not different from those in bespoke permits for similar discharges. In this case, the annual

subsistence charge will be similar. We therefore believe that there will be little incentive for holders of existing bespoke permits to switch to a standard permit.

- ii. As regards the proposed maximum flow limit, please see the answer to 2.7 (first point) and for the second point, 2.8(a) (seventh point).
- iii. As previously stated, we do not expect many operators with existing bespoke permits to apply to operate under these standard rules. All existing discharge consents will automatically become bespoke environmental permits when the Regulations come into effect. Operators will not need to apply for bespoke or standard permits for discharges for which they already hold a permit, unless the discharge changes so that it does not comply with the existing conditions. In that case, they should apply to vary the permit.

**4.5** One operator commented on the draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers) and SR2010No3 (discharge to water of secondary treated sewage). They considered that given the region in which they operate, the main barrier to the take-up of these rules would be the restrictions in relation to the proximity to European Sites, Ramsar Sites and SSSIs for both sets of standard rules, with the addition of identified bathing waters and designated shellfish waters for SR2010No3.

**Our response:** Please see the answer to 2.8 (a) (sixth point).

**4.6** One operator commented on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

- i. They welcomed the approach of producing a standard permit for small sewage treatment works (STWs), but were disappointed that its use would be limited as the current format contains significant restrictions which would prevent its application to their sites. They believed that the restrictions in the standard rules would drive the need for bespoke permits at the majority of small STWs, thereby actually increasing the regulatory burden.
- ii. They pointed out that small STWs of this size are currently normally covered by descriptive consents. The maximum daily flow limit of 20 cubic metres per day represented a marked reduction from the current descriptive consent policy that is applied to sites of less than 250 population equivalent. They currently operate 370 STWs; ninety-three of these are covered by descriptive consents, all of which were fully compliant. However, only five of these STWs have a maximum daily flow of less than 20 cubic metres per day, of which one discharges less than five cubic metres per day, two discharge to groundwater and two discharge close to designated sites. None of these would therefore qualify for the standard rules. They requested that the maximum daily flow limit was increased.
- iii. They went on to say that it continues to be a concern that standard permits in general cannot be used for activities carried out within a certain distance upstream of a designated site. They believed that there should be a pragmatic, proportionate and risk-based application of the distance from these sensitive sites. In this case the limit is one kilometre, which seemed particularly precautionary for the scale and nature of sites being considered in the consultation. They were very concerned therefore, that with the exception of one STW, the introduction of standard rules will result in the requirement for bespoke permits for all of their

STWs, irrespective of size, sensitivity or risk to the environment. They did not consider this proportionate or risk-based regulation.

**Our response:**

- i. Please see the answer to 4.4 (third point).
- ii. As regards the proposed maximum flow limit, please see the answer to 2.7 (first point).
- iii. Please see the answer to 2.8 (a) (sixth point).

**4.7** The Farmers' Union of Wales commented on the draft standard rules SR2010No4 (the discharge to land of enzyme treated sheep dip). In their view the proposals outlined in the consultation document were excessive, unduly bureaucratic and did not reflect the level of risk posed to the environment should farmers adopt the use of Landguard enzyme treatment.

They considered the proposals to be a way of increasing the cost burdens on an industry, whilst raising the bar in terms of regulatory requirements.

**Our response:** We consider this standard rules set to be a cost effective and environmentally friendly option for farmers who want to return to dipping sheep or want to hold a permit for the eventuality of dipping. A detailed answer to all of the above points can be found in **other comments** 9. (a – j).

**4.8** One operator proposed the development of standard rules for the mechanical biological treatment of waste for the production of fuel, rather than a compost for recovery.

**Our response:** We note your comments for future standard rules consultations.

**Question five: Do you have any comments about this consultation document and the way that we have conducted this consultation?**

Of the 32 replies, 8 made comments and 24 did not respond to the question.

**5.1** The Food Standards Agency had no major comments to make on this question. In their view "Qualified Experts", who deal with radioactive substances regulation applications ought to be able to follow the rules, as these are similar to the rules that are currently in place under RSA93.

**Our response:** We too are confident that this rules set – together with the associated regulatory process – provides a straightforward framework within which operators can apply for a permit and then minimise the risk of damaging or losing a source, or having one stolen – and demonstrate that they are doing so whilst securing the benefits of using their sources.

**5.2** Whilst welcoming the opportunity to comment on the proposals in respect of proposed revisions to existing rules, the Minerals and Waste Development Control Planning Advisory Group pointed out that it would have been useful to have been supplied with the existing generic risk assessments to allow them to consider whether the proposed changes would have any impact on the risk assessments.

**Our response:** We are grateful for your comments on the proposed revisions to the existing sets of standard rules for open windrow and in-vessel composting. Please also see the answer to 1.7.

**5.3** The Health and Safety Executive passed on their thanks for consulting them. They went on to say that the consultation period provided sufficient time to circulate it internally in order to respond to the deadline.

**Our response:** We are pleased that the Executive was able to respond. We intend to continue to work with regulatory colleagues to build on existing initiatives to share information efficiently and to avoid any unnecessary administrative burdens on those we regulate and advise. We also intend to continue the arrangements we now have for fixed condition registration casework – including those designed to streamline regulatory processes for customers who are farmers.

**5.4** One operator commented that clarification was required on which type of permit will apply to discharges greater than 20m<sup>3</sup> per day maximum flow, and the current limit for descriptive discharges of 50m<sup>3</sup> per day dry weather flow.

**Our response:** These activities will require bespoke environmental permits under EPR, which could be descriptive or numeric.

**5.5** The Chartered Institution of Wastes Management (CIWM) commented on the proposed revisions to SR2008No16 (composting in open windrows) and SR2008No17 (composting in closed vessels):

- i. CIWM pointed out that some of their members are confused over the introduction of waste code 02 02 and how this is explained with animal by-products and open windrow composting;
- ii. In the table of permitted wastes for the open windrow composting standard rules, waste code 15 01 05 includes the term biodegradable. They queried what biodegradable meant in this context and how did it comply with BS 13432;
- iii. As regards the standard rules for composting in closed vessels, waste code 04 02 mentions waste from the textile industry. They assumed that these are natural fibres, otherwise they will not compost;
- iv. Point 4 in table 3.2 mentions a minimum industry standard in relation to biofilters. They are not sure what this is and there is no link to help applicants or operators.

**Our response:**

- i. The table of permitted wastes uses the same two digit chapter codes and four digit sub-chapter codes as the List of Wastes Regulations 2005. The 02 02 code merely identifies the relevant sub-chapter. The only waste type permitted from this chapter is 02 02 09 – horse manure, farmyard manure and bedding;
- ii. This waste code covers composite packaging. We have limited it to biodegradable organic packaging, that is to say only packaging that can be composted;
- iii. This four-digit chapter code covers organic and natural products from the textile industry. We have limited these to un-dyed and untreated products. This will include, but not be limited to, some natural fibres;

iv. Please see the answer to 2.9 (b) (sixth point).

**5.6** A trade association felt that the consultation document would be improved if the consultation questions were embodied in the relevant sections of commentary as well as being collated in a separate section at the end, for ease of cross-reference and consideration.

**Our response:** We are grateful for any suggestions for improvements to standard rules consultation documentation. We will consider your suggestion for our next consultation in 2010.

**5.7** The Farmers' Union for Wales was concerned that the consultation had been published at all during a time of economic downturn and believed that serious consideration should have been given to the implications of these proposals on the viability of small businesses.

The Union went on to say that the consultation had been "sold" to the industry as a way of minimising risks and reducing regulatory overheads, when in reality the only beneficiary of these proposals was the Environment Agency's finances.

**Our response:** The timing of the consultation was driven by proposals to widen the Environmental Permitting regime to include groundwater authorisations. We are mindful of the current economic climate and consider that this standard rules set offers a real solution to the disposal of untreated spent sheep dip. Our charges are subject to the approval of the Secretary of State and the consent of the Treasury; they are set to cover the costs of regulation.

**5.8** CCW re-iterated the necessity for precaution when issuing permits that have the potential to damage conservation interests of Natura 2000 sites across Wales. They confirmed that these sites are highly protected and are afforded a great deal of resources into their preservation and improvement and went on to say that any rule sets containing distances from protected sites at which activities listed can be carried out under standard permits should be as a result of thorough monitoring and sound scientific justification;

CCW added that concerns over the potential damage to protected sites in Wales are borne from experience of their officers dealing with diffuse pollution in the process of site management and protection. They pointed out that the major issue with diffuse pollution is that it is very difficult to trace its sources for obvious reasons. As such, they have to adopt a stance, especially in relation to Natura 2000 sites, where their remit is at the forefront of their efforts to limit any possible contributions to diffuse pollution across Wales. As the Environment Agency's permitting regime arguably contributes to diffuse pollution in Wales to some degree, CCW feels the need to take a precautionary view to any standard rule sets for the permitting of operations that have potential pathways to nutrient enrichment or toxic contamination of protected sites. They added that this is specifically related to the distance screens attributed to each set of standard rules whether these are zones of restriction or zones where they must be consulted. In their view the 'standard' nature of these rule sets means they are inherently more risky in relation to preventing damage to protected sites. They would therefore like to see some kind of provisions in standard rule sets that would cover and address concerns over activities being carried out in close proximity or hydrological connectivity to SSSI and Natura 2000 sites. If these were not covered specifically in the standard rule sets then CCW requested that they are made an absolute requirement before a permit is issued i.e. they are not just a voluntary code of practice;

CCW stated that they are striving to achieve targets set by the Welsh Assembly Government in its Environment Strategy for Wales in respect of getting all designated sites into favourable condition by 2026. To facilitate progress towards this target, the Strategy includes interim targets for SSSIs; these specify that 95% of SSSIs should be in favourable condition by 2015. In view of this, CCW reminded us that permitting any development or process that may be having any sort of adverse effect on protected sites in Wales may be inconsistent with the aims and objectives of the Welsh Environment Strategy;

CCW also reminded us of our duties under S28G of the Wildlife and Countryside Act 1981 (as amended) to take reasonable steps to further the conservation and enhancement of the features by reason of which a site is of special scientific interest. This is also supported by a further duty in S.40 of the Natural Environment and Rural Communities Act (NERC) 2006 to have regard to the purpose of conserving biodiversity.

**Our response:** We thank the Countryside Council for Wales for their comments. We share your concerns for the protection of nature conservation sites and species. We believe that we have addressed these concerns in our answers to the detailed points raised in relation to the new standard rules sets we will be publishing.

We will continue to work with the nature conservation agencies in Wales and England in accordance with the working together agreements established for EPR. We are fully aware of our general conservation duties in relation to environmental permitting and will continue to be mindful of these as we move into the second phase of the Environmental Permitting Programme.

#### **Question six: How did you find out about this consultation?**

Of the 32 responses, 4 found the consultation on our website, 3 received an email from us, 2 operators found out through participating in their industry Task and Finish Group for EPP2, the Food Standards Agency found out through participating in EPP2 project meetings sponsored by the Department for Environment Food and Rural Affairs and the Welsh Assembly Government, the Minerals and Waste Development Control Planning Advisory Group found out through the Planning Officers Society, 1 operator was notified by their trade association, 1 operator found the consultation through their industry press, the Farmers' Union of Wales found out through representation on the enzyme treatment of Diazinon Sheep Dip Stakeholders Group and 1 operator found out through word of mouth and 17 did not respond to the question.

Please contact us if you want to know which organisations we informed about this consultation.

#### **Question seven: Any other comments?**

Of the 32 replies, 8 made comments and 24 did not respond to the question.

**7.1** The Health and Safety executive commented on the draft standard rules SR2010No1 (category 5 sealed radioactive source). They wanted to know if there was a standard we should reference for marking a sealed source as "radioactive" instead of saying it should be marked as radioactive.

**Our response:** This standard rules set will be supported by guidance to permit holders. The corresponding guidance relevant to our current fixed condition registration for category 5 sealed sources and which is intended to help operators meet its conditions is available at <http://www.environment-agency.gov.uk/business/sectors/39769.aspx>. It has a section on the marking of sources and of containers.

**7.2** The Minerals and Waste Development Control Planning Advisory Group asked us to consider the relationship between the planning system and standard rules, in particular, best practice in relation to the exchange of information with planning authorities about permits and compliance with planning permission to avoid duplication or conflict.

**Our response:** We have agreed how we will consult with organisations who have a special interest and expertise and who need to help us in our decision making process for permit applications. These consultation arrangements can be found in a number of “Working Together Agreements” published on our website.<sup>4</sup> One of these agreements is with the Local Authorities Coordinators of Regulatory Services (LACORS). We hope to develop other such agreements with other planning authority groups, particularly for the implementation of the Mining Waste Directive through environmental permitting.

Our aim is for our permit conditions to reflect our regulatory duties and to avoid duplication with other regulators. Where we have a duty to regulate a particular issue through our permits though, we cannot rely on the permit of another regulator. If there is a potential overlap of regulatory controls for a regulated facility, such as noise from waste operations; we would hope to work closely with local authorities to ensure an appropriate regulatory response is made.

**7.3** The Ramblers’ Association commented on the proposed revisions to SR2008No16 (composting in open windrows).

They wanted to know whether full consideration had been given to the impact of composting facilities, as currently permitted under SR2008No16 on bystanders, specifically in the context of the public accessing land by means of any other highway, or exercising rights of access to open country as set out in the Countryside and Rights of Way Act 2000.

They asked this because activities permitted under these rules must be at least 250 metres away from any residential property or workplace, so it must be anticipated that there is some risk attached to them. They went on to ask whether we were satisfied that there is no risk to bystanders who walk, ride or cycle within 250 metres of open windrow composting facilities.

**Our response:** Our position on composting and potential health effects from bioaerosols is set out in our Policy, number 405\_07<sup>5</sup>. The Policy confirms that we will take into account the effects of bioaerosols on human health and that applicants have to provide us with a site-specific bioaerosol risk assessment if there is a workplace or dwelling house within 250 metres of the composting site boundary when they apply. The Policy is reflected in the standard rules such that the storage, physical treatment, composting and maturation of wastes must be at least 250 metres away from any residential property or

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<sup>4</sup> The Working Together Agreements can be found at: <http://www.environment-agency.gov.uk/business/topics/permitting/36420.aspx>

<sup>5</sup> The policy can be found on our website at: <http://www.environment-agency.gov.uk/research/library/position/41211.aspx>

workplace as they are supported by a generic, as opposed to site-specific risk assessment. It is important to note that the receptors mentioned in the Policy are those where people would frequently be present, rather than people exercising rights of way near to composting facilities. Consequently we do not believe that the health of these individuals would be at risk from bioaerosols.

**7.4** One operator commented on the draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

In their view, although a good document in its own right, the Flows and Loads 3 requirement encourages private developments to build “foul only” systems that are then later presented to water companies for formal adoption into the “mains”. They believed that adoption might not be straight forward as the standard rules do not allow for any future growth or accommodate rainfall events that will overtime develop in the flows. They went on to say that Sewerage Undertakers are obliged to accept new connections and the suitability of a private package plant before adopting it. Limiting it to a foul only system could make it very unappetising to accept for up take for a Sewerage Undertaker in due course. Furthermore, if they did adopt the package plant with a standard permit, it may need to be varied to a bespoke permit to accommodate the change in flows.

They considered that the active endorsement of “foul” only package plant for standard permits may limit the types of package plant and technology available from suppliers for combined systems. They thought that this would lead to increased costs for the provision and operation of combined systems, and may in some circumstances encourage inappropriate treatment for rainfall related events for roofs and guttering e.g. soakaways that cannot soakaway and so on, leading to connections to foul being made anyway or surface water flooding issues.

**Our response:** Please see the answer to 2.8(a) (seventh point).

**7.5** One operator commented on the draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers)

While they recognised the value of the proposed standard rules for such discharges to surface water, they highlighted a number of limitations which they considered it would impose that are not practicable or BAT (Best Available Technique), particularly in relation to those power stations that have need for thermal discharges.

- i. Section 2.1.1 Table T2.1, stated that the “discharge shall contain no added chemicals”. It is established and required practice in power plant cooling systems to control biofouling and Legionella with a disinfectant, which in most cases is sodium hypochlorite. To be effective, a residual level needs to be retained up to the point of discharge. Where there is a limit on the residual content of chlorine in the discharge, a dose of dechlorinating agent such as sodium bisulphite may be added. The use of these chemicals to optimise plant efficiency and safety are considered BAT. They proposed that this rule should be relaxed to allow these exceptions where justified;
- ii. Section 2.2.2 stated that the discharge should not be “within 500 metres upstream of a European Site or a SSSI”. They had two comments on this condition: (a) The discharge location may be tidal or estuarial, so that the prevailing flow direction of the receiving water may be in either direction. Any restriction should therefore apply either upstream or downstream (b) The restriction to 500 metres was considered somewhat rigid considering the potential variation in sensitivity between sites. They proposed that the rule be amended to the effect that the

location should not be within 500 metres of a European Site or SSSI, unless an appropriate level of environmental assessment of the site specific conditions of the propose discharge is shown to justify a closer proximity to the European Site or SSSI. (They noted that “European” site was interpreted in the rules to also include “Ramsar” site designation.);

- iii. Section 3.1.2, Table T2.1 stated that the temperature difference between “the water at the inlet and outlet is less than five degrees Celsius.” They considered this to be impracticable for a thermal power plant. Where the heat rejection is by once-through cooling, plant is designed for optimum efficiency at a fixed differential that is generally between 8 and 12°C. In such a plant, it would be possible in theory to reduce the temperature increase by adding to the flow of cooling water, i.e. by dilution. However they believed that this would not be BAT as the additional flow would consume more energy, more disinfectant and other additives, create more potential disturbance at abstraction and discharge locations and threaten to transgress any limit on maximum discharge volumes (see the fifth point below). They went on to say that in an open re-circulating cooling system with a cooling tower, there is no direct link between the inlet and discharge temperatures. The discharge temperature is driven by the ambient wet bulb temperature and the approach characteristic of the cooling tower. Typically only 1% of the rejected heat is discharged into water, hence the disconnect between abstraction and discharge temperatures. In practice, the temperature difference between intake and outfall tends to be fairly constant, but on a hot, humid day the discharge temperature could rise significantly for a short time, out of the control of the operator. They proposed that (a) the maximum is relaxed to 8 degrees and (b) allowance is made for occasional exceedances in cooling tower systems under extreme meteorological conditions;
- iv. Section 3.1.2, Table T2.1 stated that the maximum discharge temperature “shall not exceed twenty five degrees Celsius.” In their view, it was not practicable to impose this condition continuously on a thermal power plant, as there will be occasions when the intake temperature is close to or above 25°C so that the required temperature differential is small or even negative. Furthermore, it is not always practicable to comply by withholding discharge until the temperature drops. They proposed that the rule was relaxed to allow a reasonable number of occasional exceedances under extreme high intake water, or ambient wet bulb, temperatures;
- v. Section 3.1.2, Table T2.1 stated that the discharge volume “shall be less than 1000 cubic metres per day”. They considered that this was not practicable with a modern, efficient power plant of standardised unit size. In a nominal 400 MW electric output combined cycle module with a cooling tower system at even the most aggressive concentration factor to reduce water consumption, typical discharge rates would struggle to comply with this limit under average conditions and discharge volumes may be up to 50% higher than average under extreme summer conditions. With a once-through cooling system of this capacity, the discharged daily volume could approach 200,000m<sup>3</sup>. They proposed that the rule is relaxed to a more practicable limit. They also proposed that we allow an exceedance where an appropriate level of environmental assessment of local conditions shows that the impact is acceptable and the discharge can be justified.

**Our response:**

- i. The intention is that the discharge contains no detectable added chemicals that will cause any polluting impact in the receiving water, not to ban the occasional use of

chemicals to control biofouling of the pipework. The operator may use chemicals, as long as they neutralise them before discharge. We will amend this requirement to make it clear.

- ii. Please see the answer to 2.4 (b) (second point);
- iii. We have decided to increase the maximum change to 8°C. Taking account of the required dilution, this will give a maximum change in the watercourse of 2°C, which is within the UK Technical Advisory Group allowable change recommendation;
- iv. High temperatures in rivers are damaging to flora and fauna. If rivers naturally reach temperatures close to 25°C, then we need to assess whether a thermal discharge is appropriate through a bespoke application;
- v. Allowing higher flows if the receiving water is larger could potentially allow very large discharges under the standard rules. We believe that we should assess the potential impact of proposed discharges above the 1000 m<sup>3</sup>/day through a bespoke permit application.

**7.6** A trade association commented that the method of using a feedback form constrained by page sizes does not work well. They suggested using a form that allows free text addition of any length; otherwise respondents may not be able to fit a full comment in the allocated space.

**Our response:** We are grateful for your comments on the consultation response form we made available to capture feedback from respondents. We will look at the form to identify constraints of use and whether an alternative response format would be more appropriate for future consultations.

**7.7** CCW welcomed the use of rules in relation to the safe spreading of substances on inappropriate topography, geology, hydrology and weather conditions for SR2010N04 (the discharge to land of enzyme treated sheep dip). They encouraged the incorporation of such rules into other standard rules sets relating to the spreading of wastes or other substances.

They were grateful for being given the opportunity to comment on this consultation and look forward to working with us on future consultations.

**Our response:** We are pleased that CCW were able to respond. We will continue to work with both CCW and Natural England to develop conservation site distance screening criteria for future standard rules and to review existing criteria if necessary.

**7.8** Whilst one operator thought that standard rules were good, they thought that more guidance should be produced about how to proceed if an applicant fails one or more of the criteria of a set of standard rules. They used the example of a facility wanting to process 80,000 tonnes of waste per annum. In this case, they thought it should be quite easy to establish whether or not this would give rise to an unacceptable environmental impact over and above that for a 75,000 tonnes per annum operation, without having to go to a full bespoke application.

**Our response:** Operators must apply for a bespoke permit where standard rules are not available or an activity is unable to meet the rules. An important part of the regulatory package we have designed for bespoke environmental permitting is our H1 environmental risk assessment guidance, which enables operators to assess the potential environmental

impact of their proposals and provides a way for operators to compare and choose between different options to mitigate any significant impacts.

Where an operator is unable to meet the standard rules as a result of only one or two specific issues (for example, proximity to housing raising a possible risk of a odour or noise problem), they can rely on the generic risk assessment for the relevant standard rules and only need to assess those particular issues. H1 provides guidance on how to do this. We will look at ways of improving the signposting of this guidance document on our website.

## 4 Other comments

Some of the respondents did not answer the specific questions as set out in the consultation response form but instead sent a letter covering the issues that were of interest to them. Their responses have been included here.

1. The Scottish Environmental Protection Agency (SEPA) was grateful for the opportunity to comment on the fourth standard rules consultation.

They noted the contents of the consultation package and confirmed that they remained very interested in developments taking place in England and Wales with respect to Environmental Permitting. They confirmed that they were currently assessing their own permitting arrangements as part of the delivery of their Annual Operating Plan, of which Better Regulation is a significant part and, whilst making no specific responses to the questions contained in the document, they had nevertheless taken note of the proposals. These will be discussed internally and SEPA staff will continue to converse with their counterparts in the UK.

**Our response:** We are pleased that SEPA was able to respond. We intend to continue to share the detail of our regulatory policy and practice with colleagues who have a similar environmental protection remit.

The Environmental Permitting Regulations will not apply to Scotland, where RSA93 will continue to have effect. We will work, in liaison with SEPA, to explain our intended environmental outcomes and regulatory processes to customers who need to do business with both agencies.

2. One operator thanked us for the opportunity to comment on the fourth standard rules consultation. They went on to say that they were not sufficiently informed to comment on SR2010 No1 (category 5 sealed radioactive sources) or SR2010No2 (discharge to surface water: cooling water and heat exchangers) but were supportive of the other standard rules sets.

**Our response:** We are grateful for your response and welcome your positive comments on our proposals for new and revised standard rules sets.

3. Two action groups asked us to refocus our efforts into controlling greenhouse gases.

**Our response:** We note your response and can assure you that one of the key themes of our corporate strategy "Creating a better pace 2010-2015" is that we will act to reduce climate change and its consequences. We consider that this can be achieved through the Environment Agency being an effective environmental regulator, operator and independent advisor.

4. (a) A trade association and one operator made a number of general comments in relation to the draft standard rules SR2010No3 (discharge to water of secondary treated sewage).

- i. Although they welcomed the extension of the standard permitting approach into the small sewage treatment works sector, after examining these draft Standard Rules we have concerns about how widely they could be used in their current format, since they contain several significant restrictions to widespread application.

They were concerned that standard permits could not be used for activities carried out within 1 km of European Sites and SSSIs as this will significantly reduce their use;

- ii. They considered the approach to management systems and record keeping should be proportionate to the scale of the sites being permitted;
- iii. They accepted that whilst it was accepted there is a need to simplify “standard rules” as far as possible, it remained a concern that standard permits could not be used for activities carried out within a certain distance of European Sites/SSSIs, e.g. very small discharge (waste water treatment works) to a large candidate SAC river;
- iv. From their perspective, if a change of circumstance (e.g. expansion of SSSI site) negates the acceptability of a standard permit, adequate lead in time to amend any plant has to be allowed as part of the process;
- v. They welcomed that the buffer zones rules were still being debated with the nature conservation agencies, as it is important that these zones for given activities are not set on too precautionary a basis;
- vi. They were concerned that there is a blanket standard permit assumption for secondary treatment for all small discharges, irrespective of dilution. They also pointed out that the maximum daily flow of 20m<sup>3</sup>/day represents a marked reduction from the current descriptive consent policy that is applied to sites of less than 250 Population Equivalent. This will inevitably drive more small sites into bespoke category of permits;
- vii. As regards fugitive emissions, they believed the interpretation of “fugitive” should be proportionate for the level of permit being considered. In draft guidance within water discharge bespoke draft consent conditions, “fugitive” emissions were defined as “emissions to surface water or groundwater from the water discharge activities from a localised or diffuse source which is not specifically authorised by the permit”. We therefore believe there a risk of conflict in definitions where standard permits risk being more wide ranging than bespoke permits for water discharge activities.

#### **Our response:**

- i. We recognise that the distances to nature conservation sites are a barrier. However, it is important that the distances are set correctly so that low risk activities can benefit from a standard permitting approach and high risk activities must apply for a bespoke permit – so that we can assess the risks and consider specifying site-specific conditions to manage them. We have worked with Natural England and the Countryside Council for Wales to develop distance screens for specified nature conservation sites. We will continue to work with the nature conservation agencies to ensure that the distances are appropriate and to review existing distances and criteria if necessary;
- ii. We agree that the approach to management systems and record keeping should be proportionate to the scale of the facilities being permitted. Please also see the answer to 2.7 (third point).
- iii. Please see the answer to the first point above;

- iv. Please see the answer to 2.7 (second point);
- v. We are grateful for your comments, the answer to the first point above covers our response to this comment;
- vi. Standard rules consist of requirements common to the class of facilities subject to them and can be used instead of site-specific permit conditions. If a discharge does not meet the requirements of the standard rules, then it does not mean that we will not grant a permit, it just means that we need to look at the individual circumstances of the discharge during the determination of the permit application. There is no intended equivalence between current descriptive consents and the standard rules. All current consents will become bespoke permits when the Regulations come into effect;
- vii. The document referred to in your response was an early draft. Our finalised position with regard to emissions not controlled by emission limits is set out in the answer to 3.12. We do not consider that there will be a risk of conflict in definitions for emissions of this type between standard rules and bespoke permits because the definitions will be the same.

**(b)** They made a number of specific comments on the draft standard rules for the discharge to water of secondary treated domestic sewage.

### **Introductory Note**

- i. Paragraph 1 – They believed that there was potential to raise the upper ceiling of 20 cubic metres per day;
- ii. Paragraph 2 – Concern was raised over the design to BS 12566 and sized in accordance with ‘Flows and Loads 3’ managed in accordance with manufacturers recommendation’. This was thought to be overly prescriptive, with the risk this would act as a disincentive to a ready adoption of standard rules for this activity;
- iii. Paragraph 3 – In their view there should be a pragmatic application of the distance from sensitive sites. 1 km seems particularly precautionary for the scale of sites being considered in this consultation;

### **Standard Rules**

- iv. Rule 1.1.3 (availability of standard rules) - They thought that there needed to be a pragmatic interpretation about document location for copies of standard rules;
- v. Rule 1.2 (accident management plan) - The trade association thought this rule was excessive for sites of this size. They thought that the management of operational problems such as equipment failures/pollutions should be included in the management systems required in rule 1.1.1. Furthermore, four years for review of an accident plan, or appropriate management systems was thought to be overly precautionary for low risk sites;
- vi. Table 2.1 (permitted activities) – In reference to the requirement that the discharge should only be made to a watercourse which has a flow of water throughout the year, from their experience they believed that many sites of this size that have secondary treatment **will** be in areas where the receiving watercourse will be stream headwaters or ditch, which will not have flows in low flow conditions. As

regards the use of “Flows and Loads 3”, they advised that water companies have their own ways of assessing flows and loads, which they hope to continue to use;

- vii. Rule 2.2.2 (proximity to sensitive receptors) – From their perspective, the 1km distance screen to bathing waters, shellfish waters and SSSIs was too restrictive and would eliminate many potential sites in many regions of England and Wales. It seemed particularly precautionary for the scale of sites being considered in this consultation;
- viii. Table 3.1 (point source emissions to water) – They would have liked to have seen the inclusion of a qualifying comment on visual impact - such as “no significant adverse visible effect”;
- ix. Table 3.2 (monitoring requirements) – In their view a weekly monitoring frequency would be high for some sites. They recommended that this should be site-specific depending on location, sensitivity and performance. They also expected the frequency to be reduced if telemetry was installed;
- x. Rule 4.1.1 (records) – The trade association thought that 6 years record keeping for sites of this size and environmental impact seemed excessive and suggested that 2 years would be more appropriate;
- xi. Rule 4.1.2 (records) – From the trade association’s perspective, most sites of this size would not be suitable for records/management storage since above ground kiosks will be small. Off site document storage was likely to be required;
- xii. Rule 4.3.2 (notifications) – They thought that 24 hours was an extremely disproportionate timescale for “written confirmation” of actual pollution incidents for sites of this scale;
- xiii. Rule 4.3.3 (change in operator status) - They assumed this meant Operator (legal Operator) rather than operator (person who de-sludges the site);
- xiv. Rule 4.4.2 (interpretation) – The trade association thought it would be useful if the “written” reports and notifications could use electronic media, which would be suitable for “without delay notifications” too. They went to add that secondary treatment equivalent to requirements of UWWTD Schedule 3 Table 1, is in effect a tightening of the currently used uniform emission standard approach of 40/60 BOD/SS for small plants.

**Our response:**

- i. Please see the answer to 2.7 (first point);
- ii. Please see the above answer;
- iii. Please see the answer to 2.8 (a) (sixth point).
- iv. Please see the answer to 2.8 (a) (first point).
- v. Please see the answer to 2.7 (third point).
- vi. Please see the answer to 1.4 (first point). As regards “Flows and Loads 3”, we would have no objection to alternative ways of assessing flows and loads, however they could not be used when operating under these standard rules;

- vii. Please see the answer to 2.8 (a) (sixth point);
- viii. Please see the answer to 2.3 (fourth point);
- ix. Please see the answer to 2.8 (a) (eighth point);
- x. The justification for the 6 year limit is given in “Getting the basics right” “Keeping records for six years makes sure that there will be sufficient information if we do have to investigate an environmental incident, while avoiding an undue burden on operators. Many regulatory regimes require us to carry out a formal periodic review of all permits, usually once every four to eight years. Keeping records for six years will ensure that there are sufficient records to do so”;
- xi. Please see the answer to 2.7 (fifth point);
- xii. Please see the answer to 2.7 (sixth point);
- xiii. The Regulations define “operator” as the person who has control over the operation of the regulated facility. Please also see the answer to 2.8 (a) (tenth point) for more information on this;
- xiv. Please see the answer to 2.8 (a) (eleventh point).

**5.** One operator made a number of comments in relation to the draft standard rules SR2010No3 (discharge to water of secondary treated sewage). From their perspective standard rules as a concept were an excellent means of focussing the right degree of attention to lower risk situations and in turn selecting a more detailed bespoke attention to those applications that fail to comply with the basic rules for standard permits.

- i. It was pointed out that in rules 1.1 and 1.2, (management) we referred to the user having responsibility for maintenance records. The operator went on to confirm that these are important records and operators/property owners are likely to lose them. In order not to burden the operators, they suggested that consideration should be given to operators being allowed to give written consent for their accredited service company to keep the records. They thought that 5 years was a suitable period;
- ii. Table 2.1 (permitted activities) - The operator stressed the importance of requiring an accredited service engineer to maintain the treatment plant. They added that they were working with the Environment Agency to possibly upgrade the British Water accredited service scheme to be incorporated in MCERTS scheme scope;
- iii. They were pleased to see the requirement for a plant compliant with the BSEN12566-3 and would like to see the part 3 reference stressed because part 1 or 4 would only be a Septic Tank, which would give inadequate performance if used on its own;
- iv. The operator noticed reference in table 3.1, (monitoring requirements) to service engineers reporting on visual appearance of treated effluent. They pointed out that there are simple kits that will enable instant assessment of BOD, via turbidity and test kits for Ammonia. They went on to say that the use of these could easily be added to the service scope. They added that visual assessment must include comments covering tell tale signs of present or expected future problems. These

could be colour of biomass, grease media blockage, ponding and even tide marks if a plant has a pumped outlet and the pump is not always functioning;

- v. They pointed out that rule 4.1.2 (records) touched again on the operator being responsible for records. As previously stated, they thought that this would best be done by the service provider, who would do this anyway without being asked to do so. They added that supervised de-sludges often help in plant performance because tanker operators have not seen the British Water code of practice on their website and do not empty the plant completely. They went on to say that another common problem is the hosing down of media thereby removing the living biomass requiring the biomass to re-establish itself;
- vi. It was noted that rule 4.3, (notifications) required the Environment Agency to be informed of any known transgression of compliance/failure. In their view we should require not only notification of failure but most importantly corrective actions being put into place and when.

**Our response:**

- i. The operator is responsible for ensuring that records are kept as this is an essential part of their management system. If, as part of that system, duplicate records were made available to their contractor, then that is up to the operator. However, records that demonstrate that a management system is in place and complies with the requirements of the permit must be the responsibility of the operator and the operator must make the records available to us when we request them. Our reasons for requiring records to be kept for six years after being made are set out in the answer to 4. (b) (tenth point);
- ii. We welcome support for this vital element of effective plant operation;
- iii. Thank you for this comment. We have considered this and decided to amend the reference to specifically refer to Part 3 of the British Standard;
- iv. Monitoring is the responsibility of the operator. The rules will require them to check at least once a week that the plant appears and sounds to be operating correctly and that the effluent is clear and has not caused any visible problem. We are not expecting the operator to investigate the internal workings of the plant. Our guidance will suggest that they discuss with their maintenance contractor what routine checks they should undertake;
- v. Please see the above answer regarding record keeping. We note your comments about plant performance and maintenance;
- vi. Following notification, we would expect operators to implement the relevant requirements of their management systems, for example their accident management plan, which should set out the appropriate response to minimise environmental consequences and minimise the risk of recurrence.

**6.** A trade association made a number of comments on the draft standard rules SR2008No16 (composting in open windrows) and SR2008No17 (composting in closed vessels):

**(a)** As regards SR2008No16

- i. The trade association pointed out that the permitted activities listed in Table 2.1 do not appear to include the storage of compost after the composting process. They requested that further clarity was provided on the limits of activities permitted by the standard rules;
- ii. They pointed out that the table of permitted wastes allows **19 05 03 off-specification compost** only if derived from a process operated according to PAS 100, Compost Quality Protocol (CQP) or another approved standard. They thought this was overly restrictive and set out a number of reasons for this;
- iii. Rule 2.3.2 (distance from sensitive receptors) – The Code of Good Agricultural Practice specifies a minimum distance of 50 metres from an abstraction point as an acceptable distance. They could see no reason for extending this to 250 metres. They pointed out that composting sites operating under these rules were in any case required to have an impermeable surface and sealed drainage system;
- iv. Table 3.2 (appropriate measures for odours) – They pointed out that the appropriate measures required that all wastes that are not likely to give rise to odours must be processed within one week of receipt. However, they thought that it was not clear how and who would define odorous materials. This should be more clearly defined within the rules. They believed that operators should be allowed to store high carbon materials for longer periods, as these can be used to off-set the flush of sappy grass in the spring and summer to minimise odours. They also suggested that other wastes that are not odorous should be allowed to be stored for periods longer than a week;
- v. They were pleased to see that Table 3.4 (monitoring requirements) did not contain a requirement for oxygen testing, as seen in some existing permits;
- vi. Rule 4.1.1 (records) – They noted that records were required to be retained for 6 years. They thought that 2 years would be more reasonable and in line with Duty of Care requirements.

#### **Our response:**

- i. Please see the answer to 2.8 (b) (second point). As regards the comment that the limits of activities are not clear enough in the table 2.1, we consider the tables to be sufficiently clear. Furthermore, the comments do not provide us with any information in order to consider changing them;
- ii. The principal reason for restricting off-specification composted wastes to a certified process is to ensure that these they do not contain wastes that would not otherwise be allowed under the rules;
- iii. We note your comments and we will consider whether we can reduce the distance for abstraction points not used to supply water for domestic or food production purposes;
- iv. Please see the answer to 2.8 (b) (fourth bullet point);
- v. Your comments on the table of monitoring requirements are noted;
- vi. Please see the answer to 4. (b) (tenth point). We would add that duty of care requirements relate to the transfer of waste between operators. We do not consider these to be comparable to the responsibilities of site operators.

**(b) As regards SR2008No17**

- i. Table 2.1 (permitted activities) – They noted that the table includes the following clause within the limits of the activities “Any plant which has a treatment capacity exceeding 10 tonnes per day of animal waste.” The trade association thought that the wording was unclear, given that the table refers to permitted activities, rather than permitted plant. Furthermore, they were not clear what was meant by “animal waste” and why the 10 tonnes per day limit applied;
- ii. Table 2.2 (permitted wastes) – They suggested that blood is included in the list, given that it is allowed to be composted under the CQP (Appendix B);
- iii. Table 3.2 (appropriate measures for fugitive emissions) – Clarification was sought on what was intended for the “minimum industry standard” for bio-filters in this table;
- iv. Table 3.5 (monitoring requirements) – The trade association pointed out that the table required bio-filters to be checked and maintained on a daily basis. In their view this should be reduced to monthly monitoring, which would be adequate for this type of technology.

**Our response:**

- i. The wording in table 2.1 sets out a regulatory limit on animal wastes to clearly differentiate the activity as a waste operation as opposed to a Part A(1) installation as described in section 6.8 of Part 2 of Schedule 1 to EPR and reflects the wording used in that section. However, to aid clarity, we will provide a definition of animal waste;
- ii. Please see the answer to 2.6;
- iii. Please see the answer to 2.9 (b) (sixth point);
- iv. Please see the answer to 2.15 (seventh point).

**7. One operator was concerned that:**

- i. Should there be a change in circumstances, for example the expansion of a SSSI, there would be an expectation for them to upgrade plant and apply for a bespoke permit. They did not think this should be allowed to happen, but if this was the case, any improvements should be subject to obtaining the necessary funding and adequate lead-in time would be required;
- ii. They thought that while the standard permitting approach for small discharges looked to be appropriate, the maximum daily flow of 20 cubic metres per day represented a marked reduction from the existing descriptive consent policy that is applied to sites of less than 250 Population Equivalent;
- iii. They went on to say that the interpretation of “fugitive” should be proportionate for the level of permit being considered. Furthermore, the term is not clear for surface and groundwater discharge activities.

**Our response:**

- i. Please see the answer to 2.7 (second point);
- ii. Please see the answer to 4.4 (second point);
- iii. As regards fugitive emissions, please see the answer to 3.12.

**8.** A trade association commented on the draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers).

- i. In principle they supported this initiative as it provides greater transparency and reduces the administrative and regulatory burden on businesses whilst protecting environmental standards. However, they were concerned that there is no information available to explain how we developed the restrictions proposed for discharge to surface water of water from cooling circuits. They could have significant consequences if we extended elements to electricity generators covered by bespoke permits;
- ii. The draft standard rules stated that the discharge of water to inland freshwaters, coastal water or relevant territorial waters should not exceed twenty five degrees Celsius and the temperature change between the inlet and outlet must be less than five degrees Celsius. The trade association recognised the additional restrictions proposed would apply solely to standard permits, but wanted to highlight the negative impact on electricity generation if a similar set of rules were adopted within bespoke permits. Whilst the standard rules were restricted to installations discharging up to 1000 cubic metres per day, if applied to larger installations and those covered by bespoke permits a number of electricity generators would be unable to comply.
- iii. They considered that the absolute limit of twenty five degrees Celsius failed to take account of seasonal variations in inlet water temperatures, the performance of generation cooling systems and the potential range of inlet temperatures associated with different water sources. They added that it would be helpful to examine the analysis undertaken to inform this specification and details of the relative environmental impact associated with higher limits or wider variations, particularly for different water sources, for example coastal and territorial waters relative to inland freshwater. It would also be helpful to understand whether the potential impact on existing businesses has been considered in setting these limits.
- iv. Finally, they sought assurances that should these proposals be implemented for standard permits, there was no intention that they would be adopted as the standard against which businesses holding or applying for a bespoke permit would be assessed. They considered that this would be detrimental to a significant proportion of UK electricity generation and there would be no clear environmental benefit.

**Our response:** Please see the answer to 7.5 (third, fourth and fifth points). We would add that there is no intention to adopt these standards to the assessment of bespoke permit applications or existing operators.

**9. (a)** The Farmers' Union of Wales was opposed to the proposals for a set of standard rules for the discharge to land of enzyme treated sheep dip. The Union believed the rules to be unwieldy, overly bureaucratic and unnecessary.

**Our response:** We are somewhat disappointed and surprised that the FUW has responded in this manner. The Environmental Permitting Regulations (2010) has provided us with an opportunity to introduce a standard rules permit for the disposal of enzyme treated sheep dip. The FUW have been a key member of the stakeholder group throughout. They have seen and commented on working drafts of the standard rules and have always expressed enthusiasm and support for our proposals.

We note that most of this reply focuses on the charges and not the technical or practical implications/workings of the standard permit. We do however acknowledge that the charges and the cost to the farmer are inextricably linked.

**(b)** They were also concerned that the Environment Agency has suggested that the use of the Landguard enzyme treatment will reduce costs for farmers, as they will be able to use a standard permitting approach rather than applying for the more complicated and expensive bespoke permit. In their view, this was misleading as far as costs were concerned and believed this to be merely an excuse to increase costs for those who are already complying with all relevant authorisations.

**Our response:** The cost of a new application and the yearly subsistence fee for SR2010No4 is approximately half that of a bespoke groundwater regulations permit. We do acknowledge that the farmer will have the additional cost of paying for the Landguard OP-A but the cost of this is beyond our control. The manufacturers (CSIRO) are currently looking at a new, more economic production method. CSIRO have also proposed to undertake field trials with the hope of reducing the recommended dose rate from the 10 g per 100 litres (as currently stated on SR2010No4). The Environment Agency has accepted this proposal and we are working with CSIRO in trying to set up these trials. We hope that this will further reduce costs to the farmer.

We have had some interest from organic farmers who have expressed an interest in this more environmentally friendly option. There has also been interest from farmers who currently hold a bespoke permit but dip their sheep infrequently and would like to hold a permit for the eventuality that they might need to dip. This is a real solution to farmers offering significant savings over a long period.

To summarise, this standard rules set would appear to be a cost effective and environmentally friendly option for farmers who want to return to dipping sheep or want to hold a permit for the eventuality of dipping.

For existing Groundwater Regulations permit holders (formerly Groundwater Authorisations) there is a one off variation charge that we have to charge in order for us to recover our costs. We have done all we can to keep this charge as low as possible. The cost of the variation fee and the reduced subsistence fee equates to what the farmer would be paying for their subsistence fee for their bespoke permit. After the first year, the farmer would just pay the reduced subsistence fee for the standard permit.

**(c)** The FUW pointed out that the health and welfare of the Welsh sheep flock is dependent on the successful control and eradication of ecto-parasites such as Sheep Scab and farmers need a range of effective preventative treatments to protect their flocks.

They added that the most effective means of controlling ecto-parasites in large flocks is by dipping sheep in a bath containing a dilute solution of a powerful insecticide. Following the withdrawal of the marketing authorisation for Synthetic Pyrethroid sheep dips during February 2006, Organo-phosphate based sheep dips have provided the most effective broad spectrum treatment against a range of ecto-parasites.

The Union went on to say that whilst the use of injectables has increased due to fears about the effect of Organo-phosphates on human health, their effectiveness as a preventative measure for sheep scab is poor and the cost makes their use uneconomical for larger flocks.

**Our response:** The Environment Agency also share concern over the welfare of the sheep and have worked hard to make this a real solution for industry. From stakeholder meetings we are aware that alternative methods to dipping sheep may be becoming ineffective. We acknowledge that some farmers would like to return to dipping sheep. For this activity, a standard rules permit is currently half the cost (for both Application and Subsistence fees) of a bespoke permit.

**(d)** The FUW explained that they had consistently lobbied for research into alternative methods of sheep scab control and had worked to encourage the licensing of the Landguard enzyme treatment as a means of reducing the toxicity of sheep dip on the environment.

**Our response:** Landguard OP-A is extremely effective in breaking down diazinon sheep dip. The Environment Agency has had much input to Landguard over the years and are satisfied that it meets the requirements for use in a simple Standard Rules permit. Diazinon is a particularly toxic hazardous substance and we have to control the spreading to land of untreated spent sheep dip through extensive risk assessment process.

**(e)** The Union pointed out that they had consistently maintained that the Environment Agency could use the derogation granted to it under the Groundwater Directive to re-classify substances from List I to List II where it has been proven that it is inappropriate for them to be on List I on the basis of a low risk of toxicity, persistence or bioaccumulation.

They believed that we could make use of the derogation if spent sheep dip was treated with the enzyme, and this would reduce the financial burdens on farmers and greatly reduce the risk of pollution of the environment.

**Our response:** Please see the answer to (f) below.

**(f)** The FUW welcomed the Joint Agency Groundwater Directive Advisory Group's current review of the metabolites of the enzyme treatment process with a view to re-classifying them as List II substances due to their low toxicity, although they were concerned that the consultation should have been suspended until the conclusions have been published.

**Our response:** This is currently ongoing but we are at this stage we would be cautious that the two metabolites: 2-isopropyl-6-methyl-4-pyrimidol and diethyl thiophosphoric acid will be downgraded from hazardous substances (formerly List I) to non hazardous pollutants.

With respect to Listed Substances and "derogation", we feel that more of an explanation is required. Listed substances are references to the old Groundwater Regulations 1998 and now we refer to "hazardous substances" and "non-hazardous pollutants" under the Groundwater Regulations 2009 and proposed EPR 2010. If the Joint Agency Groundwater Directive Advisory Group (JAGDAG) did downgrade the classification of the principal metabolites from hazardous substances to non-hazardous pollutants, a permit is *still* required for their disposal. The standard permit approach gives us the flexibility to take this reduced toxicity into account, and not require a bespoke permit per se...with its increased assessment / cost requirements.

This issue has previously been taken to a very high level in the Environment Agency (former Chief Executive Barbara Young) where a decision was made not to make this “*de minimis*”.

**(g)** In opposing these new proposals, the FUW pointed out that they have always promoted good practice in sheep dipping. They added that this has included contributing to the publication of the Code of Good Practice for Sheep Dip, supporting the ‘Stop Every Drop’ campaign to promote best practice for sheep dipping, and working with Environment Agency Wales on regular campaigns to highlight issues associated with building, maintaining and using sheep handling/dipping systems and the storage and disposal of spent sheep dip.

They went on to say that this pro-active partnership working has resulted in a significant fall in sheep dip related pollution incidents over recent years and demonstrated the industry’s willingness to improve its environmental stewardship if there is co-operation rather than coercion.

**Our response:** The Environment Agency has invited representatives from the FUW to all our external stakeholder meetings and has engaged their comments throughout development of the rules. We do not view this as coercion but as a cost effective and environmentally friendly option for the disposal of spent sheep dip.

**(h)** From the FUW’s perspective, the introduction of Landguard as a means of further reducing the pollution risks of sheep dip will be adopted by the industry if the Environment Agency was willing to recognise the reduced risks of this approach. They added that a failure to take the common sense approach will have severe repercussions in terms of animal welfare and health as farmers are unable to meet the excessive costs these proposals will inevitably attract.

**Our response:** The Environment Agency also share concern over the welfare of the sheep and have worked hard to make this a real solution for industry. We have to recover our costs and have worked hard throughout with our finance colleagues to keep associated costs as low as possible.

**(i)** Whilst recognising that fees and charges were covered in a separate consultation, the FUW was extremely concerned at the cost implications of the proposals, particularly during the current economic downturn during which most businesses are striving to operate on a non-cost increase basis.

The FUW pointed out that they were also extremely concerned that a Government Agency should be considering any cost increases during a recession.

**Our response:** Most responses from trade associations support our proposed baseline increase of 1% and consider it reasonable and below the current forecasts of inflation. The Environment Agency, like everyone else, is under pressure to make savings in the current economic climate and given likely reductions in government grants it is more important than ever that we recover the costs of the regulatory work we carry out. It is for this reason that we have had to set charges at a level that is cost reflective whilst ensuring that any relevant savings are passed onto charge-payers.

**(j)** The Union pointed out that as the costs associated with a standard permit would be higher than the current Groundwater Authorisation (if the costs of purchasing the enzyme treatment are included), there was little incentive for farmers to continue dipping sheep, which may of course be the Agency’s aim, but the long term implications for the health and welfare of the national flock are of great concern to the Union.

**Our response:** The cost of a new application and the yearly subsistence fee for this standard facility is approximately half that of a bespoke groundwater regulations permit. For an existing permit holder wanting to operate under these rules, there is a one off variation fee that, with the reduced subsistence fee, matches what the farmer would pay for their bespoke permit subsistence. Following the first year the farmer would pay the much reduced subsistence fee associated with a standard permit. We have no hidden agenda for phasing out dipping of sheep. We share concerns for the welfare of the sheep. We are only concerned with the spreading of waste sheep dip to land and the potential impact to groundwater and other receptors.

The cost of Landguard OP-A is beyond our control.

We would like to say that the standard rules, when published, are still a choice. No one is making farmers adopt them, and they may not suit every case, but overall they are a good thing for the environment as well as farmers. We think the cost issues have really skewed the perception here. Most of the argument although not explicitly stated hinges on the one-off variation fee. We have tried to justify this cost and put it into perspective in our comments above.

The standard permitting approach is also an ideal opportunity for farmers who want to come back into the system. There are also potentially many farmers (especially organic farms) where the farmer holds a permit but does not dip their sheep only when absolutely necessary, so if they operated under these rules, then they would be paying significantly less than half the annual subsistence fee of what they would be paying for their bespoke permit.

**10.** One operator made a number of comments in relation to the draft standard rules SR2010No3 (discharge to water of secondary treated sewage). In their view the approach taken in the draft standard rules appeared to significantly restrict their potential use and also represented a tightening of current UK policy in some areas. Their use in the draft form seemed likely to be more restrictive, onerous and costly than current practice and not appear to be in keeping the aims of the Better Regulation and EPP2 programmes.

Their specific comments were as follows:

- i. The daily volumes allowable under the rules were very small, especially considering that they are maximum daily volumes;
- ii. Current UK policy on appropriate treatment as determined by the UWWTD Implementation Group allowed septic tank treatment as one of a number of possible appropriate treatments under the UWWTD whereas the standard rules required secondary treatment. This was considered to be a significantly more onerous requirement;
- iii. Descriptive consents were currently an option for sewage works serving up to 250 people with a dry weather flow of about 50 m<sup>3</sup>/d, a significantly higher flow threshold than allowed under the proposed standard rules. They wanted to know what arrangements were being made to keep the option of descriptive consents open for such works;
- iv. In their view, the requirements of BS 12566 and use the assumptions in “Flows and Loads 3” were unduly precautionary and likely to lead to over design and hence cost. The use of bedroom counts was an example of this.

**Our response:**

- i. Please see the answer to 4.4 (second point);
- ii. Please see the answer to 2.8 (a) (twelfth point);
- iii. Please see the answer to 4.4 (third point). We would also point out that applying for a standard permit is voluntary. Operators always have the option of operating under a bespoke permit;
- iv. Please see the answer to 2.7 (first point).

**11. (a)** A public corporation made a number of comments in relation to the draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers) and SR2010No3 (discharge to water of secondary treated sewage).

### **General**

In their view all standard rules should include a requirement for the applicant to furnish proof of landowner's agreement prior to issue of permit. They thought that no standard permit should be issued without the knowledge of the landowner, or it should be agreed that any pollution liabilities rest with the regulator should the operator (if other than the landowner) fail to have the finances to clean up and mitigate damage. They went on to say that this should apply not only to the current consultation but all standard permits and that as with other EPR consultations, it would have been useful to consult on the standard rules and the guidance concurrently.

**Our response:** In determining permit applications, the Regulations do not require applicants to furnish proof of the landowners' agreement prior to the issue of the permit. This is a matter for the operator and the landowner. We can impose conditions requiring operators to do things which they are not entitled to do without the consent of another person. That person is required to grant consent. However, the person granting consent is entitled to compensation from the operator. These types of conditions would only be found in bespoke permits.

In the main consultation document we did highlight the fact that guidance on how to comply with the rules had already been provided in "Getting the basics right – How to comply with your environmental permit." We also pointed out that the guidance would be revised to take account of the proposals to expand the Environmental Permitting Regime.

### **Draft standard rules SR2010No2 (discharge to surface water: cooling water and heat exchangers)**

While they welcomed the opportunity the proposed rules could give to promotion of environmentally sustainable cooling of canal side buildings, the limitations set would mean that all schemes would require a bespoke rather than a standard permit. They considered that further consideration of the limits should be given to allow small schemes to progress with standard permits and suggested that a discharge volume figure related to mass of receiving water, and not just flow, would open more projects to viability, while still protecting the environment.

**Our response:** Please see the answer to 7.5 (fifth point).

### **Draft standard rules SR2010No3 (discharge to surface water: secondary treated sewage)**

- i. In addition to the volumes specified they suggested the inclusion of isolated outflows of low volumes (<5 cubic metres) that have occurred for decades with solely primary treatment such as a septic tank in the standard rules. In their view the same requirements with regard to notification and monitoring could be applied and in the event of signs of negative impact on the receiving waters the permit could be suspended or revoked. They added that this would allow time for discharges that are not an issue to be improved without substantial costs to the public purse at a time when funding was very tight;
- ii. They thought that the change of the regulatory enforcement position with respect to discharges of effluent from existing septic tanks to surface water had not been communicated well and therefore it would be expected a transition period to be in place from the introduction of the rules particularly for those discharges below the 5 cubic metres maximum daily volume. They understood that the transition period will extend until 2012;
- iii. The corporation asked whether a regulatory impact assessment was carried out when the regulatory position changed so that all discharges from septic tanks regardless of size would require secondary treatment. They added that if this had not been carried out, it should be included as part of this consultation as the change could result in substantial costs and may not deliver significant water quality improvements.

**Our response:**

- i. Existing discharges of sewage to surface water should already be authorised by a discharge consent. These will become environmental permits when the Regulations come into force. We have no plans to amend existing permits, where the discharge causes no problems. If it is an existing discharge that is operating illegally without a discharge consent, we will issue a bespoke permit in response to an application, if the discharge has no appreciable environmental impact. If we require any improvements to existing discharges, we will agree an appropriate timescale with the operator.
- ii. Discharges of sewage to surface water have been required to operate under a discharge consent for many decades. This is not a new requirement. Please see the above answer for improvement timescales.
- iii. Please see the answers above.

**(b)** A number of comments were made on the draft standard rules SR2010No2 and the accompanying generic risk assessment.

**Draft standard rules SR2010No2**

- i. Reference was made to the water returning to the same “water body” from which it was abstracted. No definition of water body was given in the standard rules. Abstraction and impoundment licensing tends to refer to “source of supply” instead. In their view this inconsistency in terminology may lead to some problems;
- ii. To comply with standard rules they thought that discharges should be required to be situated downstream (or in the direction of flow) of the cooling water intake. This would prevent excessive heating of the water between abstraction and discharge;

- iii. The draft rules contained no detail regarding antifouling processes. They considered that the rules should specifically state requirements should anti-fouling be carried out with regard to type e.g. chemical, biological or physical and whether we would allow antifouling residues into the receiving water body;
- iv. They were unsure what duties applied to landowners. In their view the landowner should not be expected to ensure the permit holder has an appropriate environmental management system; this was the Environment Agency's remit;
- v. Table 2.1 (permitted activities) - They calculated that the discharge volume limit combined with the proposed delta T of only 5<sup>o</sup>C would mean that the standard rules could only cover schemes with heat loading up to 210kW. Given the cost involved of retrofitting an existing site or even the development of new sites and the engineering measures needed to ensure navigability of the canal network, they felt that the cost benefit analysis would prevent most projects from being adopted. They added that a discharge volume figure related to mass of receiving water, and not just flow, would open more projects to viability, while still protecting the environment;
- vi. Rule 2.2.1 (the site) – In their view there were enhanced environmental and financial benefits to being able to use a source of hot water on an adjacent site, which would be precluded with the adoption of this rule. They added that the returned water can be cooler, and fossil fuel savings can be achieved using waste warm water as a source for heating;
- vii. Rule 3.1 (emissions to water) – They considered that by placing a limit of 41.66m<sup>3</sup>/hr on the flow would rule out many applications and took no account of the volume of the receiving water, such as the sea, large lakes and major waterways;
- viii. They went on to say that temperature change was limited to 5<sup>o</sup>C – generally 10<sup>o</sup>C was considered acceptable in the past to generate 3<sup>o</sup>C at the 'edge of the mixing zone' Max temperature now 25<sup>o</sup>C – was previously 28<sup>o</sup>C. They believed that the standard rules could allow a higher maximum temperature without compromising protection of the environment and their experience suggested that 28<sup>o</sup>C would be a realistic limit. They added that with the rise in global temperatures, surface waters are likely to see higher ambient temperatures. As a result, the temperature in the source water may exceed 20<sup>o</sup>C for a portion of the year. If this occurs, it seemed doubtful whether cooling systems could rely on standard rules because if they did so they would have to be turned off, probably at the time when the most environmental benefit would accrue on the operator's site;
- ix. Table 3.1 (point source emissions to water) – They pointed out that there was no mention of mixing zone or SFFA requirements;
- x. Rule 3.1.3 (emissions to water) – They were unsure whether the rule referred to chemical cleaning or just closed circuit cooling. They added that perhaps it should tie in with parameter 3 on the generic risk assessment;
- xi. Rule 4.3.2 (notifications) – The rule required written confirmation of a pollution incident within 24 hours. In their view, this needed to be clear that it can be by email and the requirement could be varied to phone notification and confirmatory email or letter within 72 hours to reflect the time it takes Royal Mail to deliver.

**Our response:**

- i. If water is abstracted from one body of water and discharged to another, the two may be of different quality and the discharge could cause pollution. By 'different' water bodies we mean currently unconnected water bodies, such as abstracting from groundwater and discharging to a stream. We would need to assess whether this could cause damage through a bespoke permit determination process;
- ii. We have considered this restriction, but have decided that it is unnecessary;
- iii. Please see the answer to 7.5 (first point);
- iv. Only a person who is in control of the regulated facility may obtain or hold an environmental permit. This person is the operator. The operator must have the authority and ability to ensure that the environmental permit is complied with. The operator may or may not be the landowner. If the landowner is not the operator, then the obligations of the permit would not apply to them;
- v. Please see the answer to 7.5 (third and fourth points);
- vi. This standard rules set does not preclude the use of any generated warm water on adjacent sites. We welcome any proposals to use heated water, which reduces CO<sub>2</sub> emissions and reduces the temperature of water returned to the environment.
- vii. The limit is a daily limit. Please also see the answer to 7.5 (fifth point);
- viii. Please see the answer to 7.5 (third and fourth points);
- ix. We are satisfied that at this scale of discharge and required minimum dilution, the mixing zone will be small;
- x. We have considered this rule and have decided to amend it to confirm that it applies to only to liquids in containers that are stored as part of the permitted activities. Please also see the answer to 7.5 (first point);
- xi. Please see the answers to 2.8 (a) (eleventh point) and 2.7 (sixth point).

#### **Draft generic risk assessment for standard rules SR2010No2**

- i. Page 1, Line 1 – In their view Legionella was not a risk in systems at the temperatures given and none stored water. They considered the assessment to be over cautious. They added that releases in cascades reduce temperature and should be encouraged;
- ii. Page 1, Line 2 (justification for magnitude box) – They pointed out that this only mentioned biological fouling and that calcium carbonate build up should also be considered;
- iii. Page 1, Line 2; Page 2, Line 1 (pathway boxes) – In their view “bathing” should be replaced with “immersion”;
- iv. Page 1, Line 2 (justification for magnitude) – This stated that “systems may be treated from time to time to control biological fouling of pipes.” However the risk management states “SR (permitted activities) – discharges must not contain any chemicals”. They thought that this appeared contradictory;

- v. Page 2, Line 2 (risk management box) – They considered that the distance between inlet and outlet should be referenced and the requirement that the outlet must not be upstream of the inlet included. They added that no differentiation between fast and slow flowing water bodies was given, nor the size of receiving water body;
- vi. Page 2, Line 3 (risk management box) – They noted that this only allowed discharges from a closed cooling system where the water was not treated with chemicals whereas the previous column stated that they must be treated. This inferred that no discharges from closed systems would be allowed.

**Our response:**

- i. The generic risk assessment must consider all possibilities. We came to the same conclusion and ranked this risk as low;
- ii. We are grateful for you pointing out this possibility, however, it does not change the requirements on the use of chemicals. Please also see the answer to 7.5 (first point);
- iii. ‘Bathing’ is used because the generic risk assessment refers specifically to waters identified under the EC Bathing Water Directive;
- iv. Please see the answer to 7.5 (first point);
- v. We considered such restrictions, but decided that they were unnecessary for discharges made under these standard rules. Please also see the answer to 1.4 (first point);
- vi. Within an ‘open-loop’ system covered by the standard rules there will be a closed-loop circuit carrying heated water or cooled water through the building and an open-loop circuit from which heat is extracted or to which heat is transferred. Only the water in the open-loop part can be discharged.

**(c)** A number of comments were made on the draft standard rules SR2010No3 and the accompanying generic risk assessment.

**Draft standard rules SR2010No3**

- i. Table 2.1 (permitted activities) – The table stated that the discharge shall only be made to a watercourse that has a flow of water throughout the year. The corporation considered that this would preclude discharges to canals in many cases and require cessation of current arrangements. They suggested replacing this with the following wording: “The discharge shall only be made to a watercourse that contains water all year round”;
- ii. In their view, “trade effluent” needs defining better as they had previously been advised by the Environment Agency that trade effluent would not include effluent akin to domestic effluent i.e. washing machine and shower drainage would not be viewed as trade effluent even from a caravan site or canal service station;
- iii. Rule 4.4 (interpretation) – They thought that the definition of secondary treatment should reference Schedule 3, Table 1 of the Urban Waste Water Treatment (England and Wales) Regulations 1994. The corporation also wanted clarification

as to the effect of the cross-reference. They assumed that an operator would not be required to meet UWWTD standards because there is no monitoring of BOD and COD in Table 3.1 of the rules. In addition, it seemed unlikely to them that the standards appearing in Schedule 3, Table 1 of the Urban Waste Water Treatment Regulations would be appropriate because the UWWTD requirement to meet these standards only applied to population equivalents greater than 2,000. They would like this put beyond doubt, for example the reference relates to the design criteria of the secondary treatment only and monitoring would only be visual.

**Our response:**

- i. Please see the answer to 1.4 (first point);
- ii. We have recently re-appraised our previous water quality guidance on the definitions of 'domestic sewage' and 'trade effluent'. As a result, we have changed our guidance and broadened our definition of what is included in 'domestic sewage'. Our new water quality definition is now in line with the definitions under the Water Industry Act 1991 and the Urban Waste Water Treatment Directive. We will shortly publish this new guidance on our website;
- iii. Please see the answer to 2.8 (a) (twelfth point).

**Draft generic risk assessment for standard rules set SR2010No3**

- i. Line 3 - It was suggested that 'swimming' is replaced with 'immersion';
- ii. Line 5 - They did not believe that ammonia would be a problem in low flows and were unsure whether this was accounted for in flows and loads 3.

**Our response:**

- i. Please see our earlier answers to "draft generic risk assessment for standard rules SR2010No2" (third point);
- ii. Please see the answer to 1.4 (fourth point).

# Appendix 1 List of respondents

The Ramblers Association

The Food Standards Agency

Portsmouth Water Ltd

Transition networks in Wales & Climate action in Pembrokeshire

Planning Officer's Society's Minerals and Waste Development Control Planning Advisory Group

Broads Authority

Work Environment, Radiation and Gas Division – Health and Safety Executive

Scottish Environment Protection Agency

Centre for Environment, Fisheries and Aquaculture Science

Water UK

Ministry of Defence

Anglian Water

United Utilities Water PLC

The Chartered Institution of Wastes Management

Kingspan Environmental Ltd

The Association for Organics Recycling

South West Water

The Association of Electricity Producers

Parsons Brinkerhoff Ltd

Wessex Water

The UK Renderers Association

The UK Environmental Law Association

Southern Water

New Earth Solutions Group Ltd

Farmers' Union of Wales

Countryside Council for Wales (CCW)

Severn Trent Water Ltd

British Waterways

**Please note that some respondents requested non-disclosure of their response.**

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enquiries@environment-agency.gov.uk**

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