



# Standard Rules for the Environmental Permitting Regulations – Consultation No.11

Summary of consultation responses

February 2016

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**Published by:**

Environment Agency  
Horizon house, Deanery Road  
Bristol BS1 5AH  
Tel: 0117 934 4000  
Email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)  
[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

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E: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk).

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# 1 Introduction

The Environmental Permitting (England and Wales) Regulations 2010 (“EP Regulations”) allow us to offer standard permits, to reduce the administrative burden on business while maintaining environmental standards. They are based on sets of standard rules that are developed using assessments of the environmental risk posed by the activity.

We consulted on two sets of standard rules during a twelve week period between 23<sup>rd</sup> March and 15<sup>th</sup> June 2015 for onshore oil and gas related activities. For each new standard rule set we also, in accordance with Section 4.4 of our charging scheme, indicated the proposed applicable charge band from the default standard facility table.

The consultation invited views on whether we have correctly identified the risks associated with each activity and whether the new sets of rules are appropriate to manage the environmental risks.

## 2 How we ran the consultation

We invited comments on new sets of standard rules for the following activities:

- Drill and core activities with well testing (mining waste standard rule, risk assessment and waste management plan).
- Storage and handling of crude oil from exploration and production facilities (installations standard rule and risk assessment).

The proposed standard rules do not include hydraulic fracturing nor will they 'fast track' proposals that may lead to hydraulic fracturing.

The process was set up as an e-consultation although hard copies were made available to those who requested and we also accepted e-mailed responses. We asked a number of specific questions as follows;

**Question one:** Do you agree with our approach to use standard rules for these onshore oil and gas activities?

**Question two:** Do you agree with the proposed new rules that we have set out in section 4 of this consultation?

**Question three:** Have we correctly identified all the risks for each activity, as described in the generic risk assessments associated with the consultation?

**Question four:** Are there any barriers to complying with the standard rules?

**Question five:** Do you think that the introduction of standard rules for these activities will have a significant financial impact overall on your operation?

**Question six:** Are there any other activities that you think would benefit from the standard permitting approach or future revisions?

**Question seven:** Please tell us if you have any other views or comments on these proposed rules that have not been covered by previous questions.

# 3 Summary of key findings

## Number of consultation responses

We received 211 responses through our website e-consultation system. Approximately 90% of those responses were from individuals and 10% from organisations. Of the responses 95% of those who replied did not agree with our proposals for standard rules and 3% agreed.

In response to a newspaper article in the [Independent](#) which claimed we were 'fast-tracking fracking' we also received 36,626 petition e-mail objections which did not follow the format of answering our specific questions set out in the consultation document. However, of those responses 45% specifically indicated in their response that they objected to the use of standard rules, 80% specifically said they had an objection to hydraulic fracturing (fracking) and 76% also specified in their response that they objected to all exploration for oil and gas.

## Nature of consultation responses

The majority of all consultation responses received were related to objections to the "fast-tracking" of fracking through the use of standard rules permits.

The main issues raised in the 211 responses submitted using our website are as follows:-

- Standard rules would mean a lack of local consultation and also a lack of consideration of effects of the operations on local communities;
- No consideration of site specific risks including risk to groundwater;
- Risks to the environment from use of powerful acids;
- Emissions from well activities e.g. flaring/radon gas;
- Environment Agency should be protecting the environment not 'fast tracking' permits for business; and
- Consultation should not have been done over the election period and local communities should have been informed.

A breakdown of the main types of e-mail responses from petition websites concerned with hydraulic fracturing are detailed in Table 1 below.

Table 1.

Type of fracking related objection	Number of objections
Lack of public consultation	14938
No site specific assessments	14325
Object to exploratory processes that precede fracking	14323
Decreased accountability	14322
Insufficient publicity on consultation	14313
Applications should be assessed on a case by case basis	12483
Consequences of fracking in other countries	8140
Reduces regulation	7238
Effects on climate change	5941
Fracking is untested	5534

These issues will be addressed in Section 4 of this consultation response.



# 4 Responses to questions

Our response to the main comments received during the consultation for each of the question posed is given below.

*Question one: Do you agree with our approach to use standard rules for oil and gas exploration activities?*

## **Objections to fast tracking hydraulic fracturing and related issues**

Our proposals for standard rules in this consultation do not cover high volume hydraulic fracturing (fracking) or any other well stimulation involving the use of proppants nor will they 'fast track' proposals that may lead to hydraulic fracturing. Where comments have been made that are related to fracking (many of which are listed in Table 1 above) we note those views. However we will not address those issues in this consultation response as that is not what is being proposed and all applications for fracking will still require full bespoke permits with site specific risk assessment and public consultation. The proposed standard rules would only allow companies to drill the borehole and undertake preliminary low risk testing and store crude oil. If, having drilled the well and undertaken preliminary testing, the operator wished to proceed to full well testing, including hydraulic fracturing, they would need to apply to vary their permit and planning permission, both of which would be subject to consultation.

## **Objections due to lack of local engagement or consultation**

We do not normally consult on individual standard permit applications as the risks have been identified and consulted upon in the national consultation.

It should be noted that local public consultation will still be required for any land use planning permission via the local authority.

As the proposed activities covered by the standard rules do not involve hydraulic fracturing, it is also highly unlikely that we would consider their application a site of high public interest.

In the unusual event that a site applying for standard rules permits was considered a site of high public interest, we have the discretion to undertake additional local community consultation and engagement activities. This may include -

- wider advertising, for example, in local newspapers;
- hosting public drop-in sessions;
- engaging with local councillors, Parish Councils, community liaison forums and community groups

Any local engagement would focus on the proposed determination decision, and not the rules themselves, which are already set and cannot be changed.

## **Objections to the standard rules due to the environmental risks and the use of acids**

The proposals are subject to a robust risk assessment and the activities are limited in scope. They do not allow high volume hydraulic fracturing.

Formation testing and acid washing are standard conventional techniques which have been used by the oil and gas industry for many years. These activities have a long history of being carried out safely and without significant impact on the environment.

Leak-off testing is a low volume, short duration test which operators undertake to dictate the maximum pressure or mud weight that may be applied to the well during drilling operations. Acid washing is the localised use of acid solutions in the geological formation to remove residual clay or repair damage to the formation. It is considered to be a standard activity because the acid, which is used in small quantities, will react with the rock formation and be rendered neutral and therefore is not a risk to the water environment.

## **Concern over a premature exercise of power in using standard rules**

We do not accept there is insufficient evidence or experience to formulate standard rules in this area. This consultation specifically relates to discrete areas of oil and gas activity, namely leak off testing, acid wash and oil storage. We have exhaustively considered and prepared generic risk assessments for each of the activities. Each assessment strictly defines the limits of the risk that can be regulated through common controls and have been carried out using the “source – pathway – receptor” approach. Operators will not be authorised or allowed to carry out activities within a specified distance of a watercourse or groundwater source protection zone.

Whilst it is proposed that these activities are to be subject to standard rules, this will in no way lead to a diminution in environmental protection. We are satisfied that the proposed standard rules will continue to provide a high level of protection for the environment in the same way as bespoke permits.

## **The proposals conflict with the precautionary principle**

We have carried out a comprehensive assessment of the risks associated with each of the proposed activities. We therefore consider that the proposed activities do not threaten irreversible environmental damage as would warrant invoking of the precautionary principle. We are satisfied that the proposed activities do not represent an unacceptable risk to the environment. If at any time we consider an operator’s activities to fall outside the standard rules set they would be required to apply for a bespoke permit. The formulating of these standard rules are wholly consistent the Environment Agency’s rule-making powers.

## **Regarding failure to ensure public participation in environmental decision making**

The Environmental Permitting (England and Wales) Regulations 2010 (“EP Regulations”) allow us to offer standard permits, to reduce the administrative burden on businesses whilst maintaining environmental standards. They are based on sets of standard rules that we can apply widely across England whilst still providing a level of protection commensurate with bespoke permits. The rules themselves are developed using assessments of the environmental risk posed by the activity.

Because we have no decisions to make on site-specific permit conditions (given that we have previously consulted on the applicable rules) we therefore do not consult on

the rules themselves during individual permit applications. However, we do have a policy of increased consultation or engagement on applications where we consider there is, or is likely to be a high degree of public interest. Our approach is tailored to specific circumstances but for standard permits this would be limited to the proposed determination decision as the rules are already set and cannot be changed.

We are satisfied this approach is wholly consistent with international and EU law on public participation.

### **Proportionality of Regulation to the risk**

Whilst standard rules are intended to reduce the administrative burden on business, it is equally important that this should not lead to a reduction in the level of environmental protection. We consider that standard rule permits, where they are applicable, strike the appropriate balance between reducing unnecessary administration on businesses while at the same time maintaining environmental standards.

### **Compliance with Directives**

It was commented that the proposals for SR2015 No.1 circumvent the requirements of the Mining Waste Directive. We do not consider that we have mis-directed ourselves in the drafting of SR2015 No.1. Our view is that Article 3(15) does not capture either the transient or otherwise temporary holding of waste, pending removal from the site within skips or metal tanks and therefore the proposed activity is not a waste facility under the Directive. We also take the view that the waste management plan proposed meets the requirements of the Directive. A key element of the rules is that they require an operator to comply with a standard waste management plan that sets out controls for the drilling process, well casing and the characterisation of wastes that are permitted as well as the new techniques proposed. We consider that this standard waste management plan comprehensively addresses all issues relating to the minimisation, treatment recovery and disposal of extractive waste.

### **Objection to oil storage rules on the basis of breaches of the Industrial Emissions Directive (IED)**

Oil storage is a legacy activity from the Integrated Pollution Control (IPC) regulatory regime. It has not been identified as an activity that requires an environmental permit, in Annex 1 of the IED. Therefore UK provisions in relation to oil storage, go beyond that which is required by the IED

### **Clarification of the scope and duration of standard rules**

Where an operator has applied for a permit for a set of standard rules a standard permit may be issued. The standard permit is an environmental permit. Environmental permits are not time limited and will continue in force until revoked, surrendered or replaced by a consolidated permit in accordance with regulation 19 of the Environmental Permitting (England and Wales) Regulations 2010.

### **Comments that standard rules should not be used for untested techniques**

Acid wash has been used for many years and is used in oil, gas and water wells to clear mud and drill debris. Leak off testing is used to establish the rock strength and again is not new.

*Question two: Do you agree with the proposed new rules that we have set out in section 4 of this consultation?*

#### **Objections due to flaring and radon emissions from well activities**

We do not have and are not proposing a standard rule for gas flaring. A gas flaring activity would require a bespoke permit application and the application would be subject to a site specific risk assessment and public consultation. Emissions from radon gas are not relevant to our consultation as is not within the scope of the Environmental Permitting Regulations and therefore we cannot regulate it.

#### **Objection to the use of hydrofluoric acid in the standard rule**

As hydrofluoric acid is only used in limited situations such as use in sandstone settings we have decided to remove the use of this acid from the standard rule set and mining waste plan. Use of this acid for acid washing will therefore require a bespoke permit application.

#### **Concern over use and the movement of acids**

Hydrochloric acid and other hazardous substances use is regulated under Health and Safety at Work Regulations and Road Transport Regulations which are the domain of the Health and Safety Executive (HSE) and other regulators. The proposal is now only for the use of hydrochloric acid and not hydrofluoric acid. The standard rule permit would be a specific permission to use this acid only where the requirements of the generic risk assessment can be met and all the conditions of the permit can be fulfilled. Movement of hazardous chemicals by road is regulated by the HSE not the Environment Agency.

#### **Operators should be required to test for hydrogen sulphide**

The crude oil storage standard rules set do require the operator to sample and test the crude oil to confirm its hydrogen sulphide content.

### **Proposal to add a limit for hydrogen sulphide**

We agree that an amendment should be made to the crude oil storage rules to add a restriction on the hydrogen sulphide content of crude oil. This has been done.

### **Change to location criteria for protection of Sites of Special Scientific Interest (SSSI)**

We have amended the location criteria for both sets of standard rules so that it includes a 200 metre exclusion for sites designated solely for geological features. In respect of further restriction where a water course connects directly with an SSSI the restriction on the activities, the substances to be used and the resultant wastes are themselves low risk. The requirements within the rules for containment and the distance criteria from water courses and SSSI together provide the controls necessary.

*Question three: Have we correctly identified all risks for each activity described in the generic risk assessments associated with this consultation?*

### **Objections on grounds of lack of consideration of the site specific risks**

Standard rules have been developed with a robust risk assessment. Within the rules we have distance criteria (buffer zones) that a site must meet in order to have the standard permit. Where the relevant criteria cannot be met a more detailed site specific assessment of the risks for those sites that are close to receptors (such as houses, conservation sites or in a particular groundwater protection zone) will be required. Facilities which require a site specific assessment will not be suitable for standard rules. We are satisfied that the use of standard rules is appropriate in these circumstances. A site specific assessment will also still be conducted at the planning stage. The Environment Agency is a statutory consultee and provides the mineral planning authority with advice on the local groundwater issues. Standard rules permits maintain the same high levels of environmental protection as a bespoke permit. The Environment Agency still has the same powers to ensure compliance with the conditions of the permit, to undertake site visits and spot checks and could make the operator cease operations if they found the site was causing pollution.

### **Requirement for additional restrictions due to risks from volatility of crude oil**

There is no evidence to suggest that oil extracted from UK strata will be particularly volatile, therefore additional restrictions around vapour pressure would be unjustifiable at this stage. The reason for the differentiation between exploration and production is the duration of the activity, which limits the risk.

*Question four: Are there any barriers to complying with the standard rules?*

### **Concern that the question is aimed at operators not members of the public**

If a decision is taken to adopt the standard rules it is an appropriate question to determine whether the regulatory controls proposed will work in practice and cover the relevant activities that the risk assessment will allow. The question does not prevent members of the public expressing their concerns or views regarding any perceived barriers to compliance with the standard rules. We took full account of all relevant

responses, whether from operators or members of the general public, when assessing the issues which the question sought to address.

### **Bespoke permits will still be required for oil and gas activity**

A response was received that although standard rules will help for some activities, oil and gas activity will still entail the use of bespoke permits where local technical and environmental issues dictate. This is the case as site specific assessment is required for many of the higher risk activities that we do not consider appropriate for the standard rule approach.

*Question five: Do you think that the introduction of standard rules for onshore oil and gas exploration will have a significant financial impact overall on your businesses.*

A response was received from the oil & gas industry that it is too early to ascertain the direct financial impact of standard rules on the industry and that a review of the performance of standard rules should be undertaken after a suitable period, to understand the economic benefit.

Many respondents noted that this was a question aimed towards the oil & gas industry. Whilst this may have appeared to be the case, the question does not prevent members of the public expressing their concerns regarding whether a proper balance has been struck between environmental protection and the aim of reducing any unnecessary regulatory burdens on the oil and gas industry. We took full account of all relevant responses, whether from operators or members of the general public, when assessing the issues which the question sought to address.

*Question six: Are there any other activities that you think would benefit from the standard permitting approach or future revisions?*

### **Regarding proposed new standard rules for onshore oil and gas activities:**

The following activities were suggested as potential standard rules for the future:

- the management of extractive waste and well testing;
- flaring of sour gas; and
- production phase.

We will consider if these activities are appropriate for future consultation on standard rules.

*Question seven: Please tell us if you have any other views or comments on these proposed rules that have not been covered by previous questions?*

**Concern over the scope of the consultation**

We directly consulted Government and other Regulators, non-governmental organisations and groups, professional and industry bodies, academic organisations and operators. The consultation commenced prior to the election period and was open for three months to all members of the public and to local organisations and we welcomed views from everyone. As a national consultation, we contacted national organisations rather than local ones.

## 5 Next Steps

Responses from this consultation will be used to inform the new standard rules and the generic risk assessments.

The proposed new standard rules will be published on the .gov.uk website in February 2016.

Individuals who wish to follow up their responses, or points made within this document, in more detail are welcome to contact us:

Environment Agency  
Horizon House  
Deanery Road  
Bristol BS1 5AH

email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)



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