



Standard Rules for the Environmental Permitting Regulations – Consultation No14

Summary of consultation responses
and decisions

September 2015

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The Environment Agency. Out there, making your environment a better place.

Published by:

Environment Agency
Horizon house, Deanery Road
Bristol BS1 5AH
Tel: 0117 934 4000
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk

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1 Introduction

The Environmental Permitting (England and Wales) Regulations 2010 (EP R) 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 we can apply widely. The rules are developed using assessments of the environmental risk posed by the activity.

Through the fourteenth consultation, live from 20 December 2014 to 20 March 2015, we proposed changes to a number of existing standard rules in relation to:

- 1 Landspreading & digestate storage
- 2 Deposit for recovery
- 3 Soil transfer, treatment & recovery

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 the three sets of proposals, seeking views from operators, trade associations and businesses, other regulators, the public, community groups and non-governmental organisations with an interest in environmental issues.

The process was mainly an e-consultation although hard copies were made available to those who requested.

This document summarises the responses to the consultation questions, our responses to these, the decisions we have made and the actions we will take as a consequence. These are set out in turn for each of the three sets of proposals.

3 Landspreading & digestate storage

3.1 Summary of the key findings and the actions we will take

3.1.1 Proposals We Consulted On

The consultation proposed amendments to mobile plant standard rules and risk assessments authorising the spreading of waste on land for agricultural or ecological benefit under SR2010 No4, SR2010 No5 and SR2010 No6. The proposals were to amend these rules sets as follows:

- Changes to the provisions for temporary storage of waste prior to spreading;
- Enabling operators to request deployments for areas greater than 50 hectares;
- Prohibiting spreading of high readily available nitrogen (RAN) wastes in groundwater safeguard zones (SGZs) for nitrate;
- Restrictions on spreading in adverse conditions;
- Updates to the list of acceptable wastes and adding a number of new wastes;
- Requiring pre-notification of the intention to commence spreading; and
- Minor amendments to existing definitions and wording to provide greater clarity and consistency.

We also proposed amendments to the standard rules and generic risk assessment for the storage of digestate from anaerobic digestion plants under SR2010 No17. The proposals were to amend these rules sets as follows:

- Expanding the list of acceptable wastes to include all non-hazardous wastes listed in SR2010 Nos 4, 5 and 6;
- Removing the exclusion on wastes consisting solely or mainly of dust, powder and loose fibres. These wastes will be acceptable if they are stored in a building;
- Requiring stackable wastes to be stored on an impermeable surface with sealed drainage;
- Requiring containers used to store non-stackable wastes to be constructed to CIRIA 126 specifications;
- Allowing high readily available nitrogen wastes to be stored but in covered containers to prevent ammonia emissions;
- Requiring different wastes to be stored separately;
- Minor amendments to existing wording and definitions to provide greater clarity and consistency.

The consultation invited views on our proposals, including 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.

3.1.2 Level of Response

We received a total of 48 responses, which we have carefully considered. We have recorded these on the Environment Agency consultation portal, which is available to view at: <https://consult.environment-agency.gov.uk/portal/ho/ep/src/rules/14?tab=list>.

Of the 48 responses: 23 were from operators or consultants who advise landspreading operators; 11 from trade bodies representing landspreading operators, the water industry or farmers and land managers; 8 responses came from water companies; 4 from individuals; 1 from a County Council; and 1 was anonymous.

We received a number of comments and questions that were not related to the proposals we consulted on and as such are outside the scope of this consultation. These will be considered separately to the consultation process and as such we do not address them further in this document.

3.1.3 Key findings and the actions we will take

Standard Rules SR2010 No4, 5 and 6: Mobile plant permits for the beneficial spreading of waste on land

Regarding the need for a Business Engagement Assessment

The majority of respondents felt that there would be a significant financial impact on the wider business as a result of a number of the changes proposed. Many of the reasons behind this relate to certain changes proposed regarding storage. Requests were made for a Business Engagement Assessment (BEA) in accordance with the Government's Accountability for Regulatory Impact (ARI) initiative.

In light of this feedback we accept there is a need for some further financial analysis in the form of a BEA. As a result of the consultation process we have also revised our proposals (see below) and it is these revised proposals which will be used to conduct the BEA. We intend to take forward the revised proposals, subject to consideration of the BEA, and will confirm our decision once that exercise has been completed.

Regarding whether the proposals are appropriate to manage the risks

We received a few comments relating to the General Risk Assessment (GRA). We will make minor amendments and clarifications to the GRA as appropriate.

Regarding storage duration

A significant number of respondents questioned the proposal for reducing the maximum storage period from 12 to 6 months. Some referenced research which suggests that most losses from waste occur in the months immediately after deposit. However this fails to recognise the risk of catastrophic failure of containment which is a common cause of pollution incidents and that this permit does not allow the use of permanent storage facilities. Respondents also questioned whether it would stimulate

greater investment in storage facilities or simply result in waste being spread at inappropriate times.

We recognise that this proposal has raised concern and note the doubts expressed that it would stimulate the necessary investment in storage facilities, although we are concerned by the suggestion that operators would resort to inappropriate spreading practices rather than invest in appropriate infrastructure.

We anticipate obtaining useful and relevant information from a newly funded project and it therefore appears appropriate not to proceed with the proposal to change the storage duration at this time. Instead we will carefully review the information we obtain, together with available evidence on the level of new investment in site based storage facilities over the intervening period. As we are not proceeding at this time we do not address comments made on this particular change in this document, and it will not form part of the BEA.

Regarding other storage requirements

We have decided that the remaining changes to storage of waste proposed in the consultation should be proceeded with subject to consideration of the BEA. These include:

- allowing storage limits to apply to each deployment rather than each permit;
- retaining a storage limit of 3000 tonnes but restricting the quantity of non-stackable waste within this total to 1250 tonnes, a limit used successfully by operators under the previous paragraph 7 exemption;
- in more sensitive locations, we will require storage of high RAN wastes to be covered to control ammonia emissions;
- the interpretation for non-stackable, high RAN waste, and also for design of field heaps will be as used in the Nitrate Vulnerable Zones Regulations; and
- we will also ensure the existing interpretation of place where the waste is to be used, as also applied to the previous Paragraph 7 exemption, is communicated and followed. That is, secure storage of waste is on the area (or areas) of land where the spreading for land treatment activities is to occur.

Regarding spreading in adverse conditions and amendments to existing definitions and wording

No concerns were raised regarding the proposed changes for spreading in adverse conditions or amendments to existing definitions and wording. We will therefore go ahead with these changes as proposed.

Regarding deployment area

For deployments covering an area greater than 50 hectares we will allow a deployment for a single waste stream for a single crop on a single continuous parcel of land (field) of up to 100 hectares under the control of a single land occupier, who may be the owner or tenant. This flexibility is intended principally to incentivise the use of low volume / low application rate wastes such as ashes therefore the storage limit for deployments greater than 50 hectares will remain unchanged.

Regarding acceptable wastes

No concerns were raised about the list of proposed wastes in the consultation. However, comments were made that as incineration and recovery technology moves forward some waste descriptions are becoming a little out of date. Additional wastes

were proposed but without clear supporting information to justify their inclusion under standard rules. We will keep this aspect under review in the event of receiving or obtaining such information. If, at a later date, we consider that additional waste streams should be added to the rules sets we will put forward proposals as part of any future standard rules consultation.

Regarding restrictions within groundwater safeguard zones

Industry respondents raised a concern with respect to the restriction of spreading high RAN wastes in groundwater SGZs designated for nitrate. We have carefully considered this and the need to balance requirements to enhance protection of the environment whilst adopting proportionate regulation. Therefore we have decided not to proceed with an outright ban on spreading high RAN waste in groundwater SGZs as detailed in the consultation, but to impose lesser restrictions, namely maximum application rates and no-spreading periods, to protect vulnerable groundwater.

Regarding pre-notification

There was a wide range in the level of support for the proposal to require pre-notification of the intention to spread. We have decided to proceed with introducing this change. In response to concerns raised by respondents we have clarified that pre-notification is for the 'intention' to commence spreading with a recognition that situations can change at short notice. The most popular suggested means of notification was via email or phone. To facilitate this we will include contact details for the local Environment Agency office within the deployment letter. We will require pre-notification at least 48 hours prior to spreading, and no greater than 7 days prior to spreading, in order to provide a window for Environment Officers to schedule compliance visits.

Standard Rules SR2010 No17 – The storage of wastes to be used in land treatment

No concerns were raised on the following changes for the SR2010 No17 permit:

- Expanding the list of acceptable wastes to include all non-hazardous wastes listed in SR2010 Nos 4, 5 and 6.
- Removing the exclusion on wastes consisting solely or mainly of dust powder and loose fibres. These wastes will be accepted if they are stored in a building.
- Minor amendments to existing wording and definitions to provide greater clarity and consistency.

We will therefore proceed with these changes as proposed.

Regarding standards for design, construction and operational standards

Two respondents were concerned about the use of the CIRIA standard in the permit, four raised concerns about the requirement for impermeable surfaces for stackable waste, one was concerned about the requirement for storage of high RAN wastes in covered containers, and one was concerned about the proposed three month transition period. However, we consider that the design, construction and operational standards stipulated in the consultation are consistent with other waste operations and necessary for secure containment of wastes. Operators who do not meet these standards are able to apply for a bespoke permit and provide evidence of the effectiveness of an alternative standard. We will therefore be proceeding with these changes.

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Regarding the transitional period to introduce the changes

We do not intend to extend the 3 month transitional period as we are of the view that it would be inappropriate to prolong the period where there would be a difference in regulatory standards between existing and prospective permit holders. This also enables existing permit holders to benefit from being able to store a wider range of wastes as soon as possible. However we recognise that holders of the four existing permits may have concerns about complying with certain conditions of the revised permit and invite them to contact us.

3.2 Responses to questions and our response to these

Q1. Have we correctly identified all the risks for each activity, as described in the generic risk assessments associated with the consultation?

38% (18 responses) agreed that we had identified all the risks. 47% (22 responses) disagreed. There were 7 (15%) who either didn't reply or didn't know.

The majority of respondents who disagreed with the risks raised the fact that a Business Engagement Assessment (BEA) had not been completed. Their comments focussed on the financial implications of some of the proposed changes rather than on the question of whether risks have been correctly identified. We address the BEA in question 7 below.

Regarding risks associated with storage

There was a request for evidence behind the changes to the recorded risk, especially where the change was to increase in the level of risk. There were comments that the risk assessments did not include justification for all of the proposed changes. These comments were mainly focussed on storage duration and the reduction in volume of liquid waste; and that the benefits assumed by the changes do not seem to reflect the risks posed.

There have been a number of pollution incidents involving the insecure storage of wastes destined for landspreading. In response we increased the number of inspections carried out by our staff. The feedback they have provided is that the level of risk associated with current storage practices is unacceptably high and is a significant contributing factor in a number of serious pollution incidents. The risks identified in the generic risk assessments have been updated to reflect this information.

Some of the proposals in this consultation were developed to mitigate the increased levels of risk resulting from apparent changes in industry practices since the original landspreading permits were introduced, and to help operators move away from an over-reliance on poorly constructed and poorly managed field storage and using facilities permanently to store waste. Investment in larger, more accessible, well constructed and managed storage facilities would also go some way to resolving the difficulties experienced by the industry when the landbank is inaccessible due to adverse weather, ground conditions or animal disease outbreaks.

Regarding Fire Risk

Several respondents mentioned fire risk. We note that the majority of wastes in SR2010 No4 are non-combustible. An operator's management system should identify and minimise any risks to the environment and human health, including those of fire.

We have considered whether a specific Fire Prevention Plan should also be required and decided that the level of fire risk associated with operations under these rules is such that identifying and providing mitigation through the management system is sufficient and proportionate. We will however keep this aspect under review and should we conclude such a plan should be required we will bring forward proposals in a future consultation.

Q2. Do you consider that reducing the storage period allowed in mobile plant standard rules from 12 months to 6 months will be effective in stimulating investment in contingency storage facilities and lead to greater business resilience?

75% (35) of the responses disagreed with this question. 19% (9) agreed and 6% (3) either didn't respond or didn't know.

The majority of respondents commented on the environmental risk associated with storage questioning whether this would be reduced if storage time is reduced from 12 to 6 months. There were several references to Defra-ADAS research on this topic which focussed on the leachability of wastes. However, this research did not consider the risks associated with catastrophic failure of containment. Concerns were also raised over managing vehicle movements and supply chain issues should storage be reduced to 6 months. We recognise that some adjustment in business models would be necessary.

Comments were less clear on the question of stimulating investment in contingency storage. This aspect will be considered further following newly funded project work. Therefore, at this stage, we have decided to put the proposed changes to storage duration on hold. We will review this in 2016 and re-consult should we decide that storage times should be amended.

Q3. Can you suggest other wastes that could be suitable for inclusion in these standard rules?

Twelve individual wastes were suggested by 16 respondents.

The following ten waste streams were proposed, but without supporting technical evidence that would be necessary for production of a Generic Risk Assessment.

- Aerobically treated wastes that are well characterised and do not present a significant environmental risk when well managed but are not compost under the current Environment Agency definition of compost, including the suggestion of compost, woody waste and sewage cake;
- 19 12 12 (compost Like Output) biodegradable waste from mixed waste streams;
- PFA / Sugarbeet / Mineral Fines / Distillery Waste mixed with soil growing materials;
- 10 01 03 - Fly ash from untreated wood;
- 01 05 04 - drilling muds;
- 19 06 04 - digestate from anaerobic treatment of source segregated municipal waste;

- 'biochar' from the pyrolysis of sewage sludge or biodegradable products containing sewage sludge provided the char was found to be non-hazardous EWC code 19 01 18;
- wood chip waste from bio filters; and
- washed, cleaned and tested leaf litter for use within agriculture as 19 12 12 soil substitute.

The following waste was proposed with supporting data. The code provided actually refers to concrete wastes and not waste from cement production, which are not appropriate for spreading onto land. This waste has been considered for inclusion in the deposit for recovery standard rules.

- 10 13 14 - sludge from cement production

The following waste was referenced in the current Regulatory Position Statement (RPS) 174 'Revising the description of wastes accepted under specified mobile plant permits' (September 2014). This lists 'washwater from Animal By-product handling and processing plants that meet the waste water treatment requirements in the Animal By-product Regulations (EWC Code 16 10 02)'. This waste is listed on the revised permit, but under the code 02 02 99. Therefore no further action is required.

- Washwaters from Intermediate Animal By-Product Plants

The consultation document was clear that any proposed new wastes should be accompanied by evidence that the wastes are suitable for recovery by spreading on land. We consider, in the absence of available evidence, the wastes proposed are likely to contain a higher level of uncertainty (e.g. as regards hazard assessment and risk when stored or spread) and greater variability of make-up than those already accepted onto the standard rules permits. Many of the proposed wastes are either mixtures of different wastes or they are derived from complex processes which themselves involve the use of waste. We consider that an application for a bespoke permit is the more appropriate mechanism by which these wastes may potentially be accepted for use in land treatment activities. We have therefore decided not to include any of the waste types proposed at this time. However, should we receive or obtain the necessary evidence in respect of any particular waste type, we will carefully consider this and consult should we decide any can be included in later revision of the rules set.

Q4. Do the codes and descriptions for ashes cover the range of waste ashes being spread on land?

2% (1 response) agreed with this question, 9% (4 responses) disagreed and 89% (42 responses) didn't know or didn't answer.

The majority of respondents were not involved in spreading of ashes.

We had a request to add ash from the combustion of poultry litter to the U15 waste exemption and to extend the exemption to allow spreading of the ash onto other farms. Whilst we acknowledge these requests, they do not form part of the consultation. We will forward them on to Defra to be considered in their exemptions review.

There was also a request to add 10 01 03 to the list of ashes. This is addressed in question 3 above.

Q5. What would be your preferred method for pre-notifying us of the intention to commence spreading operations?

Three respondents objected to the need for pre-notification and others commented that the requirement would increase the burden on industry for what they perceived as little environmental gain. It was also noted that there seemed limited value given that there are many circumstances that can lead to last minute changes.

The standard rules and deployment arrangement gives operators flexibility to decide when, with due regard for environmental and agronomic factors, it would be appropriate for their spreading activity to take place and to change spreading dates if required. We consider this is both a reasonable and essential flexibility of the system.

We have a duty to regulate landspreading effectively but can only do so if we are able to plan our compliance activities. This can be difficult as spreading only takes place for short periods over the life of the deployment. This can be resolved if the operator notifies us in advance of when they intend to carry out the spreading.

Some operators have shared information about when they intend to spread and this helpful practice has enabled us to carry out some compliance inspections. However these operators have also complained that other operators are withholding the same information and therefore escape the same level of scrutiny. Given these concerns about the limitations of the voluntary approach to pre-notification we propose to include the condition to require the permit holder to pre-notify us of their intention to spread. We understand that pre-notification increases the burden on permit holders. However, we consider this approach is fair and proportionate. It will allow us to be risk-based and targeted in our environmental protection work.

Many respondents commented that there is a need to recognise the changeable nature of spreading operations. We are aware that situations can change for a variety of reasons and that spreading may be delayed. The pre-notification is simply a notification of the intention to spread; if circumstances change at the last minute, it does not commit an operator to carry out the notified spreading.

The most popular suggested method of contacting us was via email. We are, however, aware that not all operators have access to email and would therefore prefer phone contact details. Contact details for the local area office will be provided (both an email address and phone number) within the deployment letter. We will ensure that the email address provided is monitored daily.

We have determined that the minimum pre-notification period will be 48 hours prior to spreading to allow the Environment Officers time to arrange site visits if necessary. The maximum pre-notification period will be 7 days to minimise the amount of change to the notified intention to spread.

One respondent provided possible wording for the pre-notification condition. This is considered inappropriate because it would enable operators to provide notification after spreading has started. This would frustrate the intention of the pre-notification process which requires notification of the intention to spread prior to that spreading taking place. Cessation of spreading operations is covered within our proposed condition.

Some respondents expressed concern that pre-notifications would increase the burden on the Environment Agency. The system will be set up to minimise the burden on all parties. We do not intend to acknowledge receipt of pre-notifications and would not visit every notified spreading activity. We believe that with better knowledge of when spreading is planned to take place we will be able to target our visits more efficiently.

Q6. For deployments of up to 100 hectares how would you prefer the standard rules to define 'continuously managed area of land'?

There was some question over whether the proposal related to 100 hectares or 150 hectares. The draft permit proposed the additional option of 100 hectares. The supporting consultation document incorrectly referred to 150 hectares. We would like to clarify that we are proposing areas of up to 100 hectares. We received many suggestions for defining 'continuous managed area of land', most relating to single management and single waste streams. We have decided to adopt the following:

Deployments of a single waste stream for a single crop on a single continuous parcel of land (field) of up to 100 hectares under the control of a single land occupier, who may be the landowner or tenant.

We received a request to increase maximum storage quantities in proportion to the increase in spreading area. An intention of the 100 hectare deployment is to better support the beneficial use of low-application rate wastes such as ashes. In such instances an increase in storage volume would not be required and therefore we have decided this is not appropriate.

Q7. We consider that taken as a whole the package of proposals described here will not have a significant financial impact on the wider business community. If you agree or disagree, please explain why, and provide evidence to support your view of the likely impacts.

11% (5 responses) agreed that there would not be a significant financial impact on the wider business. 72% (34 responses) disagreed and 17% (8 responses) did not know or did not answer.

A number of respondents questioned why the consultation did not include a BEA. Under the Accounting for Regulator Impact (ARI) process a BEA is required only where the change is considered to have a significant financial impact. We took the view that the package of proposed changes would probably not have a significant overall financial impact. However we decided to seek views on this aspect as part of the consultation.

The proposed amendments that we consulted on were largely prompted by the recognition that a significant number of operators are not complying with the storage requirements in existing standard rules, which limits storage to 3000 tonnes per permit and not per deployment. As a result, the level of environmental risk posed is significantly higher than we envisaged when the standard rules were designed. In the absence of these proposals operators would be required to obtain multiple mobile plant permits or alternatively bespoke waste storage permits. Our proposals offer operators a cost effective alternative that avoids the need for multiple mobile plant permits and makes standard rules permits available for site based storage.

From the comments received we believe that many respondents did not take into account the additional flexibilities and the avoided costs of an estimated circa £4 million achieved by moving from a maximum potential storage limit of 3000 tonnes per permit to 3000 tonnes per deployment. We considered that when these savings are used to offset increased costs arising from other elements of the proposed package the net financial impact of the proposals would not be significant.

Given there were significant concerns from industry due to the lack of BEA with the consultation, we will be producing a BEA following the publication of this document. The BEA will address the financial impacts on industry of the changes we have decided

it is appropriate to take forward. It will also address any non-financial impacts. We will review the revised proposals taking into consideration the BEA.

The majority of respondents who disagreed with our assessment of the financial impact raised concerns about the cost of reducing storage duration from 12 to 6 months. As explained above, we have decided not to proceed with reducing storage times at this stage. Therefore, this aspect will not be addressed in the BEA.

There were also concerns about the impact of restricting the use of wastes in groundwater safeguard zones. As explained above, we have decided not to proceed as originally proposed. The less restrictive nature of the amendments we will implement will have a lower financial burden than our original proposal. We will ensure that the restrictions which we have decided to implement are recognised in the BEA.

It was suggested that infrastructure required for stackable wastes could possibly cause business failures although this suggestion was not explained further. We will consider this as part of the BEA.

Q8. Please tell us if you have any other views or comments on these proposed revisions that have not been covered by previous questions.

Regarding Spreading in Groundwater Safeguard Zones (SGZs)

We received many consultation responses that questioned our proposals to stop the storage or land spreading of high readily available nitrogen (RAN) waste within groundwater SGZs for nitrate under these Standard Rules Permits. However we do have evidence that land spreading high RAN materials contributes to nitrate groundwater pollution at our most sensitive drinking water supplies. This nitrate pollution, unless appropriately tackled, will ultimately require water companies to install additional (and expensive) treatment before the water can be used for human consumption. However, we have carefully considered the consultation responses including that such a blanket prohibition would, for example, increase transport costs for operators in and around SGZs, and also raise issues such as application timing which is an important factor in controlling nitrate leaching losses.

We have therefore decided, after careful reflection, to continue to allow spreading of high RAN wastes in groundwater SGZs designated for nitrate under these Standard Rules Permits, provided operators comply with the following less onerous restrictions that protect these sensitive drinking water supplies.

The rules shall limit the storage / spreading of high RAN wastes in groundwater SGZs designated for nitrate to:

- Periods outside of the NVZ closed periods for spreading organic manure with high readily available nitrogen;
- Application rates of $\leq 50\text{m}^3/\text{ha}$, with a minimum 3 week gap between applications; and
- Maximum application rate of 250 kg total N per any given hectare.

We had a number of responses that suggested alternative approaches which we have carefully considered. However, we have decided that the above limits to the storage / spreading of high RAN wastes in groundwater SGZs are appropriate and proportionate.

The purpose of the amended approach is to ensure high RAN wastes are spread at the right time of the year to maximise efficiency rather than a blanket ban for all non-farm manures. On reflection, taking into account comments received, we consider this is the most appropriate way forward to balance the needs of the environment and the farming

/ industry community. For example, suggestions to have no spreading at all in Source Protection Zone (SPZ)1 and no high RAN wastes in SPZ2 would have little difference in that the standard rules already prohibit landspreading activities of any of the permitted waste streams in SPZ1s. Furthermore, since in most cases the area of a SGZ is made up of both a SPZ1 and SPZ2, restricting high RAN to SPZ2s is effectively an extension to what was proposed in the original consultation as a greater area would be covered. In addition, many existing SPZ2s do not have nitrate problems (i.e. they are not nitrate SGZs) so prohibiting high RAN landspreading nitrate in such locations would not be necessary and would be disproportionate.

Similarly a suggestion of tick box approach on LPD1 form to indicate when high RAN material will be applied so that application volumes can be checked rather than blanket ban does not counter the fact that such approaches increase the risk assessment requirements of spreading high RAN in sensitive areas. Without applying generic spreading limits as above, the only solution to allowing spreading of high RAN wastes in SGZ designated for nitrate would be to require a site specific risk assessment. This is not a permissible approach for standard rules, which must comply with a generic risk assessment. Conditions applied to a bespoke permitting approach may be similar to those already within the standard rules but the bespoke approach would allow a more thorough risk assessment of the potential impacts on groundwater from landspreading high RAN wastes to be undertaken. Based on that assessment, additional conditions may be required, such as restricting application rates, timing of landspreading etc. By modifying our approach with revised proposals with respect to limiting spreading activities in SGZs it enables risk to be assessed on a generic basis without site specific risk assessment and thus will allow a standard rules approach to be continued to be applied within SGZs.

A query was also raised in relation to potentially restricting landspreading of high RAN wastes in surface water SGZs. There are only a small number of surface water SGZs designated for nitrate; most are designated with respect to other contaminants, such as pesticides, microbial pollutants or colour (such as from peat lands). The consultation and proposals made in relation to restrictions on spreading high RAN wastes were for groundwater SGZs and there are currently no plans to extend these restrictions to surface water SGZs, though we will keep this under review.

Regarding “hard standing” requirements for Standard Rules Permit SR2010 No 17

Four respondents raised concerns about the requirement for hard standing for stackable wastes. We wish to clarify that the requirement is actually for impermeable paving. This is a risk-based generic requirement for all standard rules permits for this type of waste to ensure that liquids that come off the waste are collected and not allowed to enter the environment. Given the large quantities of waste capable of being stored under this permit we consider this to be proportionate and necessary and will therefore include this condition as proposed.

Regarding the reference to CIRIA 126 standards in SR2010 No 17

Two respondents were concerned about the referencing of CIRIA 126 standards in this permit. One respondent raised a concern over the current consultation regarding the revision of CIRIA 126. We are involved in this revision exercise and there are no major changes proposed that would impact on this consultation. We therefore consider it remains appropriate to adopt the CIRIA 126 standards within the SR2010 No17 permit.

It has been suggested that we refer to SSAFO Regulations instead of CIRIA 126. We consider CIRIA 126 to be a more appropriate standard. The standard has been developed in consultation with a wide range of interested parties. It is a recognised and trusted industry standard and provides all the necessary information in one place.

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One response suggested allowing existing storage facilities to be routinely examined to ensure they are fit for purpose. Whilst this is recognised as an option, it would entail additional cost that would need to be recovered by increasing our charges. Instead, we consider it more appropriate that if an existing store is not CIRIA compliant the operator should obtain a bespoke permit and demonstrate at the application stage that the facility is adequately built.

Regarding the storage of high RAN wastes in covered containers in SR2010 No17

There was one objection to the requirement for storage of high RAN wastes in covered containers. This is already a requirement for digestate under the existing standard rules and we are extending it to other high RAN wastes as we consider it to be an appropriate measure both to reduce aerial emissions and to prevent the loss of valuable nitrogen.

We received a number of requests for clarification including a question about what constitutes cover. To ensure operators have flexibility we do not specify the cover material or design. However due regard must be given to the storage location and type of waste in order to eliminate, or to minimise as far as practical, any aerial emissions. Further advice can be found in our intensive farming guidance (link or reference: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297084/geho0110brsb-e-e.pdf).

We will proceed with this proposal and ensure the permit includes all appropriate conditions, references and definitions in order to provide the clarity requested.

Regarding the transition period to introduce the changes

There was one objection to the proposed three month transition period. As of May 2015 we are aware of only four existing permit holders and one outstanding permit application. We do not believe the proposed changes add any significant burdens for these permit holders but we recognise they may have concerns about immediately complying with conditions of the revised permit. If that is the case then we invite them to contact us so that we can consider any specific issues on a case by case basis.

Regarding storing different wastes separately

There was one objection to the requirement to store different wastes separately and clarification was requested on what we mean by different wastes. The requirement to store different wastes separately prevents the wastes from being mixed together and losing their “identity”. Were this to happen, the operator would need to sample and analyse the mixed waste and this would be a significant additional cost. It also prevents wastes undergoing de facto treatment when they are combined. Only wastes with the same code and description could be stored together. We will proceed with this change as proposed.

Regarding the volumes allowed

There was a comment about the large difference in volumes allowed under deployments and site-based permits. The CIRIA 126 construction standard provides a much higher degree of confidence that the structure is capable of containing the waste safely and on this basis we allow a lot more waste to be stored under the site based permit. We considered reducing the maximum storage capacity but decided to retain the existing ability for activities to store waste in amounts up to a limit of 75,000 tonnes depending on the suitability of storage facilities at the site. . We chose not to apply construction standards for storage facilities operated under deployments. Instead we require storage to be secure and have reduced the quantity of non-stackable waste

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that can be stored in order to limit the impact of any loss to the environment. We will keep the effectiveness of this approach under review.

However it should be recognised that in future the storage capacity stated in the permit will be available for each deployment rather than each permit and this represents a significant increase in overall storage capacity.

Regarding storage pending recovery

One response considered the consequences of allowing multiple wastes from different producers to be stored 'temporarily' for up to 3 years. The requirement reflects the definition in the Landfill Directive, which limits storage pending recovery to a maximum of 3 years. In practice we would expect wastes to be stored for much shorter periods and would be concerned if this were not the case, especially where it causes changes in the waste. We would address this with the permit holder as a management issue.

Regarding storage of wastes with similar codes and descriptions

Allowing similar wastes from different sources to be stored together does mean that the identity of the original producer can be lost. However waste returns and duty of care documentation would still show where the wastes originated. Waste producers should provide the permit holder with the waste characteristics. If each waste is suitable in its own right we assume that the mix of the same wastes but from different producers is also suitable and this will be demonstrated in deployments.

Regarding storage of liquid waste

We received a comment that all liquid wastes were required to be kept under a SR2010 No17 permit and therefore either a lower tier 2 option was needed or a relaxation of the interpretation so that a lagoon completely emptied at least twice a year is still considered to be temporary storage. Non-stackable waste can still be stored under deployments and despite the limit being reduced to 1250 tonnes it now applies per deployment rather than per permit. However a fixed lagoon, particularly one which contains waste most of the time, is a permanent storage facility and not authorised under this permit. It is a fixed facility which needs a site based permit and will need to meet the appropriate construction requirements. The option of a lower tier 2 permit does not form part of this consultation but we will keep the possibility under review.

Regarding septic tank sludge and digestive tract contents

One respondent expressed concern that septic tank sludges and digestive tract contents would be covered by SR2010 No17 and would give rise to increased cost from new regulatory burden. The S3 exemption remains available and this allows storage of septic tank sludges. It is not proposed to add septic tank sludge to SR2010No17. Digestive tract contents are classified as a waste when spread to land and we are including them in the standard rules to ensure the option for storage is open to operators.

Regarding consistent use of terminology

We have noted the comments on inconsistencies in the use of the terms liquids and non-stackable waste and the potential contradiction between paragraphs 2.4.1 and 3.1.3. We will amend the text so it is consistent.

Other Points Raised

Regarding controls that apply to waste and non waste activities

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A number of respondents commented on the different controls that apply to waste and non-waste activities. We acknowledge that different activities seeking to confer the same agricultural benefit or ecological improvement may pose common risks to the environment. However, the legislative framework recognises that the risks posed by waste are inherently greater than for non-waste materials because by its very definition waste is a substance or object that the holder discards or intends or is required to discard. Risks, including dust and odour, that arise from non-waste or involve end-of-waste materials are not within the scope of the Environmental Permitting regime and are outside of the scope of this consultation.

Regarding acceptable levels of contamination in waste

We received a request to be more specific about the acceptable levels of contamination in waste. One respondent expressed concern that the generic risk assessment states that there should be no litter in waste. The approach in England to classification of waste does not include any allowance for deliberate physical contamination. Instead, all reasonable steps should be taken by the holder to prevent or minimise unwanted contamination. We have established principles of waste recovery set out in our how to comply guidance which requires that a waste must be suitable for its intended use without causing harm. The approach is not affected by any changes being made to these permits and continues to involve a technical assessment of the waste and site specific factors to be considered at the deployment stage.

Regarding fire risk

One respondent commented on the fire risk from storing large quantities of organic waste. We expect these risks to be addressed through measures in the management system. Although the majority of wastes listed in SR2010No17 are not readily combustible a small number of the additional waste types that were proposed pose a greater fire risk especially if they comprise the bulk of the waste types being used. This risk could be managed by requiring operators to develop and adopt a Fire Prevention Plan. However, this would require further consultation as it did not form part of the proposals in this consultation process. For this reason, we have decided that it is not appropriate to proceed with adding the following wastes at this time to standard rules SR2010No17. We will consider further the risks and appropriate controls and, if at a later date, we feel it is appropriate to include any of these wastes, we will include any proposal in a consultation exercise. .

02 01 03	Plant tissue waste
02 01 99	spent mushroom compost
03 01 01	waste bark and cork
03 01 05	untreated sawdust, shavings, cuttings, wood, and biodegradable veneer other than those in 03 01 04
03 03 01	waste bark and wood, pulp from virgin timber
04 02 21	wastes from unprocessed biodegradable textile fibres only
04 02 22	wastes from processed biodegradable textile fibres only
19 05 03	compost from source segregated biodegradable waste only
20 02 01	plant tissue waste from parks only

Regarding the requirement for site security

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We received a query on whether the requirement for site security is realistic. The existing Standard Rules permit has an interpretation of secure storage – waste must not be able to escape and must be stored so that the public do not have access to it. We have not proposed any change to this interpretation. The permit rule is outcome focussed and allows the matter to be dealt with appropriately through the management system taking into account site specific considerations. We believe this a proportionate and flexible approach.

Regarding the management condition

We had several requests to add “so far as is reasonably practicable” to the management condition 1.1.1(a). This proposal is being considered as a separate exercise because the management condition is common to a wider range of permits than those considered in this consultation. As it does not form part of this consultation it will not be changed at this time.

Regarding technical competence requirements

One respondent questioned the requirement to comply with an approved competence scheme. It was suggested that alternative qualifications such as BASIS/FACTS could be accepted. The requirement for waste permit holders to comply with an approved technical competence scheme is explained in Defra’s EPR core guidance. We would clarify that approved technical competence schemes and BASIS/FACTS deliver different outcomes. It is a requirement under EPR to have a competent person from an approved scheme and this satisfies permit condition 1.1.4. The BASIS/FACTS qualification would be relevant to condition 2.1.3. This requires an assessment that shows that benefit will be conferred by spreading of the waste be made by a person with appropriate technical expertise. It should be noted that new technical competence schemes can be submitted to Defra for approval.

Regarding proportionality of the proposals

We had several comments that we are increasing restrictions to tighten control when it was considered that only a few operators are causing problems. In this instance we have decided to address the inappropriate use of mobile plant permits and believe we have set an appropriate balance by amending the standard rules to give operators considerably more flexibility and at the same time ensuring that environmental risks are proportionately managed.

Regarding Codes of Practice

It was suggested that the SNIFFER Code of Practice should be used for mitigation in the SR2010 No5 generic risk assessment rather than the Code of Good Agricultural Practice (CoGAP). We recognise the value of the SNIFFER Code of Practice and will consider this for any future review.

Regarding links to deposit for recovery activities

There was a query regarding whether a SR2010 No5 deployment can be registered at the same time as a Deposit for Recovery permit when both operations are required in conjunction for re-profiling and improvement of land. The proposed new SR2015 No39 will enable an operator to complete a waste recovery operation without the need for an additional SR2010 No5 deployment. Should an operator wish to use wastes which are not included in SR2015 No39 there are other options available, namely to use non waste soil improvers or apply for a bespoke permit to authorise use of any waste type not included here. It will not be possible to register a mobile plant deployment on a site operating under SR2015 No39 standard rules because the requirements of the two

permits will be inconsistent with each other. This is explained further in the response to the Deposit for Recovery element of this consultation.

Regarding interpretations

Clarity was requested on how to interpret “may cause” and “other significant pollution”. These are phrases common to environmental permits, take their normal meanings, and are informed by a risk based judgement. “Pollution” is defined in the Environmental Permitting Regulations and the definition is already included in the interpretation section.

It was also brought to our attention that some interpretation sections were missing necessary definitions (section 4.4 of the standard rules). It was also pointed out that there are two tables labelled 2.3 in SR2010 No5. We will carry out a thorough check of each of the standard rules and amend as appropriate to rectify any numbering issues, omissions or duplications.

Regarding the definition of readily available ammonia

We were asked to confirm whether or not biosolids were included in the definition of readily available ammonia. In the consultation we explained how high readily available nitrogen wastes are to be defined. Since the definition refers to a property of the waste rather than being material specific it is possible for biosolids to be classed as high RAN waste.

Regarding the mechanism for adding new waste streams

We received a request for a mechanism for adding new waste streams easily and without delays. Whilst this is out of the scope of this consultation, we would like to confirm that there are already mechanisms in place such as bespoke permits or requests for regulatory positions whereby operators do not have to wait for a consultation to the standard rules permit to request that new wastes are authorised.

Regarding the potential for increased odour and nuisance complaints

There were comments that increased on-site storage, i.e. at the site of production, will result in negative amenity impacts and increased odour and nuisance complaints. We do not stipulate where permanent storage facilities should be located; it could be at the site of production, at an intermediate hub facility, or close to the place of use. This allows industry flexibility in determining the best location taking account of all the relevant factors. Regardless of the location we will expect the operator to adequately address amenity issues in the management system, and the rules provide that all appropriate measures must be used to deal with odour and noise.

Regarding differentiation between stackable and non-stackable wastes

We received a request for differentiation between stackable and non-stackable digestate in terms of the requirements for covering high RAN wastes within 200 metres of designated sites. The SR2010 No17 standard rules are not available within 200 metres of a designated site. For mobile plant standard rules, if a waste is high RAN it needs to be covered if within 200 metres of a designated site regardless of whether it is stackable or non-stackable.

Regarding designated areas

Clarification was requested on whether restrictions relating to designated sites apply to all SSSIs as some are geological in nature and would not be impacted by biowaste emissions. Designations can be complex. There can be multiple reasons for designation and geological and other features can be interrelated. At this time we are not planning on adding this degree of complexity to our standard rules. However we have noted this question and will add it to our list of issues to be considered in a future consultation.

Regarding the requirement for weather stations

We received one comment on the requirement for weather stations in order to prove whether or not the ground is waterlogged. We wish to clarify that waterlogged is a condition of the land which is defined within the permit and would be determined on this basis.

Regarding dredged silts

We received a request for dredged silts to be exempted from the changes to storage quantities. We would highlight that other options such as SR2010 No18 are available for the storage of dredgings.

4 Deposit for recovery

4.1 Summary of the key findings and the actions we will take

4.1.1 Proposals we consulted on

This consultation proposed introducing a new standard rules set SR2015 No39 in place of the existing 4 standard rules that cover deposit for recovery (SR2010 No7, No8, No9 and No10). The proposed rules would allow the use of up to 60,000 cubic metres of low risk wastes only for construction, reclamation, restoration or improvement of land in low risk locations. There would be a limited allowance for the use of other waste in surface layers for specific purposes.

We proposed that the existing standard rules would be withdrawn for new applicants in May 2015. Those operating under these rules already would be given 6 months to either:

- Complete their operations and apply to surrender their permit; or
- Apply for the new standard rules if the activities comply with them; or
- Apply to obtain a bespoke permit authorising the activity.

The principal changes made by the new rules will be The activity will be limited by volume rather than mass of waste;

- The permitted waste types will be;
- The use of non-inert waste will be restricted to the surface layers of the waste deposit;
- The rules on waste acceptance will be revised;
- The location criteria will be revised, including: a restriction that prevents the activity from taking place on top of any landfill sites; a restriction that prevents tipping of waste in to a water body or sub water table; and a restriction that prevents the activity taking place within 250m of a well, spring or borehole that supplies water for human consumption;
- A 12 month limit on the storage of waste prior to permanent deposit will be applied; and
- The operator will be required to submit a topographical survey prior to commencement of the activity and on completion.

4.1.2 The level of response

20 consultees responded to this consultation. 9 responses were from operators engaged in waste management, land restoration or construction, 4 responses were from trade associations representing the minerals and aggregates, energy and farming sectors, 2 responses were from community groups, 1 response was from a professional body, 1 response from a water company, 1 response from an energy company, 1 response from a charitable trust and 1 response from an individual.

The responses to the questions are discussed in detail under the headings below. We have carefully considered the responses and a number of key findings emerged that have led us to amend some of our proposals.

4.1.3 Key findings and action we will take

We will continue to use standard rules to regulate certain low risk deposit for recovery activities as we consider the controls provided ensure proportionate regulation. They are welcomed by a majority of respondents including those that currently use them.

We will proceed with the introduction of SR2015 No39 in place of the 4 existing standard rules as proposed in the consultation. We will also limit the scale of the activity to 60,000 m³ rather than including a limit on mass.

However, we will make some amendments to the proposed rules to address comments made by consultees. These are set out below.

Regarding Drafting errors and text amendments

The draft permit we used for the consultation did not include the condition in the existing standard rules set restriction on restoration, reclamation and land improvement, which limited these activities to land that been previously subject to industrial or man-made development. This was removed in error and we will amend Table 2.1 of the new standard rules SR2015 No39 to re-instate this limit on activities as it was not our intention to widen the scope of these activities in this way. No respondents commented on this error.

One respondent identified typographical errors in the proposed rules and suggested revisions to the formatting. We have made some amendments where appropriate to correct errors and make formatting consistent with our new standard rules template.

We have also corrected a typographical error in the waste types table to change the List of Waste code 17 03 01* (the code for bituminous waste containing dangerous substances) to 17 03 02.

We have amended the introductory note to better explain the restriction preventing use of mobile plant at sites operating under these standard rules.

Regarding the requirement for waste to come from a single source

We will amend the wording of rule 2.5.1 in response to comments made. The proposed rule aimed to ensure that waste accepted is free from contamination. To this end it included sub-conditions requiring the waste to come from a single source of a single waste type, and for there to be no suspicion of contamination. A number of respondents felt that these requirements were unclear. We will adopt the wording below for this rule as this focuses on the outcome we are seeking to achieve. We will also publish guidance on the appropriate measures we expect operators to take to ensure that waste is free from contamination. These will be proportionate to the risk posed by the waste.

2.5.1 Waste shall only be accepted if it is a type of waste listed in table 2.5 of these standard rules, it meets the additional restrictions in that table; and

(a) it is inert waste, with the exception of topsoil, soil from cleaning and washing beet and road planings; and

(b) appropriate measures have been taken to ensure the waste is free from contamination; and

(c) it has been identified as a suitable waste type in the approved waste recovery plan; and

(d) its chemical, physical and biological characteristics make it suitable for its intended use on the site.

Regarding waste types

We will proceed with proposals to limit waste types to those that are predominantly inert, with an allowance for non-inert wastes in the top 50cm of the deposit only (30cm in the case of road planings). However, we will also make the following amendments to the list of permitted wastes:

We will include '10 13 14 – waste concrete and concrete sludge'. This waste was suggested by a respondent and is included within the current standard rules. We have reconsidered our proposals and reinstated this waste because, on reflection, we consider that it poses a level of risk comparable to other waste types and that can be assessed generically.

We will include '10 12 08 – waste ceramics, bricks, tiles and construction products (after thermal processing)'. This waste is included within the current standard rules. We have reconsidered our proposals and reinstated this waste as, on reflection, we believe that it poses a level of risk comparable to other waste types and that can be assessed generically.

We will include '02 04 01 – soil from cleaning and washing beet', although we will introduce a new limit on the activity that restricts use to the top 50cm of the waste deposit only. This waste was suggested by a respondent and is included within the current standard rules. We have reconsidered our proposal to remove this waste entirely because we are satisfied that, with this new restriction, this waste poses a risk that is comparable to other wastes authorised for use within the top 50cm and that can be assessed generically.

Regarding Guidance on deposit for recovery

In order to assist applicants and operators we will provide updated and consolidated guidance on deposit for recovery activities. We expect this to be published in late 2015.

4.1.4 Timescales and transitional provisions

We have amended the transitional provisions in response to consultation responses and the longer than anticipated consultation period. We will therefore proceed to withdraw existing rule sets for new applicants from the date of publication of the new rule set, but we will extend the transitional period for current holders.

From the date of publication of the new rules only the new rules will be available for new applications.

Those operating under existing rules will be given **9 months** to either:

- Complete their operations and apply to surrender their permit, or
- Apply to vary to the new standard rules if the activities comply with them, or
- Apply to vary to a bespoke permit for the activity.

We will also clarify that Waste Recovery Plans will not need to be re-submitted if the proposed scheme is not changed. Only corrections to the included waste types will be required, if there is conflict with the new rules.

4.2 Responses to questions and our response to these

Q1. Do you agree with our approach to use standard rules for deposit of waste for recovery activities?

15 of the 20 respondents answered this question. 9 agreed with our approach to use standard rules for the deposit of waste for recovery, 4 disagreed and 2 did not know.

Q1b. Please explain your answer.

Of the 15 respondents that answered this question, 8 were strongly or generally supportive of our proposed approach, 4 were strongly or generally opposed and 2 presented mixed views.

Regarding our standard rules approach

A number of respondents commented that, while they agreed with the general approach to standard rules, they did not agree with our proposals to change the standard rules for deposit for recovery. Some described this as a 'retrograde step'. Some respondents raised concerns about our proposed tightening of standard rules, our transitional provision proposals and the evidence base we have presented in support of the changes. One said that we are wrong to change our approach as the vast majority of sites operating under standard rules have been well managed and there is no evidence of pollution occurring. These views are discussed further in following questions.

A respondent suggested that we should take less of a 'one size fits all' approach to standard rules and there should be opportunity to assess site specific risks. However, this suggestion is not compatible with the fundamental principles of standard rules, which we described in Section 2 of our consultation document. Standard rules can only be developed for activities where the risks can be assessed on a generic basis for all locations where the rules are available. In addition, rules are fixed and cannot be adjusted according to the risks posed. Where there is a need to carry out a site specific risk assessment, a bespoke permit will be required.

Another response suggested that some sites could benefit from an unchanged system or even further relaxing the standard rules to encourage recovery where activities can be shown to be of insignificant risk to controlled waters and human health. They gave an example of some former deep and surface mine sites. However, no detailed evidence was suggested to support this suggestion.

Regarding an alternative approach based on waste types and waste acceptance

One respondent said that a more proportionate approach might have been to limit waste types and change waste acceptance practice, through the waste recovery plan, rather than reform the whole regime. While changes to waste types and rules that govern waste acceptance are at the core of our proposals, there are other changes that cannot be addressed through waste type and acceptance changes alone. We have also sought to streamline the regime. In addition, the waste recovery plan should contain the justification for an activity being considered 'recovery' only; it is not the place for site specific management procedures.

Regarding the impact of merging the rules sets

One respondent did not support merging the 4 rules together as they thought it would lead to more reliance on bespoke permits. Merging the standard rules will not in itself force applicants to apply for bespoke permits to conduct their activities. However, if potential operators consider the more restrictive nature of the new permit does not cover the activities they wish to carry out then they will require bespoke permits.

Many respondents, including those that currently use them, recognised the streamlined permitting approach and clarity offered by proposed changes to the standard rules permits.

Regarding the potential to use of exemptions for the activity

One respondent described standard rules as a 'sledgehammer to crack a nut' and called for the volume limit of the U1 exemption to be increased. Another highlighted that in Scotland Paragraph 19 and 9 exemptions are still used. However, a review of the U1 exemption is outside the scope of this consultation.

Regarding the exclusion of landfills form standard rules

A respondent asked that we provide a substantive explanation for the proposed exclusion that prevents deposit for recovery activities taking place on any landfill under standard rules. Deposit of waste on existing waste deposits brings additional risks, for example:

- The deposit of waste can change landfill gas flow pathways, such as diverting gas that would have previously passively vented to atmosphere towards receptors.
- Surcharging the landfill can lead to consolidation of the waste mass, which can squeeze out leachate. This may lead to increased groundwater pollution.
- Waste deposits may damage engineered landfill infrastructure.

The magnitude of the risk will depend on the site setting, the nature of the waste deposit and the nature of any engineered landfill infrastructure. This will need to be considered on a site specific basis. Where a site specific risk assessment is required, we cannot use standard rules permits. The historic waste deposit may not be permitted and in this case the only way to consider the risk is through determination of a bespoke permit application for the recovery activity. However where the landfill site is permitted the addition deposit of waste for recovery can be regulated through the landfill permit. The risk can be assessed through an application to vary the landfill permit. This is our preferred approach to the regulation of such activities because it allows the combined risk of both activities to be considered together.

Q2. What are your views on the proposed changes and why?

Responses to this question covered a wide range of topics, which can be grouped in to a number of themes.

Regarding tackling mis-description

A respondent was of the opinion that one of our reasons for making changes is that we are concerned that some wastes are being mis-described. They said that mis-description is a regulatory issue and it should not be dealt with by changing permits, which penalises responsible operators. They asked why the Environment Agency believes that it is easier to regulate a bespoke facility. Our assessment has identified

that even accurately described wastes that are included in the current standard rules can pose an unacceptable risk to groundwater. This is the primary reason for these changes. However some wastes that are included in the current rules are heterogeneous in nature, poorly defined, or frequently mis-described. The quantity of these wastes sent to deposit for recovery sites increased significantly between 2011 and 2013. We expect that this trend will continue as a result of changes in the industry. Bespoke permitting will allow for assessment of waste acceptance procedures at the permitting stage, and ensure that permit requirements are appropriate.

Regarding site specific assessment for the operation of a standard rules permit

The same respondent queried the fact that we have said that site specific risk assessment cannot be undertaken for standard rules, yet the rules on waste acceptance require operators to assess waste prior to acceptance (for example checks that waste is not contaminated). We require assessment of the waste to confirm that it complies with the rules and thus poses a low pollution risk. With such requirements, there is no need for site specific assessment of the pollution pathways and the receptors. As explained above standard rules permits cannot be used where there is a need for site specific risk assessment.

Regarding the evidence to support our proposals

A number of respondents expressed reservations about the lack of detailed evidence presented by the EA to justify removing wastes types. One commented that, due to the increased costs and requirements on businesses compared to the presented potential reduction in environment harm that may be caused under the current system, they thought that the proposals are not risk based or necessary.

Another said that the vast majority of current standard rules operate well and there is no evidence of pollution occurring. Another said that significant quantities of coal combustion residues have been used since at least the 1960s in recovery to land projects and that they are not aware of environmental damage arising from such activities, such as pollution of groundwater reserves by activities in Source Protection Zone 1 (SPZ1).

The current standard rules do not require monitoring, which has resulted in an evidence gap because there is no way of establishing, on the ground, whether or not pollution has or is occurring. We know that all the waste types we have removed, including coal ash, have potential to cause pollution.

That does not mean that those removed waste types will cause pollution at all locations. However it also means that they cannot be used at all locations without, a risk assessment with respect to the potential impact upon groundwater at the proposed place of use.

Regarding limiting waste used to a volume of 60,000 m³ rather than by mass

The majority of those that commented on this proposal supported it. A respondent asked why we had chosen to adopt a limit of 60,000 m³. Another suggested that there will be more scope for errors and that the proposed move will lead to less use of lower density wastes, when compared with the upper 100,000 tonne limit in the current rules.

We have chosen to retain an overall limit on the scale of activities that can benefit from standard rules as, broadly speaking, larger activities pose a greater risk to the environment than smaller activities. Deposit for recovery activities are all about using waste as a substitute for non-waste material for a specific purpose. What matters

therefore is that the proposed final landform or structure is created, so that the function described in the waste recovery plan is realised. Operators must use waste that is fit for the proposed purpose (and included in the rules), regardless of density. It should therefore be site levels and the structure design that limit the extent of the activity and a volumetric limit aligns well with this aim. The revised standard rules will require site surveys to be submitted before and after the operation, which we will use to determine whether this limit has been complied with and whether the permitted scheme has been achieved.

In order to compare the existing limits on mass to the proposed limit on volume it is helpful to consider an example. An engineered noise bund will be built to a specified height and width required to attenuate a given noise source. The density of waste can vary considerably, but we consider that as long as the landform agreed has been created then the mass of the waste used is less important. Using average conversion factors of 1.2 – 1.8 tonnes per cubic metre, 60,000 m³ of waste (the proposed limit) allows for the use of between 72,000 and 108,000 tonnes. This is broadly consistent with the quantities permitted by the current standard rules. Tonnages will still need to be used for quarterly waste return reporting, but it will remain acceptable to use conversion factors.

Regarding the requirement for waste to come from a single source

The proposed standard rule set includes rule 2.5.1 (c) that requires waste to be “from a single stream (only one source) of a single waste type”. A respondent commented that operators need to retain the ability to accept waste from multiple sources to attract business and remain competitive. Another highlighted that it is not clear if the restriction means that the entire project can only use waste from one source, or whether the intention is that each load can only come from one source. That respondent suggested that the former approach would not be viable. A third respondent agreed that this restriction would make it difficult to operate and that it was more important to ensure that waste was not contaminated.

We have carefully considered these responses and agree that, on reflection, the proposed rule was unclear and in need of improvement. The proposed rule aimed to ensure that waste accepted is free from contamination, through the included sub conditions. We will therefore amend the wording of rule 2.5.1 to that given below, which focuses on the outcome we are seeking to achieve. We will also publish guidance on the appropriate measures we expect operators to take to ensure that waste is free from contamination. These will be proportionate to the risk posed by the waste.

2.5.1 Waste shall only be accepted if it is a type of waste listed in table 2.5 of these standard rules, it meets the additional restrictions in that table; and

(a) it is inert waste, with the exception of topsoil, soil from cleaning and washing beet and road planings; and

(b) appropriate measures have been taken to ensure the waste is free from contamination; and

(c) it has been identified as a suitable waste type in the approved waste recovery plan; and

(d) its chemical, physical and biological characteristics make it suitable for its intended use on the site.

Regarding restricting waste types to predominantly inert only

One respondent commented to the effect that this proposal was not risk based. Another said that some inert wastes would fail Soil Guideline Values for use in Summary of responses Standard Rules for the Environmental Permitting Regulations – Consultation No14

residential areas. Another respondent said that we are allowing wastes that are not considered 'inert without testing' under the Council Decision (mineral wastes, mineral processing wastes, bituminous wastes, 19 12 09 minerals, 19 12 12 aggregates) and this approach appears to be at odds with our aim to reduce risk. They called for us to undertake full quantitative risk assessment for all these wastes to demonstrate that they could be used under standard rules without posing an unacceptable risk.

In contrast to this, another respondent expressed concerns that we were considering all inert wastes to be potentially non-inert due to the risks presented by some specific waste streams. They suggested that monitoring evidence does not support this and that our response was not proportionate. Another said the proposals go too far and that the risk posed does not warrant these changes. One respondent stated that we were 'restricting the recovery process' by limiting waste types.

One respondent raised concerns about the ability of the proposed wastes to support any meaningful plant growth. They commented that it would be necessary to rely on the subsequent use of mobile plant, something that the introductory note rules out. We have responded to this point below. Another argued that some organic wastes would still be needed and that by removing them from permits, low risk organic wastes will go to landfill as bespoke permits are not cost effective.

We have deliberately restricted the operations that can be carried out under standard rules to reduce the risk posed by these activities to an acceptable level. We have entirely removed those wastes that require site specific risk assessment, given their potential composition and the pollution risk they may present. Bespoke permitting can allow such wastes to be used for recovery operations if they are shown to be appropriate, through a site specific risk assessment for the specific use, in the location proposed.

The proposed standard rules allow waste topsoil and peat to be used in the top 50cm of the waste deposit and these wastes will be able to support plant growth. We have also decided to allow the use of soil from cleaning and washing beet in this surface layer, as explained below. If additional organic wastes are required to support the specific plant growth required then a bespoke permit could be obtained to allow this. Alternatively, the soil profile could be enhanced with non-waste fertilisers including PAS100 quality protocol compliant compost. There are other ways of recovering low risk organic wastes, so they will not necessarily be sent to landfill.

The waste types that we have included, together with the new rules, significantly reduce the risk posed when compared to what has been permitted under the standard rule sets that this new rule set will replace. The included wastes are considered to be inert and/or low risk where there is compliance with additional rules governing waste acceptance. There are further restrictions on non-inert waste types, for example bituminous wastes can only be used to create hard surface infrastructure in the top 30cm of the waste deposit. If rules governing waste acceptance are not complied with, for example if all appropriate measures to prevent contamination are not taken (in breach of rule 2.5.1), then there is clearly potential for the listed wastes to be non-inert and to cause pollution. We would respond to this in accordance with our Enforcement and Sanctions Guidance as we would for any permit breach.

We are satisfied that the rules we have placed on waste acceptance and the location restrictions are both necessary and proportionate.

Regarding mobile plant

One respondent commented that we specifically exclude the use of mobile plant alongside this standard rules activity, but that this will be needed to allow meaningful plant growth given the restrictions on the use of organic waste.

In accordance with Regulation 16 of the Environmental Permitting Regulations 2010, mobile plant cannot be deployed at a regulated facility where there is an inconsistency between the requirements of the two permits. If this happened the site based permit would take precedence. If a mobile plant permit authorised additional waste types to those included in the site based standard rules, this would be a clear inconsistency.

If additional organic waste types are required to complete an R10 land treatment activity then a bespoke permit will be required. This will allow the risks posed by the activity to be considered as a whole. We will amend the introductory note of the standard rules to better explain the reasons for the restriction on use of mobile plant.

Regarding the use of additional waste types

There were suggestions for a number of waste types to be introduced or reinstated in the standard rules. In all but one case (waste concrete and concrete sludges) no evidence, such as waste composition information and modelling, to show that these wastes can be used in all rules locations without posing an unacceptable risk to the environment, was presented by respondents.

- Bituminous waste: a respondent highlighted to us early in the consultation that there was a typographic error in Table 2.3. We incorrectly included the hazardous waste code 17 03 01* for use within the top 30cm of the waste deposit. Clearly it was not our intention to newly allow the use of hazardous waste under these rules. The correct code should have been 17 03 02 which, when combined with the additional restriction proposed, would include non-hazardous road planings only. We corrected this error immediately on 20 February 2015 by uploading an amended version of the draft rules on to the consultation portal.
- Pulverised fuel ash and furnace bottom ash (coal ash) and other waste from thermal processes: one respondent said that, because coal ash has been removed from the standard rules, other wastes including secondary aggregates or virgin materials will displace it for use in projects. It was said that this will increase resource use (and greenhouse gas emissions) and mean that more coal ash will go to landfill, especially as a Regulatory Position Statement that allows use of coal ash (RPS 172) is due to be removed. Two respondents stated that the bespoke permitting requirement for site specific risk assessment would not give regulatory certainty that coal ash can be used and therefore other wastes will be used instead. Another respondent commented that removing wastes relating to thermal processes (along with dredgings and wastes from waste management activities) is not helpful as they currently use these wastes in land restoration schemes.
- Pulverised fuel ash (PFA) and incinerator bottom ash aggregate (IBAA) have been assessed as part of the Quality Protocol project. Computer models of engineering structures, including embankments, have been developed based on laboratory analysis of these wastes that demonstrate unacceptable impacts to groundwater in modelled sensitive locations. In addition, field leaching trials have been carried out under the EQual programme and the results support the findings of the computer modelling work. Quality protocols clarifying end-of-waste status have not been issued for unbound uses of PFA and IBAA for these reasons. There may be locations where no harm or pollution of groundwater will occur as a result of the deposit of these wastes, but these locations will have to be determined through the use of site specific risk assessment. As the risks posed by these wastes cannot be assessed generically a standard rules permit allowing the use of these wastes is not appropriate. We are now working to determine the appropriate regulatory approach for these waste streams.

In 2011 to 2013 the combined tonnage of coal ash recovered at standard rules sites was around 20,000t, compared to around 250,000t at bespoke permitted sites. This suggests that bespoke permits can and do play a valuable role in recovery of coal ash. Also, nearly 50% of DfR permits are already bespoke and over 70% of all waste (by weight) has been deposited under them rather than standard rules.

- Dredgings: one respondent said that dredgings (when dry) are not dissimilar to topsoil and that dredgings from some waterways are inert (sands and gravels). They suggested that dredging waste should not be removed from the rules as the waste acceptance sections of the rules (2.5 & 2.6) are sufficient for the operator to determine which material is permissible under the standard rules. For example, dredgings could not be accepted if there was 'suspicion of contamination' as this would be in breach of proposed rule 2.5.1 (d). Two other respondents expressed similar views.

Dredgings have been extensively analysed and evidence shows that they can be complex and variable. They can contain inorganic and organic hazardous and non-hazardous substances and/or high levels of organic matter. The nature of the dredging waste will depend on the water body that is being dredged. An unpolluted river (now and in the past) will tend to have uncontaminated sediments but it depends on the geology of the catchment. Sediments act as a sink for contamination and many river beds are stores of historic industrial and mining contamination.

In order to permit the use of dredging waste under standard rules we would need to state acceptable limits for contamination and/or organic content for use at depth and in the surface layers of the waste deposit. These limits would need to be supported by generic risk assessment that considers the composition of dredging waste. No evidence such as waste composition information or modelling was provided in consultation responses that would enable limits to be derived, or to support the generic risk assessment for use of these wastes in locations covered by standard rules. If we were to rely on the proposed rules that exclude wastes where appropriate measures have not been taken to ensure that they are not contaminated, then we would need to give guidance on the appropriate measures that should be taken. For example, we would need to give guidance on how to identify clean, natural, uncontaminated water courses. This would be very difficult to do and we question whether such watercourses are actually likely to be dredged that often.

We recognise that current standard rules allow the use of dredging waste and that these rules are supported by a generic risk assessment that we produced. However, for the reasons explained above we feel that this is not consistent with our standard rules approach. We now consider that bespoke permitting, based on actual analysis of the specific waste and assessment of the site specific risk to controlled waters, is the only way to properly assess the risk posed by dredgings beyond the small scale operations that can be carried out under the U1 exemption. Around 20,000 tonnes of dredging wastes were used at standard rules DfR sites between 2011 and 2013, while 40,000 tonnes of dredging were used at bespoke DfR sites in the same period. While the use of deposit for recovery permits in general appears to be fairly limited, bespoke permits are clearly a viable route for recovery of this waste stream.

- Waste concrete and concrete sludge: a respondent to the parallel consultation on SR2010 No4 and No5 for landspreading called for the waste code "10 13 14 waste concrete and concrete sludge" to be included in those permits. Following further discussion and clarification, this consultee requested that this waste code be included in SR2015 No39, to allow the use of off-specification and

surplus concrete in construction, restoration, reclamation and land improvement.

This waste code is included in the existing standard rules. We have re-examined our proposals and now consider that the risk posed by this waste is comparable or lower than the risk posed by the waste “17 01 01 concrete” (from construction and demolition sources), which we proposed to include. Waste concrete and concrete sludge could be suitable for use in construction (and potentially restoration, reclamation or land improvement) whatever the source of that waste. Rule 2.5.1 includes a requirement that waste is suitable for use and with that we have decided to include “10 13 14 waste concrete and concrete sludge” in SR2015 No39.

- Waste ceramics, bricks, tiles and construction products (after thermal processing): the waste code 10 12 08 is also included in existing standard rules. We consider that the risk posed by this waste is comparable or lower than the risk posed by the waste “17 01 07 mixtures of concrete, bricks tiles and ceramics other than those mentioned in 17 01 06” (from construction and demolition sources) that we propose to include. This waste could be suitable for use in construction (and potentially restoration, reclamation or land improvement) whatever the source of that waste. Rule 2.5.1 includes a requirement that waste is suitable for use. We will include 10 12 08 waste ceramics, bricks, tiles and construction products (after thermal processing) in SR2015 No39.
- Soil from cleaning and washing beet: one respondent called for this waste type to remain in the standard rules and queried our evidence that organic-containing wastes are contributing towards levels of hazardous substances in groundwater. The waste code “02 04 01 soil from cleaning and washing beet” is currently included in SR2010 No7, No8, No9 and No10. Beet washings can be highly organic and have potential to produce polluting leachate, which is high in ammonia and nitrates rather than hazardous substances. This waste stream can also generate soil gas. We have evidence of this occurring at sites that have accepted this waste stream, which is why we proposed removal of this waste from the standard rules. However, this waste can provide valuable nutrients and a growing medium and it is frequently used as an ingredient in the manufacture of quality soils. In addition, there is a low risk that this waste would become contaminated with inorganic substances or physical contaminants in normal handling.

For these reasons we have reconsidered our proposals and consider that if this waste is used in moderation in surface layers only the risk will be acceptable. We will therefore reinstate this code in to the standard rules. However, we consider it is necessary to restrict use to within the top 50cm of the waste deposit, as we have done for topsoil waste.

- Wastes from waste management facilities: one respondent said that the removal of waste codes relating to wastes from waste management facilities was not helpful to them. No evidence was provided to support retaining these waste codes. Wastes from waste management facilities are generally highly variable and their composition will depend on the inputs to and nature of the specific waste management process. Recovery sites must have in place procedures to ensure that wastes they accept are fit for purpose and do not pose an unacceptable risk to the environment. Only through bespoke permitting can the Environment Agency carry out the necessary checks to confirm that these procedures are in place and adequate for such waste types taking into account the proposed use and site location. We consider that these checks are necessary for most wastes from waste management facilities. We

have decided to include restricted versions of the 19 12 09 and 19 12 12 waste codes in the standard rules as we proposed, but we will not include any other wastes from waste management facilities.

Regarding exclusion of topsoil, organic wastes and road planings at depth within the deposit

Only one respondent commented on our proposals to limit some wastes to use in surface layers. They understood why we propose this but said that there should be a de-minimus allowance for contamination in wastes used at depth as site clearance is not that precise.

The approach in England to classification of waste does not include any allowance for disregarding contamination. All reasonable steps should be taken by the producer to segregate wastes to prevent contamination. The resultant waste streams should be classified and coded in accordance with our WM3 guidance. Waste should not be accepted at a deposit for recovery activity operating under standard rules if this has not been done. We will apply our normal regulatory approach (i.e. reasonableness) to the odd item of wood, plastic, metal etc inadvertently accepted at deposit for recovery sites. This is consistent with section 2.1.1 of Council Decision 2003/33/EC that applies to landfill sites.

One respondent asked that we make it clear that topsoil can be used for R5 activities with certain exclusions. R5 is the recovery of inorganic wastes. Topsoil contains organic material so recovery of topsoil would not be an R5 activity. The rules will allow limited organic wastes to be used in the top 50cm of the waste deposit as an R10 land treatment activity.

Q3. Do you understand the requirements of the proposed new standard rules?

14 respondents answered this question. 12 said that they understood the requirements of the new rules, and 2 did not know.

Q3b. Please explain your answer.

The majority of those that answered this question simply confirmed that the rules were easy to follow and understand.

One respondent said that while they understood the rules, they did not necessarily understand the justification for making some of the changes. Another commented on the Business Engagement Assessment and another on our proposals for transitional provisions.

One respondent asked whether the 1 month allowance for reporting at the end of each quarter could be extended. This period is standard across the vast majority of environmental permits and routinely complied with. We see no reason to change the requirements of these standard rules.

Q4. Will the proposed standard rules provide a useful mechanism to allow the beneficial use of waste?

13 respondents answered this question. 4 said yes, the rules would provide a useful mechanism to allow the beneficial use of waste, 6 said no and 3 did not know.

Q4b. Please explain your answer.

Some said that while standard rules would provide a useful mechanism to allow the use of waste, specific rules within the proposed rule set would make it more difficult. Examples included the restriction on waste from a single source and the request for a contamination allowance discussed above.

Others thought that the proposed rules were so restrictive that they would be of limited use. Specific examples given include the restrictions on waste types and comments on these are discussed under Question 2b above. One respondent said that the quantity of waste recovered may reduce as a result of the changes we are proposing.

One respondent expressed a view that wastes listed in the aggregates Quality Protocol (QP) should not be included in the standard rules as they can be used without a permit under the terms of the QP. The aggregates QP provides one way for waste derived material to be used as a resource. Standard rules allow suitable wastes to be used as aggregate replacements without the requirement to meet all the conditions of the QP, potentially reducing costs for waste processors and developers. We see no reason to restrict this.

Another respondent pointed out that standard rules are just one way to authorise the recovery of waste. Others include bespoke permits and use of waste under the Definition of Waste: Development Industry Code of Practice.

Comments were also made about our Business Engagement Assessment that have been responded to under Question 6b below, along with general comments captured under Q8 below.

For the reasons set out in the response to other questions we consider that the addition restrictions we are proposing are necessary and proportionate. We will proceed with revised standard rules as they will continue to offer a more streamlined permitting process for those that can meet the rules. The bespoke permitting process is available for those that cannot and data shows that these are well used.

Q5. Have we correctly identified all the risks for these activities, as described in the generic risk assessments?

13 respondents answered this question. 8 said yes, we had correctly identified all the risk, 4 said no and 1 did not know.

Q5b. Please explain your answer.

The majority of respondents agreed with the Generic Risk Assessment (GRA). One respondent said that the GRA overstates the risk posed by the waste types in the current standard rules. The GRA considers the new standard rules, not the existing rules.

Regarding proportionality of controls for low risk waste types

Another respondent said that the GRA appears to be overcautious given the proposed low risk waste types. We have restricted the waste types to those we consider to be low risk providing the rules are complied with. That does not mean that such wastes present no risk. There is potential for these wastes to pose a greater risk, for example if the rules on waste acceptance are not complied with. The rules include requirements to ensure these wastes are used with measures, including preventing activities in the most sensitive groundwater locations and preventing deposits of waste in to

groundwater, so that there will be a precautionary geological attenuation layer between the waste and groundwater. We are satisfied that the residual level of risk is acceptable, given the activities that will be permitted together with the rules.

It must also be noted that the standard rule criteria are also necessary to protect the environment from pollution that is not related to waste composition, such as the impact of dust on air quality and noise on habitats.

Regarding comparisons with GRAs for exemptions

One respondent commented that GRAs have previously been produced that justify the use of a wider range of waste types, such as the GRA that supported Paragraph 9A and 19A exemptions. The government removed those exemptions as part of a review of exemptions. These were replaced with U1 which is more restrictive as it was considered that use without a permit posed an unacceptable risk of pollution. We are making this change because, on review, we consider that the risk posed by the current standard rules is still unacceptable. The changes we have made to the standard rules are designed to address this.

Q6. Do you agree with the estimated net benefit of -£0.67 million?

12 respondents answered this question. 2 said yes, they agreed with our assessment, 3 said no and 7 did not know.

Q6b. If you disagree, please explain why, and provide evidence to support your assessment of the impacts.

One respondent said that the proposed changes will have minimal impact as they stand and that the standard rules will still be a useful mechanism for the recovery of waste. A number of respondents commented that the estimated impact on business was very high and not justified given the low level of risk posed by the current standard rules. One respondent commented that they did not understand why the EA was making it more difficult during a recession. As we have explained in other sections of this response, we do not agree that the current rules present a low risk to the environment. The changes we are making are necessary to reduce the environmental risk posed by activities to an acceptable level. None of the respondents provided additional or contrary evidence to inform our assessment, so we will finalise it as explained in this document.

Regarding the content of the assessment

One respondent thought that our assessment appeared too simplistic. Another asked for more detail behind the -£0.67M figure. We arrived at the -£0.67M figure by following the Government guidance on the ARI process, applying the costs and assumptions that are set out in our Business Engagement Assessment (BEA).

A respondent sought clarification of the BEA approach we took. Bespoke activities can vary significantly in scale, the risks they present and therefore the controls required and costs that operators incur. The BEA modelled this by assessing the potential impact on future bespoke permit holders using three characteristic groups, namely: 'small/low risk'; 'medium risk' and 'high risk'. The respondent queried how the level of risk for bespoke applications will actually be determined. The bespoke permitting process will assess the site specific risk posed by the activity presented in each application. Specific permit conditions will be imposed as necessary to control those risks at those

sites. This will determine the actual costs for that operator. The three risk bands presented in the BEA were used for modelling purposes only.

Regarding the impact on use of standard rules vs bespoke permits

One respondent commented that the restrictions on waste types would make it harder, and therefore more costly, to attract waste in to sites operating under standard rules and that this had not been accounted for in the BEA. We accept that this may be the case. However, those that find it difficult to attract sufficient quantities of the wastes that are listed under standard rules would be able to apply for a bespoke permit. We have considered the additional costs of that in the BEA.

Another respondent questioned the BEA assumption that everyone will apply for a bespoke permit if standard rules are not available and that all applications for a bespoke permit will be approved. They highlighted that the BEA does not take account of the additional cost, including landfill tax, of having to landfill material in situations where a bespoke permit may not become an option. We agree that the BEA does not consider this, but we do not have sufficient information to estimate this cost. No such information was provided in responses to this question. If, given the site specific risk assessment, it is not appropriate to have a bespoke permit because the risks are unacceptable, then it is certainly not appropriate to use standard rules.

Others recognised that there will invariably be an increase in use of bespoke permits, reducing the incentive to use waste for recovery. They highlighted that bespoke permits will be more costly and less attractive, particularly at marginal sites. They thought that this may be a barrier to land restoration, at quarries for example, and that some proposals may not go ahead as a result, or may be completed to a poor standard and not brought back in to beneficial use. Others said that operations will need to be larger to cover additional costs. In addition, respondents claimed that waste producers may incur costs as they are unable to remove wastes from their sites. Our BEA does already account for the increase in bespoke permitting and the additional costs this may bring. No evidence has been presented to support the assertion that some land restoration projects will not go ahead as a result of the proposed changes, or that waste producers will be unable to remove wastes from their sites resulting in additional costs.

Regarding impact on landfill and the waste hierarchy

Three respondents gave an opinion that the changes may result in more waste going to landfill and two of those were concerned that we appear to encourage this. While recovery is higher up the waste hierarchy than disposal, it is important that any deposit of waste on land does not present a risk of pollution. The change to standard rules does not necessarily mean that more waste will go to landfill. The waste may be used at another recovery site with a bespoke permit. These proposals seek to ensure that wastes are used with appropriate controls to ensure that there is not an unacceptable risk to the environment. If some more waste does go to landfill as a result of these changes, which we do not consider to be inevitable, then this consequence will not outweigh the need for groundwater protection.

By contrast, one respondent strongly disputed our conclusion that changes will enable inert landfill sites to more easily attract waste that may have gone to standard rules sites. They said that inert landfill sites will still struggle against 'zero waste' initiatives that seek to divert waste from landfill and higher overheads when compared to waste recovery activities. Another added that planning permission is also harder to obtain for disposal activities. We accept that these proposals will not help inert landfill sites to attract waste in the face of 'zero waste' initiatives, which exist due to waste policy implementing the waste hierarchy. However, the move to bespoke permitting for recovery operations of comparable complexity will result in the overhead margin being

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reduced. Another respondent suggested that a move to recognise mineral working restoration with inert waste as recovery would be far more effective at levelling the regulatory playing field. This is outside the scope of this consultation.

Regarding assessment of impact on water resources and groundwater

One respondent said that while the costs to business appear to be robust and based on evidence, the stated benefits to water are not referenced and appear to be based on a single study. They also expressed the view that we need evidence of the current regime actually impacting on water resources in order to justify these claims.

Our assessment of the benefit of protecting groundwater and therefore drinking water supplies was based on modelling and reasonable assumptions about the impact that leachable pollutants could have on drinking water supplies and a conservative estimate of the value of drinking water. Our modelling considered a fictional but realistic scenario of bund construction at a scale, in a location and using waste types permitted by current standard rules. The results showed that peak concentrations of pollutants in the aquifer may not occur until 250 – 1,000 years from the date of deposit, but that exceedence of reference values (such as Drinking Water Standards) could occur within 10's of years. The Deposit for Recovery regime has not been in place for long, so pollution from previous activities, and impact on water resources, may not yet be evident. Also, the light touch nature of our current regulation of deposit for recovery activities means that there is little monitoring of groundwater quality that takes place around permitted sites, with no monitoring at all at those that operate under standard rules. While the full benefit of these changes to groundwater may not be realised for some years, we considered it important to include these wider impacts in the assessment to build a more complete picture.

Some other comments were made in answer to this question that we have addressed these in responses covering other questions.

Q7. Will the proposals have any other impacts that we have not identified? These could be financial impacts or costs and benefits that are not readily quantifiable.

11 respondents answered this question. 6 said yes, there are other impacts that we have not identified, 2 said no and 3 did not know.

Q7b. Please explain your answer.

One respondent said that without more information it is difficult to estimate the full benefit to the environment, as sites develop.

Two respondents said that some operators are unlikely to obtain bespoke permits in all cases where they previously operated under standard rules. They considered that increasing the complexity and cost of waste activities is likely to result in more environmental crime.

One respondent highlighted that the recent introduction of the Loss on Ignition testing regime for transfer station fines, by HMRC, could lead to more waste fines being diverted to waste recovery sites. The proposed changes will assist in managing this. This waste stream would not be permitted under the new standard rules and it would only be permitted under the existing standard rules where the fines are also “soil substitutes”. The bespoke permitting process will allow consideration of waste acceptance procedures to prevent waste fines from being accepted where they are

unsuitable for recovery. We recognise the potential impact of the landfill tax regime and will ensure that our compliance assessment activities are appropriately targeted.

Some other points were raised that we have responded to in other sections of this document.

Q8. Please tell us if you have any other views or comments on these proposed revisions that have not been covered by previous questions.

We have already responded above to some of the points raised in answers to this question. The following additional points were raised.

Regarding our permitting approach

One respondent said that it already takes 4 months to get a permit plus a month of pre-application discussions. They thought that these proposals will make it more difficult to get a permit. Another said that if permitting takes longer than it should then costs will increase, e.g. if the 'clock stops' during determination. They said that these additional costs have not been factored in to the BEA. A third respondent commented that there is no statutory timescale for applications for permits to operate under standard rules and delays are often experienced.

No change in our permitting process is proposed. It is true that more applicants will require bespoke permits and these can sometimes take longer to be determined because they usually require site specific technical assessment. There are statutory timescales for determining standard rules and bespoke permits and these are comparable (3 months for standard rules and 4 months for bespoke permits). We aim to determine all permit applications, regardless of their complexity, within 13 weeks.

The clock will only stop if we require further information that is missing from the application. We will provide updated guidance on what bespoke applications will need to include and will continue to offer pre-application advice. Applicants should ensure that applications are complete when they submit them.

Regarding the interface with exemptions

One respondent commented that these proposals are more restrictive than the U1 exemption. Another said that In Scotland exemptions allow this type of operation.

Regulations in England and Scotland are different in many respects. In England the [U1 exemption](#) allows the use of specified wastes in construction. The U1 exemption does include other wastes that are not included here, but only in small quantities and for specific end uses. For example, up to 1,000 tonnes of various wood wastes can be used to create tracks, paths, bridleways or car parks only, or up to 1,000 tonnes of non-hazardous dredgings can be used for construction (extended to 5,000 tonnes for land drainage works). Broadly speaking, larger activities pose a greater risk to the environment than smaller activities. We consider that the risk posed by activities involving larger quantities of wastes included within the U1 exemption cannot adequately be assessed generically.

Regarding habitats

One respondent considered that the standard rule preventing an activity within 50 m of site designed under a Biodiversity Action Plan (BAP) (2.4.2 (b)) is not a well crafted condition. They said that significant rural areas are speculatively demarcated as such and that in their experience we apply this rule rigidly, without considering the risks and controls. As a consequence every application within 50 m of a BAP is permitted as a

Tier 2 Bespoke activity. They recommended that we remove this standard rule or provide guidance on how the EA considers each BAP.

The impact on the BAP site or species is not considered by the Generic Risk Assessment and the described approach to bespoke permitting is correct. This allows us to consider the site specific risk and mitigation, to ensure the BAP site is protected. We screen for relevant nature conservation sites using a sector-specific approach. We base this on the sensitivity of the species or habitat, and on the hazards caused by the permitted activity (such as toxic contamination, nutrient enrichment, habitat loss, siltation, smothering, disturbance and predation etc). Not all BAP species or habitats are relevant for each standard rule activity. We assess the risks to each of these nature conservation features for each activity or permit. We offer pre-application advice so applicants can check with us in advance of applying for a standard rule permit to ensure the nature conservation screening criteria can be met. The onus of mitigating any impacts on the BAP habitats lies with the operator at all times.

Another respondent commented that the location criterion relating to great crested newts may mean that additional surveys are required and costs are incurred, and that some proposals may not go ahead as a result. We have not introduced a new location criterion relating to Great Crested Newts. The requirements of the new rule set are the same as those included in SR 2010 No's 7, 8, 9 and 10.

Regarding noise and vibration

We were asked why we are seeking to regulate noise when this is the duty of planning authorities. The EA has a statutory duty to regulate noise from permitted activities. The planning regime considers noise from the permitted development which in many cases will not be the same thing. The Local Authority powers in relation to statutory nuisance are restricted where the activity that is generating noise is covered by a permit. All our permits, including standard rules, impose suitable conditions to control noise from the permitted activity that are both reasonable and necessary. We are not proposing to change them.

Regarding Guidance on deposit for recovery

One respondent said that we need to provide clear guidance for our National Permitting Service so that demands for information at the permitting stage are reasonable. Another said that our current guidance on defining recovery, RGN 13, needs review.

RGN 13 is under review as part of the cross-government Smarter Environmental Regulation Review (SERR) project. We already have internal guidance for our permitting officers to ensure that we require information and set permit conditions on a risk basis. However, our revised guidance on recovery will include technical guidance for applicants and operators.

Regarding future changes to our GP3 guidance

In the Business Engagement Assessment attached to our proposals we outlined potential future proposals to restrict deposit for recovery operations in Source Protection Zone 1 through a change to GP3. One respondent considered this to be 'gold plating' and asked for the evidence of increased risk to be presented. The current wording in GP3 already recognises that deposit for recovery activities, unlike other waste activities that do not involve the permanent deposit of waste, cannot be readily removed if there are serious issues with compliance. GP3 also already states that where there is an intrinsic risk we will object. It is our considered opinion that the majority of deposit for recovery activities likely fall into this category and we intend to reflect this view in the wording of our new position. This will also bring these activities in line with inert landfill sites, to which we already object in SPZ1 for similar reasons.

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Regarding technical competence

One respondent commented that the technical competence requirements for the new standard rules will need to be identified. We will work with scheme providers to confirm the technical competence requirements. This activity is considered to be “Medium Risk” under the WAMITAB/CIWM scheme.

Regarding transitional provisions

One respondent said that there was no good reason for retrospective introduction of the new rules. They expressed the view that the costs of existing operators migrating to standard rules are another unnecessary burden and are unacceptable. Another respondent thought that costs would be particularly high if there is a need to re-submit a Waste Recovery Plan. One respondent described the costs of migration as “extortionate”, highlighting that most activities carried out under standard rules are small, low risk and time limited. One respondent considered that the proposed 6 month transitional period may need extending. Another suggested that 9 months would be better. A further respondent suggested that existing standard rules holders be granted a variation to operate under the new standard rules if they comply, free of charge.

While most activities that operate under standard rules are short term, the permits that authorise those activities remain in place until they are surrendered. In October 2014, 19 of the 30 activities permitted to operate under standard rules in 2010 (the first year of introduction) remained permitted. These permits had been in place for over 4 years in 7 cases.

We are making these changes because we consider that the current rules authorise activities that present an unacceptable risk of pollution. The longer this situation remains, the greater the risk of pollution occurring. However, we need to balance the need to move all operations to the revised permitting regime with the need to minimise impact on existing operations. Transitional provisions are a well established way of doing this.

We will proceed to adopt the transitional arrangements we proposed in the consultation, however we will extend the transitional period to 9 months from the date that the new rules are published. This will give operators more time to complete their operations and avoid the need to obtain a revised permit. This will reduce the Equivalent Annual Net Cost to Business of this change.

We must recover our permitting costs whenever we carry out permitting work, so it will be necessary to charge a fee even where operators move from operating under existing standard rules to new standard rules. This is because we need to assess whether new location criteria are met and that references to waste types in the Waste Recovery Plan are amended. We will not however require re-submission of Waste Recovery Plans for detailed assessment if the proposed scheme is not changed in any way. Where a recovery decision has already been made and a permit issued we will not re-visit that decision if the activity is not changed.

Other comments

The introduction of a time limit on storage prior to use was welcomed by a respondent, who asked what the implications would be if this was not complied with. We decide how to respond to breaches of any permit condition in accordance with our Enforcement and Sanctions Guidance.

Some typographic errors were identified by one respondent along with formatting suggestions. We have corrected errors and changed formatting in some places, where necessary, to be consistent with our template for new standard rules.

5 Soil transfer, treatment and recovery

5.1 Summary of findings and the actions we will take

5.1.1 Proposals we consulted on

We consulted on the following proposals:

- Including additional advisory text on the need to meet end of waste status for any waste derived materials and the use of any waste quality protocols or codes of practice if they exist.
- Modifying waste acceptance procedures to require prior chemical analysis of soils derived from known or suspected contaminated sites.
- Clarifying the list of authorised treatment activities in the mobile plant permit for the treatment of soils, materials and products to allow simple segregation and sorting activities as a standalone as well as associated recovery activity.

The proposed modifications would be to the following sets of standard rules:

SR2008 No1 75kte: Household, commercial and industrial waste transfer station.

SR2008 No2: Household, commercial and industrial waste transfer station (no building).

SR2008 No3 75kte: Household, commercial and industrial waste transfer station with treatment.

SR2008 No4: Household, commercial and industrial waste transfer station with treatment (no building).

SR2008 No5 75kte: Household, commercial and industrial waste transfer station and asbestos storage.

SR2008 No6: Household, commercial and industrial waste transfer station with asbestos storage (no building).

SR2008 No7 75kte: Household, commercial and industrial waste transfer station with treatment and asbestos storage.

SR2008 No8: Household, commercial and industrial waste transfer station with treatment and asbestos storage (no building).

SR2008 No10 75kte: Inert and excavation waste transfer station.

SR2008 No11 75kte: Inert and excavation waste transfer station with treatment.

SR2009 No5: Inert and excavation waste transfer station below 250Kte.

SR2009 No6: Inert and excavation waste transfer station with treatment below 250Kte.

SR2008 No.27 – Mobile plant for the treatment of soils and contaminated material, substances or products.

The consultation invited views on whether there were any barriers to complying with the modified standard rules, whether there were any significant financial impacts on business and whether respondents had and other comments or views to make.

5.1.2 Level of response

We received and considered a total of 6 responses. Out of the 6 responses; three were from industry, two were from non-government organisations and one was from a Local Authority employee.

5.1.3 Key findings and the actions we will take

The majority of respondents agreed with our approach to the modification of standard rules for soil transfer, treatment and recovery activities.

We are satisfied that the proposed modifications are appropriate and that there are no barriers to compliance. Furthermore we are also satisfied that these modifications will only have a financial impact upon those operators who are not currently complying with existing Duty of Care and end of waste requirements.

We therefore plan to proceed with the implementation of these changes with the aim of re-issuing modified rules sets towards the end of 2015.

Please find below our detailed responses to the questions and main comments raised by our respondents to the Standard Rule Consultation No 14.

5.2 Responses to questions and our response to these

Q1 Are there any barriers to complying with this standard rule?

Out of 6 responses received 4 respondents said there was no barrier to compliance, one said there was and one "didn't know".

One of the respondents who did not think there would be any barriers to compliance pointed out that by providing further clarity in relation soils and end of waste it raises awareness of the need to comply with the relevant article of the Waste Framework Directive.

The respondent who thought that there would be barriers to compliance pointed out that "The final products produced will be required to comply with industrial specifications. In some cases special testing has to be carried out for a specific project." This response is also relevant to Question 2 as it concerns financial impact

Regarding concern over barriers to compliance with the standard rules

We are satisfied that the proposed modifications are appropriate and that there are no barriers to compliance. As later respondents point out, operators should already be subjecting the inputs and outputs of their treatment processes to appropriate testing in order to comply with existing Duty of Care and end of waste criteria. The purpose of these modifications is to highlight existing legal responsibilities.

Summary of responses Standard Rules for the Environmental Permitting Regulations – Consultation No14

Question two: Do you think that the proposed modifications will have a significant financial impact overall on your business?

Out of 6 responses 3 did not think the modifications would have a significant financial impact, 2 did and one “didn’t know”.

One of the respondents who thought that the modifications would not have a significant financial impact pointed out that the costs of compliance at their facility were already built in to the charges made to their customers.

One of the respondents who thought the modifications would have a significant financial impact pointed out that “In theory there should not be increase in costs as in theory waste operators should be meeting end of waste criteria”.

The other respondent who thought there would be significant impacts pointed out that “There will be additional operational costs”. It is this same respondent who, in responding to the previous question, rightly identified the need for product testing of materials sold back into the marketplace in order to meet end of waste criteria.

Regarding concern over financial impact of modifications

We are satisfied that these modifications will only have a financial impact upon those operators who are not currently complying with existing duty of care and end of waste requirements. Any increase in costs should be recouped in the price charged for acceptance of wastes or sale of subsequent non-waste products. These modifications will therefore assist in maintaining a level playing field for those operating in the marketplace.

Regarding a request for further guidance on applying waste acceptance conditions

One respondent in providing an answer to question 2 requested clarity as to when visual inspection of materials should take place. As the permit condition in question relates to waste acceptance procedures at the waste facility we can confirm that the requirement is to visually examine each load of material as it arrives at the facility.

The same respondent also suggested that it would be useful to provide additional guidance on the definition of contaminated sites for the benefit of operators.

In line with the proposed permit condition, the operator should seek a detailed analysis of any soils identified as being contaminated on the waste transfer note. Detailed analysis should also be sought for soils arriving from sites where, as a result of either visual or olfactory checks or clear identification of the origins of the waste as being from an Industrial or Manufacturing site, they have reason to suspect that contamination may have arisen.

We intend to highlight the response to this question when introducing the modifications with relevant permit holders.

Question three: Please tell us if you have any other views or comments on these proposals that have not been covered by previous questions.

Only 2 respondents provided additional views or comments. Both respondents indicated their support for the modifications with one respondent stating:

"I believe that greater clarity is needed and has been needed for a number of years in relation to waste soils and their appropriate use. The majority of waste management and/or waste companies believe waste soils meet the WRAP QP for the production of aggregates from inert wastes and/or end of waste status which is clearly not the case. Overall I see this consultation process and implementation of the amendments into the standard rules permits in relation to soils and end of waste as positive."

6 Next Steps

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

New and amended standard rules which bring into effect the decisions on Deposit for Recovery and Soil transfer, treatment and recovery activities will be published on the Gov.uk website before the end of 2015.

The BEA for landspreading will be published before end 2015 and following this, changes to permits will be published in early 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

Appendix A List of respondents

Landspreading & digestate storage

Anonymous responses (1)

Individual responses (4)

4R Group

ADAS UK Ltd

Agrivert

Anaerobic Digestion & Bioresources Association

Anaerobic Digestion Operator's Working Group

Andigestion Ltd

Anglian Water

Association of Independent Meat Suppliers

B&C Farming Ltd

Buckingham Group Contracting Limited

CIWM

Confederation of Paper Industries

Digit Resource Management Limited

Earthcare Technical Ltd

Ecoganix Ltd

Environmental Protection UK

Environmental Services Association

FGS Agri Ltd

Greenworld Sales Ltd

GWE Biogas Limited

K W Purvis Ltd

Land and Water Services Ltd

Leicestershire County Council Waste Management Team

Leo Group Limited

McCreath Simpson & Prentice

MPA

N T Killingley Ltd

National Farmers Union

New Earth Solutions Group

Northumbrian Water

Southern Water

South West Water Ltd

Summary of responses Standard Rules for the Environmental Permitting Regulations – Consultation No14

Tamar Energy Group
Thames Water Utilities Ltd
The Renewable Energy Association
The Renewable Energy Company
United Utilities Water Limited
Veolia Environmental Services UK Plc
Viridor Waste Management
Water UK
Wessex Water Services Ltd/GENeco
White's Recycling Ltd
Yorkshire Water

Deposit for recovery (some organisation gave a joint response)

Individual response (1)

AA Environmental
A R Remediation Ltd
BAM Nuttall
Booth Ventures
Blendcheck
British Aggregates Association
Buckingham Group Contracting Ltd
Canal & Rivers Trust
Core 11 community group
CIWM
Digit Resource Management Ltd
EDF Energy
Einig Contracting
Energy UK
Environmental Protection UK
Hargreaves Services plc
Keyway (Gloucester) Limited
Mineral Products Association
National Farmers Union
N B Clark Ltd
PJ Carey (Contractors) Limited
Tetron Point
Viridor Waste Management Ltd
Yorkshire Water

Soil transfer, treatment and recovery

Individual responses (1)

BAM Nuttal Ltd

BHP Crushing & Screening Ltd

Environment Protection UK (EPUK)

Institute of Civil Engineers (ICE)

N B Clark Ltd

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