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## **Water UK's Response to the Defra Consultation on Environmental Permitting Programme Phase 2**

### **Introduction**

Water UK welcomes the opportunity to respond to the Defra consultation on Environmental Permitting Programme Phase 2 with proposals to widen the Environmental Permitting Regime by incorporating Discharge Consenting, Groundwater Authorisation and Radioactive Substances Regulation.

Water UK represents water and wastewater service providers in the UK. Our members contribute to protection and enhancement of public health and the environment. We support the principles of sustainability, better, streamlined and efficient regulation.

### **General Comments**

We support the Better Regulation initiative that has been designed to reduce costs for industry by cutting red tape, while continuing to protect the environment and human health. We would like to see a clearer demonstration and evidence that the current proposal to extend the EPP will indeed lead to reduced costs for the water industry. For example, the proposal as a package will include a detailed guidance document and although its contents could have cost implications for our industry, we believe this is not at this stage properly accommodated in the Regulatory Impact Assessment. Until the guidance has been completed we cannot determine if the overall aim to reduce costs for industry will be achieved for our industry.

The Discharge Consenting and Groundwater Authorisation regimes are mature and robust workable regimes, at the level of detail provided in the consultation document, we fail to see that any significant additional benefit for the industry will be realised by implementing these proposals. We are also concerned about what impact conversion of existing consents to the new permits would have on the industry.

Exemptions – Whilst we welcome the intention to have exemptions we would welcome more information on the risk assessment method undertaken to arrive at the thresholds proposed. We think the

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groundwater exemption process should also consider whether the discharge is 'direct' or 'indirect'.

We respond to the specific questions in the consultation document as follows.

### **Response to Specific Questions in the consultation document**

**Question 1** – *To what extent do consultees agree that the written consultation criteria have been adhered to?*

A number of the consultation criteria have been adhered to however some of the exceptions include those that are to follow such as provision of feedback to consultees. We are also unable to comment on whether officials running consultations have sought guidance on how to run an effective consultation exercise.

We are pleased that Defra organised a workshop as part of the consultation process to seek and gather views and, encourage stakeholders to contribute to the development of the programme.

We note that one of the requirements of the consultation process is for formal consultation to take place when there is scope to influence policy outcome. We think the ongoing EA consultation 'Working together - Your role in environmental permitting' appears to prejudge the outcome of this Defra consultation. If this is the case, then this particular criterion has not been adhered to.

**Question 2** - *Do stakeholders agree with the way in which the RSR application process would be widened to cover investigative work at sites that may be intended for the disposal of solid radioactive waste? If so, what type of solid radioactive waste disposal facilities do you consider staged regulation should be used for?*

Solid radioactive disposal is outside the water industry's area of expertise, so we have no comments to offer.

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

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Water UK strongly supports retention of the four-year rule for Discharge Consents and should be extended to Groundwater Authorisations. In addition, we suggest serious consideration is given to extending the period to five years in line with the Periodic Review process or six years in line with the River Basin Planning Cycles. Consenting requirements have financial implications, it is therefore vital any revisions are considered and costed, with any impacts on customers' bills duly allowed for. We also think that the four-year rule provides good discipline for the EA to consider consenting requirements in a strategic manner instead of an ad-hoc basis. We do not subscribe to the view that the four years "causes the regulator to avoid taking a more risk-based approach to setting permit conditions and incentivises the regulator to impose stricter prescriptive limits than might otherwise be necessary". Objectives of water bodies and watercourses are known in advance. The EA should set consent requirements on the basis of proper evidence-base otherwise the first step should be a requirement for such evidence to be built up by the EA before any changes to the consent requirements and conditions are made.

We also do not subscribe to the view that because the four-year rule does not apply to other regimes under EPP it is a de-merit. EPP is expected to be risk-based, reduce cost and admin burden, so it is counter intuitive to argue against a system that mitigates very well against avoidable investment uncertainties and risks reduced costs. We suggest the four-year rule is extended to six years for all sectors in line with the River Basin Planning process to provide certainty of investment by all sectors.

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

Yes, we agree with the Government proposal to retain the current Discharge Consenting procedure where appeals continue to have effects of suspending the new conditions until the appeal is resolved. The appeal provision is a safeguard that encourages the regulator to apply rigour to its consenting process and conditions. We think this better regulation but ultimately appeals should be prevented through better liaison between the Regulator and industry.

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

We support EA to retain regulation of discharge consent and groundwater authorisations. We suggest the general principle that Regulators should be encouraged to improve collaborative working through joint MoU and not necessarily by resorting to powers of direction.

**Question 6** - *Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate discharge consenting into the EP Regulations?* **Question 7** - *Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate groundwater into the EP Regulations?*

We have combined our responses to Questions 6 and 7 by providing comments on the specific proposals in Chapter 4.

**Proposal 1** – If proven necessary, we would agree that the EP Regulations are introduced by adopting the geographic scope provisions of the EP Regulations for discharge consent and groundwater authorisation regimes. We have no comment on the Radioactive Substances Regulations.

**Proposals 2 and 3** – We note that the terms “Operator” and “Regulated Facility” have their roots from IPPC. Given that most of the water industry’s discharge consents and groundwater authorisations are not captured by the IPPC regime, the introduction of the terms pose additional regulatory and financial risks to water companies, which should be avoided, or otherwise properly reflected in the Impact Assessment.

For example, some water companies manage and operate assets on behalf of third parties although they are not the asset owners who are ultimately responsible for the investment requirements of these assets.

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We also think use of the term “regulated facility” for discharge consents and groundwater authorisation is inappropriate. For example, regulation of the effluent quality for discharge consents and groundwater authorisations apply to the point of discharge to surface or groundwater and not the entire regulated facilities. This will have auditing and operational implications that will introduce additional policy implementation costs and admin burdens both on regulator and water companies.

We suggest the terms ‘operator’ and ‘regulated facility’ should be clarified for our sector or appropriate alternative found. We will be happy to work with Defra to agree appropriate terms.

**Proposal 4** – We support the application of GBR to discharge less than 5m<sup>3</sup>/d to surface waters, and an exemption for discharges less than 2m<sup>3</sup>/d to groundwater. We ask for confirmation that these provisions are applicable to water industry assets of a similar size.

**Proposal 5** – We support the application proposal for discharge consents and groundwater authorisation.

**Proposal 6** – The principle to consolidate multi-permits on a site into a single site permit appears to be attractive, however we cannot see the benefits of cutting red tape, reducing admin burden or cost to our sector.

We think the periods for determination of applications are reasonable, although the four-month period allowed for granting permits and for variations where public participation is required may be problematic where there are objections. We think provision needs to be qualified.

**Proposal 7 (Operator Competence)** – We note the key elements within the proposals that affect skills are as follows:

**Operator Competence** – under the EP Regulations, a regulator must not issue nor transfer an environmental permit where it considers that the operator will not comply with the permit conditions (Schedule 5 paragraph 13). The Government considers that requirements for operator competence support the aims of the EP Regulations, and encourages the use of appropriate management systems. Regulators are encouraged to adopt a risk-based approach to assessing operator competence. Specific

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industry-led technical competence schemes have been designed for the waste sector but not for the other sectors.

***Discharge Consenting (DC)*** – spells out that environmental permit applications should be refused where the regulator considers that the operator will not comply with permit conditions.

The water industry currently operates a Competent Operator Scheme to ensure the competency of operatives working on water supply and treatment works. This scheme is supported by members of Water UK and is facilitated by Energy and Utility Skills on their behalf. It has been developed in consultation with the Drinking Water Inspectorate and is fully adopted by the members of Water UK across all four nations.

We believe that this scheme is suitable to meet the requirements of the Environmental Permitting Programme phase 2 for Groundwater Authorisations. Additionally we believe that this scheme could form the basis as a model for demonstrating competence of sewage treatment works operatives. Indeed many companies have already been proactive and are using the Competent Operator model for sewage treatment works operatives.

The industry would welcome further discussion with DEFRA in establishing the future competency model for sewage treatment works operatives.

***Proposal 8*** – See our response to Question 3.

***Proposal 9 (Transfer)*** – We support the proposal to transfer part or all of an environmental permit between different parties and agree that the joint transfer notification provision is used for discharge consents and groundwater authorisations.

***Proposal 10 (Compliance)*** – We recommend that further details are provided on compliance before the proposal is adopted as it has potential to increase or reduce regulatory burden. We also recommend that inspection proposals including the frequencies should be subject to further consultation prior to adoption.

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***Proposal 11*** – We do not believe it is practical to use suspension of notices for a continuous service such as public wastewater treatment for long durations. Where will the continuous effluent flow go?

We support the introduction of a common approach to enforcement and suspension notices and the removal of the prohibition notice approach.

***Proposal 12*** – We welcome retention of emergency defence. We do not think it is necessary to align the maximum penalties under WRA and EPR given that penalties are less for offences committed under the WRA than EPR. We suggest this provision in the draft EPR regulation should be revised.

***Proposal 13 (Public Registers and Access to Information)*** - We support the principle to adopt a common public register, however we suggest that clarity is provided on obligation of all regulators, the ownership and responsibility for update of information particularly where a single site permit involves activities regulated by different regulators.

***Proposal 14 (Public Participation and consultation)*** - We support the adoption of a common risk-based approach to consultation and public participation and would hope this would lead to a leaner process for those discharges into areas where a number of different Agencies and Organisations may have an interest.

***Proposal 15 (Revocation)*** - We support the adoption of powers to enable discharge consents and groundwater authorisations to be revoked in whole or in part. Clarity and confirmation that partial revocation relates to consent modification or variation to the conditions will be helpful.

***Proposal 16 (Surrender)*** – We support the use of the simple notification mechanism that would automatically bring the consent to an end at any time without the need for the regulator to separately revoke the permit. However, we suggest that the regulator provide confirmation of the surrender for closure and audit trail purposes.

***Proposal 17 (Transition)*** - We agree with the proposal that existing discharge consents and groundwater authorisations would automatically become environmental permits. We also support the proposal that outstanding applications continue to be determined under existing systems and, if granted, such permits become environmental permits.

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***Proposal 18 (Appeals)*** - See our response to Question 4.

***Proposal 19 (Guidance)*** - We support the proposal to adopt common EP model guidance for the candidate regimes. We anticipate that all such guidance documents will be subject to the normal consultation procedures.

***Proposal 20 (Service of Documents and Submission of Forms)*** - We think the proposal to provide a standard approach to the servicing of documents and submission of forms is reasonable.

***Proposal 21 (Designation of Regulator)*** – See our response to Question 5

***Proposal 22 (Power to require information)*** – It will be useful to have further details on the extent of which the power will apply.

***Proposal 23 (Power to give direction to regulators)*** - We acknowledge these proposals but would urge caution on the use of a general power to direct Regulators and would ask that the use of these powers be carefully considered in view of our duties as a statutory water and sewerage undertaker.

***Proposal 24 (Powers of Entry)*** - No comment

***Proposal 25 (Prohibition Notices)*** - We note your proposal regarding discharges onto land. We think the speculative options regarding possible requirement for an EP Permit, or registration as an exemption, or prohibition under the Landfill Directive needs to be developed before any decisions are made. We do not believe it appropriate at this stage to speculate about groundwater authorisation or whether prohibition notices duplicate the requirement imposed through the EP Regulations. Deposit of discharge on land is an area of concern for our industry for which we would like further engagement at an appropriate time.

***Proposal 26 (Self Regulation by the Environment Agency)*** - We support the proposal that the EA should have a transparent and open system for self-regulation in terms of acquisition and holding of environmental permits for EA activities.

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**Question 8** - *Do you agree with the specific proposals in Chapter 4 of this consultation to incorporate radioactive substances regulation into the EP Regulations?*

Radioactive substances regulation is outside the scope of the water industry's core expertise. We therefore offer no comments.

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

We think the forecasts of cost and benefits should be improved. For example the consultation does not contain any provisions for setting fees and charges, therefore the full cost benefit picture cannot be seen which makes it difficult to evaluate the impact of the proposals. The Impact Assessment only takes into account savings in administration time/resources and we suggest this needs to be balanced against any proposed reduction or increase in charging costs.

We also note that the consultation does not contain any detailed proposals on which discharges could be covered by a standard permit. It is therefore difficult to evaluate any full benefit of the proposals to our industry. This is disappointing as a potential list for consideration was produced as an outcome of the EPP2 Water Stakeholder Forum in July 2008.

**Question 10** - *Can consultees identify further measures relevant to the integration of permitting regimes which would produce greater reduction in administrative burden for regulated industry while continuing to deliver the requirements of EU directives and protection of the environment and human health?*

No further comments.