Draft Regulations laid before Parliament and the National Assembly for Wales under section 2(8) and (9)(d) and (e) of the Pollution Prevention and Control Act 1999 for approval by resolution of each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2011 No. 0000

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Made - - - - ***

Coming into force in accordance with regulation 1(b)

These Regulations are made in exercise of the powers conferred by sections 2 and 7(9) of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**1**).

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, have in accordance with section 2(4) of that Act consulted(**2**)—

(a) the Environment Agency;

(b) such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate; and

(c) such other bodies or persons as they consider appropriate.

A draft of this instrument has been approved by a resolution of each House of Parliament and by the National Assembly for Wales pursuant to section 2(8) and (9)(d) and (e) of that Act(**3**).

Accordingly, the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, make the following Regulations.

(**1**) 1999 c. 24. Paragraph 9A was inserted by S.I. 2005/925, Schedule 6, paragraph 2(2)(a). Paragraph 21A was inserted by section 38 of the Waste and Emissions Trading Act 2003 (c. 33). Paragraph 24 was amended by S.I. 2005/925, Schedule 6, paragraph 2(2)(b). Paragraph 25 was amended by section 105(1)(a) and (b) of the Clean Neighbourhoods and Environment Act 2005 (c. 16). Functions of the Secretary of State under section 2 (except in relation to offshore oil and gas exploration and exploitation), so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by article 3 of the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions were then transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**2**) The requirement in that section to consult the bodies and persons mentioned was transferred from the National Assembly for Wales to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32). The consultation carried out by the National Assembly for Wales has effect as if it were carried out by the Welsh Ministers by virtue of paragraph 39(3) of that Schedule to that Act.

(**3**) The reference in section 2(8) to approval by each House of Parliament has effect in relation to exercise of functions by the Welsh Ministers as if it were a reference to approval by the National Assembly for Wales by virtue of paragraph 33 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

PART 1

General

Citation and commencement

1. These Regulations—

(a) may be cited as the Environmental Permitting (England and Wales) (Amendment) Regulations 2011; and

(b) come into force on 1st October 2011, except regulations 2, 3, 12 and 14 which come into force on the day after the day on which these Regulations are made.

Interpretation

2. In these Regulations—

(a) "the 2010 Regulations" means the Environmental Permitting (England and Wales) Regulations 2010(**4**); and

(b) "the Act" means the Radioactive Substances Act 1993(**5**).

PART 2

Amendments to the 2010 Regulations

Amendment of the Environmental Permitting (England and Wales) Regulations 2010

3. The 2010 Regulations are amended in accordance with regulations 4 to 15.

Amendment of regulation 2 (interpretation: general)

4.—(1) Paragraph (1) of regulation 2 (interpretation: general) is amended as follows.

(2) In the definition of "radioactive material", for "paragraph 2" substitute "paragraph 3".

(3) In the definition of "radioactive substances activity", for "paragraph 5" substitute "paragraph 11".

(4) After the definition of "radioactive substances activity", insert—

""radioactive substances exemption" means an exemption under Part 7 of Schedule 23 from the requirement for an environmental permit in respect of a radioactive substances activity;".

(5) In the definition of "radioactive waste", for "paragraph 4" substitute "paragraph 3".

(6) In the definition of "waste", for "paragraph (4)" substitute "paragraph (5) where it applies".

(7) For paragraph (4) substitute—

"(4) Paragraph (5) applies where a person ("A")—

(a) carries on a radioactive substances activity described in paragraph 11(2)(b) or (c) or (4) of Part 2 of Schedule 23 in respect of radioactive waste;

(**4**) S.I. 2010/675; relevant amendments by S.I. 2011/ 988.
(**5**) 1993 c.12; amended by S.I. 2001/4005, S.I. 2010/675, 1995 c. 25, 1993 c.11, 2009 c.23

(b) is exempt under regulation 12(3) from the requirement for an environmental permit in respect of that activity and that waste ("the relevant exemption"); and

(c) the waste ("the applicable radioactive waste") is—

(i) NORM waste (as that term is defined in Part 7 of Schedule 23); or

(ii) the waste described in the first, second or sixth row of column 1 of table 6 in Part 7 of Schedule 23.".

(8) After paragraph (4), insert—

"(5) Where this paragraph applies, for so long as the relevant exemption applies to A, the applicable radioactive waste must be treated for the purposes of these Regulations as if it were waste other than radioactive waste.".

Amendment of regulation 5 (interpretation: exempt facilities)

5. In paragraph (1) of regulation 5 (interpretation: exempt facilities), for the definition of "exempt groundwater activity", substitute—

""exempt groundwater activity" means—

(a) a stand-alone groundwater activity that meets the requirements of paragraph 5 of Schedule 2; or

(b) a groundwater activity that—

(i) is a groundwater tracer test as defined in paragraph 1 of Part 3 of Schedule 3;

(ii) is also a radioactive substances activity by virtue of the using of radioactive material as a part of that test; and

(iii) meets the requirements of paragraph 5 of Schedule 2.".

Amendment of regulation 12 (requirement for an environmental permit)

6. In regulation 12 (requirement for an environmental permit), for paragraph (3) substitute—

"(3) In respect of a radioactive substances activity, paragraph (1) does not apply to a person to whom a radioactive substances exemption applies for that activity.

(4) Paragraph (5) applies to a person ("A") who—

(a) receives radioactive waste from another person ("B") for the purposes of A disposing of that waste; and

(b) subsequently disposes of that waste.

(5) Where this paragraph applies, A does not require an environmental permit—

(a) for the receipt of waste from B, where B holds an environmental permit which allows B to dispose of the waste to A; or

(b) for the subsequent disposal of that waste by A, where the waste is disposed of in accordance with the permit held by B.".

Amendment of regulation 14 (content and form of an environmental permit)

7. In regulation 14(6)(b) (content and form of an environmental permit), for "paragraph 5(5)" substitute "paragraph 11(5)".

Amendment of regulation 17 (Single site permits etc.)

8. In regulation 17(3) (single site permits etc.), for "paragraph 5(5)" substitute "paragraph 11(5)".

Amendment of regulation 67 (Interpretation of Part 7)

9.—(1) Regulation 67 is amended as follows.

(2) After the definition of "2007 transitional application", insert the following definition—

""article" and "substance" have the meaning given to them in Schedule 23 to these Regulations.".

(3) The definition of "radioactive substances exemption order" is revoked.

Revocation of regulation 72 (Radioactive substances exemption orders)

10. Regulation 72 is revoked.

Insertion of regulations 72A, 72B, 72C and 72D

11. After regulation 71, insert—

"**Previously excluded radioactive material and radioactive waste**

72A.—(1) Paragraph (3) applies to a person ("A") who was carrying on an activity ("the continuing activity") described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity carried on by A—

(a) in respect of a substance or article which—

(i) immediately before 1st October 2011 was not defined as radioactive material or radioactive waste; but

(ii) on that date became defined as radioactive material or radioactive waste by virtue of the amendments made to those definitions on that date ("the relevant amendments");

and

(b) which on that date became a radioactive substances activity described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23 by virtue of the relevant amendments.

(3) Where this paragraph applies, A is exempt from the requirement to hold an environmental permit in respect of the continuing activity until the end time set out in regulation 72C.

Previously exempt radioactive substances activities

72B.—(1) Paragraph (3) applies to a person ("A") who was carrying on an activity ("the continuing activity") described in paragraph (2) immediately before 1st October 2011 and who continues to carry on the activity on or after that date.

(2) The continuing activity referred to in paragraph (1) means an activity—

(a) described in paragraph 11(2), (4) or (5) of Part 2 of Schedule 23; and

(b) in respect of which, immediately before 1st October 2011, A was exempted under regulation 72 (as in force at that time) from the requirement to hold an environmental permit ("the existing exemption").

(3) Where this paragraph applies, the existing exemption continues to apply to A until the time set out in paragraph (4), subject to any conditions which applied to that exemption.

(4) The time referred to in paragraph (3) is—

(a) if A does not become exempt in respect of the continuing activity under a radioactive substances exemption before 1st April 2012, the end time set out in regulation 72C; or

(b) if A does become so exempt, the time at which the exemption begins to apply.

End time: regulations 72A and 72B

72C.—(1) For the purposes of regulations 72A and 72B, the end time is—

(a) where, before 1st April 2012, A makes a permit application—

(i) if that application is granted, the time of grant;

(ii) if that application is refused and—

(aa) A appeals against the refusal under regulation 31, the time at which the appeal is determined or withdrawn;

(bb) A does not appeal against the refusal, the end of the day which is the final appeal date;

or

(b) where no such application is made, the earliest of—

(i) 1st April 2012;

(ii) the time at which A ceases to carry on the continuing activity; or

(iii) for the purposes of regulation 72A only, the time a radioactive substances exemption first applies to A in respect of the continuing activity.

(2) In paragraph (1)—

"final appeal date" means the last day on which an appeal against a refusal to grant an environmental permit could have been brought under regulation 31, but not including any extension of the time limit for making an appeal allowed by the appropriate authority under paragraph 3(2) of Schedule 6; and

"permit application" means—

(a) an application for an environmental permit under regulation 13 in respect of (as applicable) the continuing activity under regulation 72A or 72B; or

(b) an application under regulation 20 for a variation of an existing environmental permit, in respect of the inclusion in the permit of that continuing activity.".

Existing radioactive substances permits

72D.—(1) Paragraph (4) applies to a person ("A") who was carrying on an activity described in paragraph (2) ("the continuing excluded activity") or paragraph (3) ("the continuing exempt activity") immediately before 1st October 2011 and who—

(a) continues to carry on that activity after that date; and

(b) holds an environmental permit in respect of the activity ("permit A").

(2) The continuing excluded activity referred to in paragraph (1) means an activity which —

(a) was a radioactive substances activity immediately before 1st October 2011; but

(b) ceases to be such an activity on that date because it was carried on in respect of a substance or article which ceased to be defined as radioactive material or