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 by each House of Parliament and of the Assembly.

DRAFT STATUTORY INSTRUMENTS

2009 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Groundwater (England and Wales) Regulations 2009

Made - - - -	***
Coming into force - -	***

These Regulations are made in exercise of the powers conferred by section 2 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—

(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(**2**).

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. 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 S.I. 2005/1958. Those functions were then transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) 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.

PART 1

Introduction

Citation, application and commencement

1. These Regulations may be cited as the Groundwater (England and Wales) Regulations 2009; they apply in England and Wales and come into force on the day after they are made.

Interpretation

2. In these Regulations—

"the Agency" means the Environment Agency;

"direct input" in relation to groundwater means the introduction of a pollutant into groundwater without percolation through soil or subsoil;

"groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

"indirect input" in relation to groundwater means the introduction of a pollutant into groundwater after percolation through soil or subsoil;

"permit" means any of the following in so far as they relate to groundwater—

(a) a permit under regulation 13;

(b) a discharge consent within the meaning of section 91(8) of the Water Resources Act 1991(**3**);

(c) an environmental permit under the Environmental Permitting (England and Wales) Regulations 2007(**4**), except to the extent that it relates to a Part B activity within the meaning of those Regulations;

(d) the registration of mobile radioactive apparatus under section 10 of the Radioactive Substances Act 1993(**5**); or

(e) an authorisation for disposal in accordance with section 13 of the Radioactive Substances Act 1993;

"pollutant" means any substance liable to cause pollution;

"pollution" means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment.

Meaning of "hazardous substance"

3.—(1) A hazardous substance is any substance or group of substances that are toxic, persistent and liable to bio-accumulate.

(2) This includes in particular the following when they are toxic, persistent and liable to bio-accumulate—

(a) organohalogen compounds and substances which may form such compounds in the aquatic environment;

(**3**) 1991 c. 57.
(**4**) S. I. 2007/3538.
(**5**) 1993 c. 12.

(b) organophosphorous compounds;

(c) organotin compounds;

(d) substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment;

(e) persistent hydrocarbons and persistent and bioaccumulable organic toxic substances;

(f) cyanides;

(g) metals (in particular cadmium and mercury) and their compounds;

(h) arsenic and its compounds;

(i) biocides and plant protection products.

(3) The Agency must publish a list of substances that it considers to be hazardous substances.

Meaning of "non-hazardous pollutant"

4. A non-hazardous pollutant is any pollutant other than a hazardous substance.

Exceptions

5. These Regulations do not apply in relation to the consequences of accidents or exceptional circumstances of natural cause that could not reasonably have been foreseen, avoided or mitigated.

Exemptions granted by the Agency

6.—(1) The Agency may exempt from the requirement for a permit, in any specific case or class of case, a discharge or activity that would result in—

(a) an input of a pollutant into groundwater of a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater;

(b) an input of a pollutant into groundwater that, for technical reasons, is incapable of being prevented or limited without using—

(i) measures that would increase risks to human health or to the quality of the environment as a whole; or

(ii) disproportionately costly measures to remove quantities of pollutants from, or otherwise control their percolation in, contaminated ground or subsoil.

(2) The Agency must keep a record of all exemptions granted under this regulation.

PART 2

Permits

Granting a permit

7. The Agency, the Secretary of State and Welsh Ministers must, for the purposes of implementing—

(a) Directive 2000/60/EC of the European Parliament and of the Council (establishing a framework for Community action in the field of water policy(**6**)), or

(b) Directive 2006/118/EC of the European Parliament and of the Council (on the protection of groundwater against pollution and deterioration(**7**)),

comply with these Regulations in exercising their functions in relation to permits.

Preventing the input of hazardous substances into groundwater

8. The Agency must, in granting a permit, take all necessary measures to prevent the input of any hazardous substance into groundwater.

Permits relating to non-hazardous pollutants to avoid pollution

9. The Agency must, in granting a permit, take all necessary measures to limit the input of non-hazardous pollutants into groundwater so as to ensure that such inputs do not cause pollution in groundwater.

Discharges that may be permitted

10. Notwithstanding regulations 8 and 9, provided it does not compromise the achievement of any of the environmental objectives relating to groundwater in Article 4 of Directive 2000/60/EC of the European Parliament and of the Council, the Agency may grant a permit for—

(a) the injection of water containing substances resulting from the operations for exploration and extraction of hydrocarbons or mining activities, and injection of water for technical reasons, into geological formations from which hydrocarbons or other substances have been extracted or into geological formations which for natural reasons are permanently unsuitable for other purposes, provided that the injection does not contain substances other than those resulting from the above operations;

(b) the reinjection of pumped groundwater from mines and quarries or associated with the construction or maintenance of civil engineering works;

(c) the injection of natural gas or liquefied petroleum gas for storage purposes into geological formations which for natural reasons are permanently unsuitable for other purposes;

(d) the injection of natural gas or liquefied petroleum gas for storage purposes into other geological formations where there is an overriding need for security of gas supply, and where the injection is such as to prevent any present or future danger of deterioration in the quality of any receiving groundwater;

(e) construction, civil engineering and building works and similar activities on, or in the ground which come into contact with groundwater;

(f) discharges of small quantities of substances for scientific purposes for characterisation, protection or remediation of water bodies limited to the amount strictly necessary for the purposes concerned;

(g) reinjection into the same aquifer of water used for geothermal purposes;

(h) inputs of pollutants that are the result of—

(i) interventions in surface waters for the purposes, amongst others, of mitigating the effects of floods and droughts, and for the management of waters and waterways;

(**6**) OJ No L327, 22.12.2000, p. 1 as last amended by Directive 2008/105/EC of the European Parliament and of the Council (OJ No L 348, 24.12.2008, p. 84).
(**7**) OJ No. L372, 27.12.2006, p. 19.

(ii) artificial recharge or augmentation of groundwater bodies for the purposes of groundwater management.

Permits generally

11.—(1) When the Agency receives an application for a permit that might lead to the discharge of a pollutant, it must ensure that all necessary investigations have been carried out to ensure that it grants any permit in accordance with regulation 8 or 9.

(2) If it grants a permit, it must include conditions requiring all necessary technical precautions to be observed to ensure the objectives of regulations 8 and 9 are achieved.

(3) A permit may not be granted without examination of—

(a) the hydrogeological conditions of the area concerned,

(b) the possible purifying powers of the soil and subsoil, and

(c) the risk of pollution and alteration of the quality of the groundwater from the discharge,

and without establishing whether the input of pollutants into groundwater is a satisfactory solution from the point of view of the environment.

(4) A permit may only be granted if the Agency has checked that the groundwater (and, in particular, its quality) will undergo the requisite surveillance.

Review of permits

12.—(1) A permit may be reviewed at any time.

(2) All permits granted before the coming into force of these Regulations must be reviewed before 22nd December 2012.

(3) The Agency must on review assess compliance with the conditions of the permit, and if the conditions are not complied with, the appropriate steps must be taken to ensure compliance including, if necessary, the revocation of the permit.

PART 3

Discharge of a hazardous substance or non-hazardous pollutant

Discharge of a hazardous substance or non-hazardous pollutant

13.—(1) It is an offence to cause or knowingly permit the discharge of any hazardous substance or non-hazardous pollutant in circumstances that might lead to an indirect input of that hazardous substance or non-hazardous pollutant into groundwater unless it is carried on under and in accordance with a permit granted by the Agency under this regulation.

But this does not apply in relation to—

(a) a discharge that requires a discharge consent within the meaning of section 91(8) of the Water Resources Act 1991;

(b) the operation of a regulated facility under the Environmental Permitting (England and Wales) Regulations 2007;

(c) a disposal that requires an authorisation under section 13 of the Radioactive Substances Act 1993; or

(d) the keeping or use of mobile radioactive apparatus that requires a registration under section 10 of that Act.