



## Annex D – Environment Agency

### Introduction

The Planning Inspectorate's Advice Note 11: Working with Public Bodies covers many of the generic points of interaction relevant to the Planning Inspectorate and the Environment Agency. The purpose of this Annex is to help applicants understand the Environment Agency's particular role in infrastructure planning. It explains what permits, consents and licences the Environment Agency has power to issue and may be required in addition to a Development Consent Order (DCO) for a nationally significant infrastructure project (NSIP).

This Annex has been updated to reflect the changes (where appropriate) made by the Localism Act 2011 to the Planning Act 2008 which mean that the Secretary of State is the decision-maker for DCO applications. Reference is also made in this Annex to "the Planning Inspectorate" which carries out certain functions related to national infrastructure planning on behalf of the Secretary of State.

This Annex will be kept under review so as to ensure that it remains relevant and up to date, for example because of future organisational or legislative changes affecting the Environment Agency and / or the Planning Inspectorate. The Planning Inspectorate welcomes feedback on the content of this Annex.

### General statutory roles, functions and powers

The Environment Agency regulates certain activities that have the potential to harm the environment and people. It decides if relevant environmental permits and other consents and licences should be issued and, if so, what conditions should be applied. It monitors compliance with the permit / licence conditions and takes enforcement action if appropriate.

The Environment Agency is a competent authority for the purposes of certain EC Directives<sup>1</sup> and it also maintains an overview of risks to people and the environment from flooding and coastal erosion.

The Environment Agency's regulatory, licensing and advisory powers and duties derive (inter alia) from the following key Acts and Regulations, including:

- Environment Act 1995
- Environmental Permitting (England & Wales) Regulations 2010
- Water Resources Act 1991
- Salmon & Freshwater Fisheries Act 1975

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<sup>1</sup> For example the Habitats Directive 92/43/EEC which has been transposed into UK legislation through the Conservation of Habitats and Species Regulations 2010 (as amended) and the Seveso Directive 82/501/EEC on the major-accident hazards of certain industrial activities which has been transposed into UK legislation through the Control of Major Accident Hazards Regulations 1999 (as amended)



- The Planning Act 2008 (the 2008 Act) and secondary legislation made under the 2008 Act

## Other obligations

The Environment Agency is also subject to the provisions of the Environmental Information Regulations 2004, the Data Protection Act 1998 and the Freedom of Information Act 2000. Geographical extent of the Environment Agency's roles and responsibilities

The Environment Agency's responsibilities align to the terrestrial environment within England and Wales and for regulating emissions to the marine environment within 3 nautical miles of the coastline.

Environment Agency Wales is part of the corporate Environment Agency for England and Wales and (unless indicated otherwise) references in this Annex to the Environment Agency should be taken to include the Environment Agency Wales.

## Role of the Environment Agency under the Planning Act 2008

The roles and responsibilities of the Environment Agency under the Planning Act 2008 fall into the following categories:

- statutory consultee, as a prescribed consultee by applicants under s.42 of the 2008 Act or by the Planning Inspectorate as a consultation body in relation to any EIA scoping
- consenting body / authority

## Pre-application consultee

The Environment Agency is a prescribed consultee<sup>2</sup> under the 2008 Act and secondary legislation made under it and an interested party (as a statutory party)<sup>3</sup> in the examination process.

The Environment Agency, like all prescribed consultees, will have input into the pre-application process as set out in the Advice Note. The Environment Agency encourages applicants to begin pre-application consultations at the earliest possible time and to ensure that project timetables take regulatory requirements into account. The Environment Agency recommends that applicants review the appropriate National Policy Statement(s) and follow any policy regarding pre-application engagement with the Environment Agency.

To assist applicants the Environment Agency will make available, on request, existing environmental baseline data and any of its environmental strategies that are relevant

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<sup>2</sup> Under s.42(a) Planning Act 2008 and Schedule 1 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, at:

<http://www.legislation.gov.uk/ukxi/2009/2264/contents/made>

<sup>3</sup> Under s.102(1) Planning Act 2008 and the Infrastructure Planning (Interested Parties) Regulations 2010, at: <http://www.legislation.gov.uk/ukxi/2010/102/contents/made>



and can advise applicants on the appropriate scope for environmental risk assessments/surveys. When consulted on a pre-application the Environment Agency will identify a lead contact and inform the applicant.

The Environment Agency encourages early engagement and there is nothing in the 2008 Act or related secondary legislation that would prevent applicants from informally consulting the Environment Agency before carrying out the required statutory consultation under s.42 of the 2008 Act.

Applicants must give prescribed consultees a minimum of 28 days to respond to s.42 consultation. In order to enable the Environment Agency to provide effective technical input the Environment Agency recommends that applicants discuss at an early stage what period of time should be allowed for the s.42 consultation response to be made.

## **EIA consultation body**

The Environment Agency has a statutory role as a consultation body under the Infrastructure (Environmental Impact Assessment) Regulations 2009. Where an applicant has requested a scoping opinion from the Planning Inspectorate in relation to a proposed Environmental Impact Assessment (EIA) development the Environment Agency will be consulted by the Planning Inspectorate about the information they consider should be included in the environmental statement and will be under a duty to make information available to the applicant.<sup>4</sup>

The Environment Agency also encourages applicants to discuss with them the scope of any EIA at an early stage to explore, for example, whether careful site selection could minimise or eliminate environmental impacts.

This Advice Note, and Planning Inspectorate Advice Notes 3, 7 and 9, set out detailed advice on the implications of EIA under the 2008 Act regime.

## **Role of the Environment Agency as a consenting / licensing authority**

The Environment Agency has power to grant permits, licences and consents under a number of enactments. In relation to NSIPs it is the responsibility of applicants to identify all the permits, consents and licences that are required.

For example consents under the Water Resources Act 1991 which may be required include licences or consents for:

- abstraction of water (surface water and groundwater)
- impounding surface water
- placing structures that affect the flow of a watercourse

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<sup>4</sup> Regulations 8 and 9 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009



- development within the byelaw distance of a main river or tidal flood defence or that includes raising of ground levels in the floodplain beside a main river

Consents that protect fish may be required under the Salmon and Freshwater Fisheries Act 1975 and other legislation. Conditions to protect fish may be placed on other permits, licences and consents. For example conditions may require measures that prevent fish entering water intakes, or limit heat pollution from water outlets.

The attached table sets out the consents, licences and permits that the Environment Agency has the power to grant.

## Environmental Permitting

The Environmental Permitting Regulations 2010 (EPR 10) require operators of certain facilities, which could harm the environment or human health, to obtain permits from the Environment Agency. Environmental permits can combine several activities into one permit. There are standard permits supported by 'rules' for straightforward situations and bespoke permits can be prepared for complex situations. There is [an introduction to environmental permitting](#) on the Environment Agency website.

The Environment Agency's environmental permits cover:

- industry regulation,
- waste management (waste treatment, recovery or disposal operations),
- discharges to surface water
- groundwater activities, and
- radioactive substances activities.

Characteristics of environmental permits include:

- they are granted to operators (not to land)
- they can be revoked or varied by the Environment Agency
- operators are subject to tests of competence
- operators may apply to transfer environmental permits to other operators subject to a test of competence
- conditions may be attached

It is the responsibility of applicants to identify whether an environmental permit is required (in addition to DCO) before an NSIP can be constructed or operated. Failure to obtain an environmental permit is an offence.

The Environment Agency allocates a limited amount of permitting pre-application advice free of charge. Further advice can be provided, but this will be subject to cost recovery.

Applicants are encouraged to "twin track" environmental permit applications to the Environment Agency with their DCO applications to the Planning Inspectorate in order to facilitate timely decision-making.



Ideally applicants should work towards submitting the permit application at least 6 months prior to the submission of an application for a DCO. The submission of an early permit application means that the Environment Agency is much more likely to be in a position to be able to give an indication as to whether it is likely to grant a permit before the examination closes and to provide useful information which will inform the Examining authority's recommendations to the Secretary of State. Also it is in the interests of an applicant to ensure that any specific requirements arising from permitting are capable of being carried out under the works permitted by the DCO. Otherwise there is a risk that requirements under permitting could conflict with the works which have been authorised by the DCO (e.g. a stack of greater height than that authorised by the DCO could be required) and render the DCO impossible to implement.

When considering the timetable to submit their environmental permit application, applicants should bear in mind that the Environment Agency will not be in a position to provide a detailed preliminary view on the permit application until it is at the stage of being able to issue its draft decision letter for public consultation and this will only happen at an advanced stage in the permitting process.

## **Competent authority**

The Environment Agency is a competent authority for the purposes of the Habitats Regulations when determining applications for permits, consents and licences for which it is the regulatory authority. Where a NSIP has the potential to have a significant effect on European sites and a permit, consent or licence is also required, the Environment Agency (in addition to the competent authority under the Planning Act) will be required to assess the likelihood and scale of these effects and if necessary to then carry out appropriate assessment (and consult the relevant nature conservation body) before making a decision under the relevant legislation. In these circumstances applicants are encouraged to coordinate their own consultation with Natural England or Countryside Council for Wales on both Habitats Regulations assessments. Planning Inspectorate Advice Note 10 provides further information.

The Environment Agency is also, jointly with the Health and Safety Executive (HSE), the competent authority for the Control of Major Accident Hazards Regulations (COMAH Regulations). If applicants are unsure whether the COMAH Regulations apply to a NSIP they should contact the HSE or the Environment Agency.

## **Relevant reports advice and guidance**

The [Environment Agency website](#) provides information on environmental topics and environmental regulation.

The Environment Agency has a Memorandum of Understanding with the Highways Agency that is supported by technical guidance. The guidance will be relevant to highways infrastructure which requires a DCO.



The Environment Agency has, or is preparing, a number of Working Together Agreements with other organisations it has regular contact with.

## Contact Points

In the first instance applicants should contact the Environment Agency's National Customer Contact Centre:

- by calling 08708 506 506 if you are in the UK
- by calling 00 44 1709 389201 if you are outside the UK
- by e-mail at [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)
- by mail at:

National Customer Contact Centre  
PO Box 544  
Rotherham  
S60 1BY

Applicants should remember to provide contact details so that the Environment Agency can reply promptly.

## Planning Inspectorate Contact Details

Director of National Infrastructure	Ian Gambles <a href="mailto:ian.gambles@infrastructure.gsi.gov.uk">ian.gambles@infrastructure.gsi.gov.uk</a>	0303 444 5080
Head of Case Management	Janet Wilson <a href="mailto:janet.wilson@infrastructure.gsi.gov.uk">janet.wilson@infrastructure.gsi.gov.uk</a>	0303 444 5058
Head of Environmental Services	Sheila Twidle <a href="mailto:sheila.twidle@infrastructure.gsi.gov.uk">sheila.twidle@infrastructure.gsi.gov.uk</a>	0303 444 5052



## Table of Environment Agency Consents

Paragraph reference <sup>5</sup>	Permit, licence or consent	other information
7	Environmental permit for a radioactive substances activity under the Environmental Permitting (E&W) Regs 2010	Disposal and accumulation of radioactive waste included under EPR 2010 environmental permit
26	Environmental permit or the registration of an exempt waste operation under the Environmental Permitting (E&W) Regs 2010	Registration of waste operations included under EPR 2010 environmental permit
27	Licence under ss24 and 25 of the Water Resources Act 1991 (restrictions on abstraction and impounding)	Abstraction (s24) &/or impoundment (s25) licence
28	Consent under 109 or under byelaws made under para. 5 of Schedule 25 to the Water Resources Act 1991	Flood defence consent
28	Environmental permit or the registration for a water discharge activity under the Environmental Permitting (E&W) Regs 2010	
30	Permit under s79A of the Water resources Act 1991	Drought permit
31	Consent under s166 of the Water Industry Act 1991 (consents for certain discharges under s165)	Consent for discharges for works purposes by water undertakers
32	Consent under s17 or s23 of the Land Drainage Act 1991 (supervision of local authority powers under sections 14 to 16; prohibitions of obstructions etc in watercourses)	Flood defence consent
33	Any consent under s30 of the Salmon and Freshwater Fisheries Act 1975 (introduction of fish into inland waters)	Fish introduction consent
34	Licence to under s1 of the Import of Live Fish (E&W) Act 1980 (power to limit the	Fish keeping or release

<sup>5</sup> Reference is to paragraph number of Part 1 of the Schedule to the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010



	import, keeping and release of fish and fish eggs)	licence
35	Consent under regulation 9 of the Water Resources (EIA) Regulations 2009	Abstraction &/or impoundment consent
36	Permit under the Greenhouse Gas Emissions Trading Scheme Regulations 2005	Onshore installations for Schedule 1 activities (includes thermal combustion for energy)
37	Registration under regulation 9 of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations 2000	Keep a register of holders and an inventory of equipment that contains PCBs to ensure safe disposal
38	Authorisation under regulation 8 of the Persistent Organic Pollutants Regulations 2007	Disposal of Persistent Organic Pollutants
39	Environmental permit or the registration for a groundwater activity under the Environmental Permitting (E&W) Regs 2010	
41	Registration under regulation 21 of the Hazardous Waste (England and Wales) Regulations 2005	Registration of affected premises
42	A notice of determination of a reference by a sewerage undertaker under Chapter 3 of Part 4 of the Water Industry Act 1991 (trade effluent)	Determination of sewerage undertaker's trade effluent consent to accept discharge of certain trade waste