

*The River Ouse, Barcombe Mills*



*Guardians of the Water Environment*



**NRA**

*National Rivers Authority  
Southern Region*

**NRA POLICY IMPLEMENTATION  
GUIDANCE NOTES (PIGN)**

**1 April 1991**

Date of issue:  
1 April 1991

NRA POLICY IMPLEMENTATION GUIDANCE NOTE NO. 1

ENFORCEMENT AND PROSECUTION  
WITH RESPECT TO POLLUTION INCIDENTS AFFECTING CONTROLLED WATERS

1. Introduction

This document sets out guidance to NRA staff in relation to the enforcement of pollution legislation with regard to pollution incidents. It does not cover such matters as the procedures for taking and analysing samples, documentation, and the format of reports and data handling. These matters will be considered separately with the object of achieving, as far as possible, uniformity between regions. It also does not cover enforcement relating simply to breaches of consent to discharge.

2. Section 107 Offences

Under part (1)(a) of Section 107 it is an offence to cause or knowingly permit "any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled water". Solid waste matter includes litter, irrespective of whether or not it is judged to be poisonous, noxious or polluting. It is also an offence under Section 4 of the Salmon and Freshwater Fisheries Act to cause matter to enter water that is poisonous to fish, the food of fish, or the spawn of fish.

3. Because of the great diversity in polluting materials and pollution incidents, it will not be possible for the NRA to derive precise definitions for the purposes of Part (1)(a) of Section 107 of the Water Act, but there is a need for the NRA to be consistent in its application of this part of the Act; this applies equally to Section 4 of the Salmon and Freshwater Fisheries Act (1975). In order to provide some consistency, it has therefore been decided to categorise pollution incidents into one of three categories and to use that categorisation to determine the actions that should follow any particular incident.

4. The Categories of Pollution Incidents that warrant the taking of formal samples

The criteria to be used to establish in which category an incident falls are set out in Table 1. The report prepared by the investigating officer must contain sufficient

detail, by reference to the criteria, to indicate the relevant category into which the incident falls.

5. In a category 1 incident, prosecution would normally follow. In a category 2 incident, action taken will be a prosecution, or a letter of caution, or a letter of warning, depending on consideration of factors set out in Table 2. Category 3 will normally give rise to warning letters if the likely identity of the discharger is known, although a caution should be considered where there has been a long record of incidents.

*A caution may be given where it is inappropriate to prosecute but it is clear that the offence is committed; it will require the alleged offender to acknowledge his guilt. If guilt is not acknowledged, then prosecution should proceed. The caution will be formally given and formally recorded by the Regional Solicitor and may then be referred to in subsequent court action in relation to a different offence; a copy should be sent to the investigating officer. A note on the procedure for cautions is at Annex A.*

*Warning letters are of lesser importance. They warn the recipient that his activity (or lack of it) has or may have given rise to pollution; he is warned to amend his ways. A standard warning letter is at Annex B.*

#### 6. Reporting of incidents

The investigating officer is responsible for collecting all evidence of the incident. Except where he judges it to be category 3, he should proceed as if a prosecution is to be taken. The officer will therefore need primarily to obtain evidence showing:

- i) the nature and source of the discharge;
- ii) the cause of the discharge;
- iii) that it pollutes water;
- iv) that, where relevant, it exceeds consent conditions;  
and
- v) the identity of the person causing the discharge.

Evidence will normally include a formal sample of the source of discharge and samples of the receiving watercourse up and down stream of the discharge. The officer must also obtain sufficient details to indicate in which category of pollution the incident falls (see Table

1). If it is likely to fall into category 2, sufficient details of the factors in Table 2 must be obtained. Ancillary corroborative evidence should be collected where appropriate e.g. photographs, videos, eye witness accounts, biological and fish data.

7. Recommendations and Authorisations

Detailed procedures may vary between NRA Regions due to variation in structures, individual responsibilities and management preferences; but bearing in mind the volume of prosecutions, their general routine nature, the need to act promptly, efficiently and economically, and the executive nature of the decision to prosecute, the following procedures are considered appropriate.

8. The investigating officer will report to the Pollution Control Officer of the Region (or his equivalent). In his report he should make recommendations as to the category of the incident and, in the case of a category 2 incident, whether a prosecution, a caution, or a warning letter is appropriate.
9. The Pollution Control Officer should consider the report and determine the pollution category. In the case of category 2 he can either decide with reference to Table 2 that a warning letter is sufficient and shall arrange for this to be sent, or he can forward the report to the Solicitor with the recommendation to prosecute or caution, giving reasons.
10. The Solicitor shall consider the evidence and if satisfied it is a proper case for prosecution, lay the information, having first sent in appropriate cases a letter to the defendant stating that a prosecution is being considered. Such cases are those where the Solicitor considers that mitigating circumstances relevant to the decision to prosecute may become apparent. The Solicitor shall consider the mitigating circumstances in all cases and shall not prosecute if he considers they are such that no useful purpose would be served in bringing the matter to court. If he considers a recommendation for caution is appropriate he will act accordingly.
11. In exceptionally major or repeated major or serious pollution incidents, the Solicitor shall make an application to the Magistrates for trial in the Crown Court, after discussion with the senior Pollution Control Officer.

12. If the Solicitor does not accept the recommendation to prosecute, he shall report the reasons to the Pollution Control Officer or equivalent, who may then refer the matter to the Regional General Manager. The Regional General Manager may wish to refer the matter to Head Office (Chief Scientist and Head of Corporate Affairs) for guidance.
13. It is the duty of each officer involved to keep his superiors informed of any cases which are sensitive and where the proposed action is likely to have implications of which they should be aware.
14. The conduct of proceedings, once commenced, is the responsibility of the Solicitor. He will be acting in the manner of a Solicitor in the Crown Prosecution Service and in accordance with the Attorney General's guidelines; he will therefore have similar powers to discontinue proceedings before or at trial, if the circumstances show this to be justified.
15. Time Scale  

As a guide, procedures should be adopted whereby in the case of warning letters, they are sent within two months of a pollution incident and, in the case of prosecution, informations are laid within three months. Cautions should similarly be administered within three months. This should allow adequate time for consultation.
16. Reports to Regional Advisory Boards and Head Office  

Each region is responsible for adopting procedures to keep its Regional Advisory Board (RAB) informed of pollution incidents and the results of cases taken to court in such manner as the RAB may require.
17. Regions should include in their monthly returns to Head Office details of number of incidents, the categories, and the results of prosecutions. Head Office will monitor the returns so as to report periodically to the Board of the NRA.

## Table 1 - Pollution Incident Categories

### Category 1

A major incident involving one or more of the following:

- a) potential or actual persistent effect on water quality or aquatic life;
- b) closure of potable water, industrial or agricultural abstraction necessary;
- c) extensive fish kill;
- d) excessive breaches of consent conditions;
- e) extensive remedial measures necessary;
- f) major effect on amenity value.

### Category 2

A significant pollution which involves one or more of the following:

- a) notification to abstractors necessary;
- b) significant fish kill;
- c) measurable effect on invertebrate life;
- d) water unfit for stock;
- e) bed of watercourse contaminated;
- f) amenity value to the public, owners or users reduced by odour or appearance.

### Category 3

#### Minor

Suspected or probable pollution which on investigation proves unlikely to be capable of substantiation or to have no notable effect.

Table 2 - Factors to Consider in Deciding Action to be Taken for Category 2 Incidents

If the factors under the prosecution heading below are more applicable to the circumstances than the factors under the warning letter heading, it will be a prosecution or caution. Otherwise a warning letter will be sent.

Prosecution or Caution

Warning Letter

- |  |  |
|--|--|
| 1. High risk to abstractions   | No risk to abstractions                |
| 2. Obvious fish kill   | Minor or no fish kill                  |
| 3. Amenity affected  | Amenity not affected                   |
| 4. Negligence  | Accidental spillage/discharge          |
| 5. Previous history of pollution or breach of consent condition at site or by polluter | No previous history                    |
| 6. Poor operational management   | Good operational management            |
| 7. Non-weather related   | Weather related                        |
| 8. No precautions taken  | Precautions taken though ineffective   |
| 9. Little or no post-incident remedial work  | Post incident remedial work good       |
| 10. Consent conditions significantly breached  | Consent conditions marginally breached |



## Annex A

### CAUTIONING IN RESPECT OF POLLUTION OFFENCES

#### AIMS

1. The purpose of a formal caution is:

- to deal quickly and simply with less serious incidents;
- to divert them from the criminal courts; and
- to reduce the chance of further offences being committed.

Note 1A A formal caution is not the only alternative to criminal proceedings. Nothing in these standards is intended to inhibit the practice of taking action short of a formal caution, such as no further action or a written warning letter. (Care should be taken in a warning letter not to impute guilt but simply to advise on future pollution prevention measures).

Note 1B A caution is not a form of sentence. It may not be made conditional upon the payment of compensation. Only the courts may impose such a requirement. However this does not preclude NRA from its normal rights to recover certain costs under section 115 of the Water Act.

#### DECISION TO CAUTION

2. A formal caution is a serious matter which we will record, which may influence our decision whether or not to prosecute in the case of further offences, and which may be cited in any subsequent court proceedings. In order to safeguard the polluter's interests, the following conditions must be met before caution can be administered:-

- there must be evidence of the polluter's guilt sufficient to give a realistic prospect of conviction;
- the polluter must admit the offence; and
- the polluter (or, in the case of a company, a person authorised to represent the company) must understand the significance of a caution and give informed consent to being cautioned.

Note 2A Where the evidence does not meet the required standard, a caution cannot be administered.

Note 2B A caution will not be appropriate where a person does not make a clear and reliable admission of the offence (for instance, if the offence is denied). It does not

follow, however, that in such circumstances prosecution will be inevitable. It may be appropriate to take no further action, although the presumption must be that the NRA is prepared to prosecute.

Note 2C In practice, consent to the caution should not be sought until it has been decided that cautioning is the correct course. The significance of the caution must be explained; that is, that a record will be kept of the caution by the NRA, that the fact of a previous caution may influence the decision whether or not to prosecute if the polluter should offend again, and that it may be cited if the polluter should subsequently be convicted of an offence.

Note 2D If a polluter meets the first two criteria but refuses consent to a caution, prosecution need not be the only realistic option, particularly if the polluter's understanding of a caution is in doubt.

#### **PUBLIC INTEREST CONSIDERATIONS**

3. If the first two of the above requirements are met, consideration should be given as to whether a caution is in the public interest. Factors which should be taken into account here are:

- the nature of the offence (which category it falls into);
- the likely penalty if the polluter was convicted;
- previous history or pollution; and
- the polluter's attitude towards the offence, including co-operation in remedial work.

Note 3A The most serious incidents, particularly those involving a major environmental impact, will not be suitable for a caution, regardless of the previous history of the polluter.

Note 3B Prosecution may not be appropriate where the incident is not particularly serious and the probable result on conviction would be a conditional or absolute discharge. But the likelihood of a more substantive penalty upon conviction need not necessarily preclude a caution, although a prosecution is the preferred option.

Note 3C The polluter's previous history (including any recent cautions) is an important factor, although not in itself decisive. A previous conviction or caution should not rule out a subsequent caution if other factors suggest it might be suitable - such as an appreciable lapse of time since the last offence, whether the most recent offence and previous offences are of different categories of

seriousness or were at different locations or plants, and the effects of a previous caution on the polluter's conduct of its operations.

Note 3D Two factors should be considered in relation to the polluter's attitude towards the incident : the degree of negligence with which it was committed and his subsequent attitude, and co-operation with the NRA and assistance in any clean-up work.

Note 3E In the case of incidents involving more than one party, the circumstances and degree of involvement of each party can vary greatly. Although consistency and equity are important considerations in the decision to charge or caution, each party should be considered separately; different disposals may be justified.

#### PROCEDURE

4. If the investigating officer (or manager) feels that a Formal Caution (as opposed to a warning letter) is appropriate, he should recommend that prosecution be taken subject to the offer of a Formal Caution. It is not considered that it will normally be appropriate to recommend a Formal Caution unless a prosecution would be feasible (i.e. no significant risk of absolute discharge).

The final decision on the suitability of a Formal Caution will be taken by the Solicitor in accordance with these guidelines and the actual procedure for offering the Formal Caution will be for a letter in a standard form prepared by the Legal Department to be sent, and for any queries (whether written or verbal) to be referred to the Legal Department to ensure that the guidelines on informed consents have been met.

#### RECORDING CAUTIONS

5. All Formal Cautions should be recorded and records kept. The Water Quality Department may also wish to keep records of informal action taken, and the reasons for it. But care should be taken not to record anything about an individual which implies that he is guilty of an offence when the evidence is in any doubt.

Note Formal Cautions should be cited in court if they are relevant to the offence under consideration. In presenting antecedents, care should be taken to distinguish between cautions and convictions. Offences leading to some form of informal action may not be cited.

C A U T I O N

NAME OF OFFENDER :

ADDRESS/REGISTERED OFFICE :

DATE OF OFFENCE :

STATUTE CONTRAVENED :

DETAILS OF OFFENCE(S) :

[On behalf of the above mentioned Company] I admit the offence(s) described above and consent to being cautioned. It has been explained to me by my Solicitor that a record will be kept of this caution and that it may be cited in Court should the Company/I be subsequently found guilty of (a) further offence(s).

Signed : \_\_\_\_\_

Name : \_\_\_\_\_

Position in Company : \_\_\_\_\_

Date : \_\_\_\_\_

Appendix B

WARNING LETTER

Dear Sir

POLLUTION AT

---

It has been reported to me that on (date) at (place) there occurred a pollution of the (name of watercourse) and that in the view of the investigating officers this incident of pollution was attributable to your act or omission.

On this occasion the NRA does not propose to take any legal proceedings against you but I should warn you that any repetition of the incident would almost certainly lead to prosecution.

Yours faithfully

Date of issue:  
1 April 1991

**NRA POLICY IMPLEMENTATION GUIDANCE NOTE NO. 2**

**ENFORCEMENT OF NUMERIC DISCHARGE CONSENTS**

**1. Introduction**

Under Subsection 1 (c) of Section 107 of the Water Act, it is an offence to cause or knowingly permit any trade effluent or sewage effluent to be discharged into any controlled waters unless, under Section 108, there is a consent, licence or other statutory provision, order, or prescribed enactment, which serves as a defence. In short, to discharge such effluents in excess of such consents, licences, or whatever, is an offence, even though in many cases a breach of consent does not necessarily cause observable pollution in the receiving water. The NRA therefore maintains a very large monitoring programme to detect non compliance with consents to discharge; breaches of the conditions specified in the consents are absolute offences. Any failure by the NRA to collect admissible evidence to prove non compliance of effluents would thus render the NRA open to justifiable public criticism.

2. It is the NRA's remit to be a strong and consistent enforcement agency. It is also the NRA's intention to be fair and equitable to all dischargers, taking a firm line with breaches of consent. This is a necessary precursor to putting pressure on, and thus expecting resources to be committed by, those who are responsible for contamination of water from diffuse sources, such as the farming industry and those responsible for contaminated land.

**3. Dischargers Failing to Comply with Consent Conditions**

Where there are persistent breaches of consent, two principal causes can be identified: either the discharger is unable to comply with the current consent because of inadequacies in the treatment plant, or the operation and management of the plant is deficient. (Distinction between the two may need to be resolved by discussion with the discharger.) These two causes require a different approach and they apply equally to all forms of consented discharge.

Also the form of the numeric consent will vary; there will either be absolute conditions or there will be conditions related to a look-up table. There are three different situations to be considered:

- absolute standards - management failure;
- look-up table - management failure;

absolute or look-up table - plant inadequacy.

4. Absolute Standards - Management Failure

For consents with absolute limits (i.e. industrial consents, STWs with upper tiers and other absolute standards e.g. toxic metals) the procedure will be as follows. When a clear breach of consent is recorded - in other words, supportable within the analytical error - as a result of the normal sampling programme, the discharger will be sent a standard warning letter (Appendix A) and the reasons for breach discussed. The discharger will be notified that the next sample taken will be a tripartite one which, if resulting in failure, could lead to prosecution.

5. Look-up Table - Management Failure

On a monthly basis each set of samples will be reviewed. For an individual sample, where a failure of any parameter has occurred the following action will be taken.

A standard warning letter will be sent (Appendix A) and an explanation sought. If there is reason to suspect that this is a one-off event, and within the permitted number of sample failures, normal routine sampling will continue, but the discharger will be warned that further breaches will result in a regime of tripartite sampling, which could then lead to prosecution. If there is reason to suspect that this will not be a one-off event, the next sample taken will be a tripartite one. Tripartite sampling will then continue until:

- sufficient data has been collected to form the basis of prosecution;
- the discharge has improved such that over the subsequent three months, all tripartite samples pass, in which case normal sampling will be re-introduced; if, however, this results in further failed samples, tripartite sampling will be re-instated and continued to the end of the twelve month period since the first tripartite failure was recorded;
- the discharge is found to comply with its consent after the elapse of 12 month's of tripartite sampling.

If the tripartite sampling produces sufficient evidence to prove a failure of the consent, then a recommendation to prosecute will follow. (The NRA is considering whether cautions would be more appropriate where the breach of the consent condition is relatively minor; further guidance on this aspect will be issued shortly.) If prosecution does

not proceed, then the Regional General Manager, the Chief Scientist and the Director of Corporate Affairs must be informed.

6. **Absolute or look-up Table Standards - Plant Inadequacy**

With regard to those in this category, two separate groups may be identified, as follows.

- (a) In some cases, the discharger will already have a planned programme of works to bring the discharge within the terms of the existing consent, which will have been discussed with the NRA. In such cases, the NRA will not prosecute provided that:
  - it is considered that the pollution does not arise from negligent or dilatory action or from bad management or practices which are unconnected with the problems being addressed by the proposed works; and
  - every effort is still being made in the interim to comply with the consent conditions; and
  - any temporary works possible are carried out; and
  - the breach or its effect is not of such a magnitude as in any case to cause persistent pollution or to justify criminal proceedings in the public interest.
- b) In other cases, the NRA will not be aware of such planned programmes. The discharger should then be formally notified of the situation that he is liable to prosecution but be given the opportunity to produce an action plan to meet the existing consent conditions (unless there is a clear need to revise them in advance of Statutory WQOs, such as meeting compliance with an EC Directive or Statutory Instrument under the Water Act or the downstream water is already failing its existing "class"). This plan would be monitored to ensure compliance and if adhered to, the NRA would not prosecute pending completion.



APPENDIX A

Dear Sir,

STW

I write to inform you that a routine audit sample of the effluent from this sewage treatment works taken on                      by our staff failed to meet its consent standard. A copy of the analysis is enclosed. Are you able to afford any explanation for this failure?

A consequence will be that future audit samples may be taken in the manner prescribed by Section 148 of the Water Act 1989 and further failures could lead to subsequent prosecution.

Yours faithfully,

Date of issue  
1st April 1991

**NRA POLICY IMPLEMENTATION GUIDANCE NOTE NO. 3**  
**INTERIM GUIDANCE ON ISSUING CONSENTS FOR DISCHARGE**

1. **Introduction**

Last year the NRA was requested by the Secretary of State to review urgently the basis of issuing consents and demonstrating compliance; a policy working group on the subject was subsequently set up under the chairmanship of Mr David Kinnersley. This group reported to the NRA Board in March, and its results have gone out for public consultation (Discharge Consent and Compliance Policy : a Blueprint for the Future, Water Quality Series No. 1, 1990) before any of its recommendations are incorporated into 'official' NRA policy. In the meanwhile, however, NRA regions are having daily to issue consents; they therefore require guidance on how best to carry out this function on a consistent basis. The purpose of this note is to provide such guidance.

2. Because it is not possible to pre-empt any radical changes in practice which may result from the Kinnersley Group's report, all that this guidance note attempts to achieve is to draw together those elements of best practice already obtaining in the regions, together with recent practice in the DOE prior to Vesting Day. The aim is to achieve a common approach across all regions, particularly with regard to similar discharges. It is by no means comprehensive, and allowance has to be made for local latitude.

3. **General Conditions**

New or revised discharges from agricultural holdings, airfields, cooling and water-heat exchanges, fish farms, industrial sites, quarry and mineral workings, sewage treatment works (STW) and water works should all contain conditions relating to sampling facilities being made available, standard 'non-injurious to fish' and 'no visible oil and grease' or suitable numerical conditions as appropriate. All consents, except storm and emergency overflows, should include a condition limiting the volume discharged. Other conditions should be applied as appropriate. Consents should generally only be granted provided that existing "non-statutory" river quality objectives - plus EQOs arising from SI's relating to EC Directives - will be met, and that there will be no

deterioration of the receiving water. No deterioration means: no planned change in class or planned non-compliance with any WQO, and; not more than a planned 10% deterioration in the quality of the receiving waters as a result of the issued consent. All necessary controls should be incorporated, but the effect of adding additional determinands on the annual charge under the NRA Charging for Discharges Scheme should be borne in mind.

4. Water plc Sewage Treatment Works where numeric consents are appropriate

When consenting sewage treatment works the conditions set out in the recently adopted Directive on Municipal Waste Water treatment should be borne in mind, although full implementation of the Directive will not commence until 1993.

a) Look-up tables

Look-up tables will be used as the basis for assessing non-compliance for the sanitary determinands of suspended solids, Biochemical Oxygen Demand (Allylthiourea) [BOD<sub>5</sub> ATU], and ammonia where these determinands appear in the consent. Existing consents vary as to whether compliance with the look-up tables is assessed per determinand or per sample; all future consents must make it clear that sample compliance assessment is to be on a determinand by determinand basis. The NRA has, however, already declared that, for prosecution purposes, it will be necessary to treat each existing consent strictly as written.

b) Upper tier limits

Upper tier limits should be incorporated in all water plc sewage treatment works with numeric consents. Where reasonably practicable, the upper tier limit should be two times the consent value for BOD and ammonia, but 2.5 times for suspended solids; the former was the preferred value of the NRAAC. It should never be more than three times the consent value. The HMIP guidance in Appendix I may be of use in setting these limits.

c) Other determinands

Limits should also be placed on other determinands as appropriate or necessary. All non-sanitary determinands will, of course, have absolute limits.

d) Other conditions

For all new works, facilities must be provided which are capable of giving a measurement of, and recording, the volume of effluent discharged and the rate of discharge. For small works this may be a V-notch wier or similar; but for larger works, permanent facilities are required. Automatic sampling facilities may also be required, particularly for large works.

5. Water plc Descriptive Consents

In appropriate cases, descriptive consents may be used where the discharge meets all the requirements of the certificates set out in Appendix II.

6. Sea outfalls

Recent DOE advice is the subject of a separate PIGN. Any additions of disinfectants to sea outfalls are to be treated as a variation to the consent.

7. Storm sewage overflows (SSOs) from sewerage systems to the point of inlet to the STW

A separate policy note on SSOs will be issued in due course. Where reasonably practicable for new systems, storm overflows should not be allowed. Before consent is given to a storm overflow from any part of the foul sewerage system, the following guidelines should be considered:

Wherever possible, existing SSOs should:

- not contain significant quantities of trade effluent or 'Listed' substances as described in circular 7/89 and subsequently in the direction to the NRA under Section 146 of the Water Act 1990 relating to EC Directives on discharges of dangerous substances (Appendix III);
- not cause the receiving watercourse to fail an EQO or affect an SSSI;
- receive reasonable dilution so as to prevent nuisance downstream;
- have a means of screening or other method of solids separation installed, except in extreme cases where this is not technically feasible because of other requirements relating to the siting of the overflow (it may be necessary to permit an emergency screen bypass if fine screens are installed);
- have prescribed in their consent the flow conditions in the sewer, under which the overflow will come into

operation;

- have alarmed telemetry systems when sited in sensitive areas.

With regard to existing overflows, where possible deemed consents should be revoked if:

- there is serious visual pollution - particularly giving rise to public complaint - caused by the overflow;
- the operation of the overflow results in the failure of an EQO/EQS or pollution of a public supply source;
- the local authority notifies the NRA that the operation of the overflow causes a public health hazard;
- an overflow can be readily eliminated by sewerage or sewage treatment works modifications or extensions.

Consideration should be given to a reporting/recording system for the operation of SSO's when specified, and for situations where problems of water quality exist.

#### 8. Pumping stations

Before consents are given for new consents for emergency discharges from pumping stations, it must first be established that failure to provide such an overflow would result in substantial damage to the installation or to private property, and that all other possible remedial measures - such as storage - have been fully investigated. If such consents for discharge are still warranted, it is essential that:

- telemetry is installed to give an alarm of failure to a permanently manned plc office;
- minimum wet-well capacity is specified to give time for remedial action before an overflow occurs;
- facilities are provided to cover for power failure - either by a permanently installed or a mobile generator;
- screening or alternative methods of solids separation is provided to prevent the discharge of gross solids, unless this is totally impractical;
- at least one stand-by pump is installed.

All consents must include a requirement to maintain the works, and to record and report annually on the frequency

and duration of operations during the year.

For existing emergency discharges which have been given deemed consents by the Secretary of State, the above requirements should be satisfied within 3 years, and the consents should be reviewed by the end of 1991.

9. Water works

Consents should be absolute. Consents should include limits for additional determinands as appropriate, e.g:

- free chlorine;
- Al;
- polyelectrolytes;
- iron;
- pH;
- flow and frequency of operation; and
- a requirement to measure, record, and report annually on flows, plus conditions as necessary on the conditions and circumstances under which the discharge shall be made.

Note should also be taken of the requirements of Schedule 19 of the Water Act 1989 - the need to consent temporary or short-term discharges from waterworks installations etc.

10. Non-plc Sewage treatment works

Similar conditions should apply to private STW's, except that look-up table conditions will not apply.

11. Treated storm discharges

For discharges at sewage works, and for storm flows which are above the full treatment capacity of the works, constraints for operation should be included to minimise the polluting load to the river.

12. Industrial discharges

Each consent is, of necessity, specialised in nature but, in addition to containing limits for specific chemicals, it should also contain requirements to measure, record and report annually on flows, as indicated in Appendix III.

13. Cooling and water heat-exchangers

Consents for discharges to fresh water will normally have an appropriate temperature limit, and for tidal waters a 'thermal load' condition will also normally be required.  $\Delta T$  (temperature increase over inlet value) may also be included. A requirement to install and maintain temperature monitoring and recording equipment - accessible for inspection - should be included, and data on flows and temperature recorded and reported annually. Restrictions on the use of biocides should be included.

14. Swimming pools

Consents for the discharge of swimming pool water and filter backwash will not normally be granted; where they are, they must not contain more than 0.2 mg/l of total chlorine and the NRA must be given at least 3 days notice of the intention to make a discharge.

15. Fish farms

A standard consent is being drafted by the Farm Waste Group; this will be the subject of a separate PIGN.

16. Automated instruments

The NRA's general policy on this matter is still under discussion. Nevertheless, if required by the NRA, for a specific discharge, the installation of automated monitoring equipment which has dual discharger/NRA telemetry access is acceptable and is to be encouraged. The NRA should, however, ensure that such an installation is cost-effective, and its IT/IS implications discussed thoroughly.

17. Standard Application and Consent Forms

All ten regions use different consent and application forms and the legal basis of these should be confirmed with the regions legal expert to comply with the 1989 Water Act. All the computer systems are geared to the individual forms and in due course best practice will be adopted through the IS Strategy. Further advice will follow.

## APPENDIX I

### UPPER TIER CONDITIONS: GUIDELINES FOR HMIP INSPECTORS

It is proposed that the upper tier for time-limited consents should be set as follows:

- i. For Biochemical Oxygen Demand or Suspended Solids:
  - a. normally at three times the consent value;
  - b. where the BOD or SS values proposed to be consented in the interim exceed 80mg/l then a lower value for the upper tier may be set after consideration of:
    - the impact of the effluent on the receiving waters, including the dilution available;
    - the nature of the sewage under treatment;
    - the ability of the works consistently to meet the limit set, including past performance data and the potential for operating improvements prior to reconstruction.
  - c. In addition, there may occasionally be other cases where, because of the limited dilution available, a value of less than 3x would be appropriate to safeguard the receiving waters; set on the basis of similar considerations.
- ii. For Ammonia (where consented):
  - a. normally at two times the consented value; but
  - b. because of the importance of ammonia levels in many cases where an ammonia condition is applied, consideration would be given to the setting of a different value, either higher (up to a maximum of three times) or lower, after consideration of:
    - the impact of the effluent on the receiving waters, including the dilution available;
    - the nature of the sewage under treatment;
    - the ability of the works consistently to meet the limit set, including past performance data and the potential for operating improvements prior to reconstruction.



NATIONAL RIVERS AUTHORITY  
REGION

## WATER ACT 1989, SCHEDULE 12

CERTIFICATE ATTACHED TO A CONSENT TO DISCHARGE  
SEWAGE EFFLUENT (Small Developments)

On behalf of ..... [Water Services Ltd ("the Company")] .....,

I certify that, in respect of the discharge at National Grid  
Reference point ..... into

..... from the Company's sewage treatment works  
at ..... and in  
accordance with the application made on .....  
..... the following criteria are applicable:

1. The treated sewage effluent derives from a population of 250 or less and contains no authorised trade effluent.
2. There are no potable water supply intakes downstream which are likely to be adversely affected.
3. As far as is reasonably practicable, the works shall be operated so as to prevent:
  - (a) any matter being present in the effluent which will cause the receiving water to be poisonous or injurious to fish or to their spawn, or spawning grounds or food, or otherwise cause damage to the ecology of the receiving waters; and
  - (b) the treated effluent from having any other adverse environmental impact.
4. The Company will operate the works having regard, so far as relevant, to the guidance set out in the National Water Council's Occasional Technical Paper Number 4, "The Operation and Maintenance of Small Sewage Works" dated January 1980. In particular the works shall be maintained properly such that:
  - (a) it remains fully operational except at times of mechanical or electrical breakdown; and

- (b) any such breakdowns shall be attended to promptly and the equipment returned to normal operation as soon as possible; and
- (c) tanks shall be desludged at sufficient frequency and in such a manner as to prevent problems with septicity, rising sludge or excessive carry over of suspended solids.

Signed ..... Dated .....

Authorised to sign on behalf of the Company

Date of issue:  
1 April 1991

**NRA POLICY IMPLEMENTATION GUIDANCE NOTE NO. 4**

**SHORT-TERM (CONSTRUCTIONAL) VARIATIONS TO CONSENTS**

**1. Introduction**

Major capital works may result in temporary deterioration in the quality of discharges, or require short-term discharges to be made. In the case of Water and/or Sewage Utility companies, this could arise during the construction of new Water Treatment or Sewage Treatment works, or sewerage schemes. Similar situations may arise due to construction of motorways, large scale industrial developments, and flood defence schemes.

Slippage of a capital scheme, due to factors outside the contractors control, may also lead to a need to permit a short extension of the time-limited consent applied to the works.

**2. General Approach**

The NRA needs to adopt a firm yet practical attitude towards regulating such activities; the mechanism for so doing exists in the consenting provisions of the 1989 Water Act. As a general rule, any relaxation in discharge consent conditions should be the minimum necessary to carry out the work. Furthermore, a consent given for such activities should not lead to a failure of any existing Quality Objectives pertaining to the receiving water, although where the existing state of the water is near to the bottom of a river or estuarine class, then some depreciation into the lower class may be allowable unless an existing use will be derogated or an EC Directive failure will occur.

**3. Procedures to be adopted**

- (a) Consents would normally be structured in terms of a mean or percentile limit and an upper tier; they must also have a specified start and finish date. It is possible that, occasionally, a relaxation for a few days is needed to enable, for example, connections to pipework to be made. The NRA should agree in advance the number of days when this is permitted, over a set period (say three months).
- (b) Discussions with field pollution staff should be held to discuss the practicalities, phasing of works and

ameliorative measures. Where appropriate, temporary plant and/or civil works will be required to be in place before work commences and these must be specified in the consent.

- (c) The discharger (i.e. the owner of the site not the contractor or a subcontractor) must be required by the terms of the consent to provide written undertakings to inform the NRA of any failure of systems and to demonstrate reasonable endeavours to ameliorate any failures.
- (d) No assurance, either written or implied, can be given for exemption from prosecution or claims for damages if the consent conditions are breached.
- (e) In general the process of granting these consent variations may well require advertising and dischargers should be made aware of the time constraints imposed by this procedure.
- (f) Where a Region is requested to revise a consent such that more time is permitted to allow the capital work's programme to be completed, the basic policy is not to concede to such a request. Not all of the reasons cited by the applicant, however, may necessarily be within his control - although this does not apply to sub-contractors. Where, exceptionally, a reasonable case is seen to apply, then the NRA should:
  - i request an accurate estimate of the length of extended time required;
  - ii request to see the plcs full time-table for its capital programme of such works yet to be completed; and
  - iii consider the possibility of relaxing the time-limited consent requested, provided that the time-limit for a similar works is reduced by an equivalent period of time.

04/03/1991

Date of issue:  
1 April 1991

**NRA POLICY IMPLEMENTATION GUIDANCE NOTE NO. 5**

**CONTROL OF POLLUTION (SILAGE, SLURRY AND  
AGRICULTURAL FUEL OIL) REGULATIONS 1991**

**1. INTRODUCTION**

- 1.1 These Regulations are the first to be made under Sections 110 and 185 of the Water Act 1989. They come into force in two phases, on 1st March and 1st September 1991 following extensive public consultation, which included considerable NRA involvement. The NRA will be responsible for enforcing the Regulations in England and Wales. Very similar Regulations are being produced for Scotland.

There are 12 Regulations with 3 schedules. The DOE's aim (with NRA agreement) has been to specify the level of performance from a relevant installation, so as to minimise the risk of pollution e.g. installations will have to be constructed to the relevant British Standard, have a 20 year design life (generally with maintenance) compared with current ADAS requirements of 10 years, and to remain effective whenever the installation is used. The Regulations do not, in general, specify the means to be adopted in meeting the required performance level, in order to provide farmers with maximum flexibility. They are also framed in such a way as to allow the NRA to deal with the majority of situations with minimal resource implications.

- 1.2 The regulations apply to:

- silage making, including bagged or baled silage;
  - slurry storage systems, including diluted slurry from yards and washings from buildings used by livestock;
  - agricultural fuel oils stored in excess of 1500 litres;
- but only to
- all such installations, constructed, substantially reconstructed or substantially

enlarged after 1st March (or 1st September 1991 where a contract was entered into or construction began before 1 March and work will be completed before 1 September 1991); and

- those existing installations which, in the NRA's view, provide a significant risk of pollution of controlled waters - in these cases, the NRA can serve a notice specifying the improvements required to bring the installation up to an acceptable standard, the latter being subject to appeal.

1.3 The purpose of this Guidance Note is to set out and confirm NRA practice in implementing key aspects of the Regulations. A comprehensive Field Guide and initial training for staff will be provided by the Farm Waste Group.

## 2. IMPLEMENTATION OF THE REGULATIONS

It is important to achieve consistent and fair implementation of the Regulations, including the transmission of NRA requirements in a consistent fashion, to farmers, advisors, designers and contractors. The DOE is publishing Guidance Notes for farmers which incorporate the views of the NRA where appropriate. These will also provide useful information for NRA staff.

### 2.1 Regulation 8 - Loss of Exemption

#### 2.1.1 Explanation

Under Regulation 8.1 a structure will lose its exempt status (conferred by Regulation 6) if it is:

- substantially enlarged;
- or substantially reconstructed;
- or any requirement of a notice served under Regulation 9 is not complied with.

It will normally be in the NRA's interests to consider an increased capacity of 10% as constituting "substantially enlarged". In some cases, however, such as where a farmer complies with a notice requiring enlargement of a structure, it may be unreasonable for the whole structure then to be required to comply with the full requirements of the Regulations. In such situations an enlargement of up to 25% may be acceptable before the structure is considered to be "substantially enlarged".

### 2.1.2 Guidance and Action

When assessing if a structure is "substantially enlarged", regard will need to be taken of individual circumstances. As a guide, an increase of between 10 and 25% in the capacity of the structure should be considered to constitute "substantially enlarged".

"Substantially reconstructed" would include cases where a wall of a slurry lagoon is replaced.

## 2.2 Regulation 9 Notice (by the NRA to the farmer) requiring works and Regulation 10 Appeal Provisions

### 2.2.1 Explanation

From September 1991 the NRA has the power to serve a notice requiring action to improve any relevant existing installation where it is considered that the installation poses "a significant risk of pollution of controlled waters". "Significant risk" should be interpreted as:

- a high risk of system failure, which is likely to cause environmental damage, or adversely affect legitimate uses of natural waters. This would apply particularly where a failure could occur in systems which are not constructed nor maintained in line with the Regulations or the Code of Good Agricultural Practice.

The NRA has some discretion to require improvements in full or partial compliance with the Regulations. Failure to comply fully with a notice is an offence and will bring the structure under the full scope of the Regulations. The notice is subject to the appeals procedure, to the Secretary of State, Environment or Wales as appropriate.

The NRA must facilitate prompt, effective action to minimise the risks of pollution, without having to respond to a high proportion of appeals. Such appeals must also be addressed with the minimum of effort.

### 2.2.2 Guidance and Actions

When serving a notice the NRA will need to:

- explain the problem to the farmer;
- request action (outlining principles rather than giving advice);

- set completion dates; and
- outline the new powers and penalties.

A minimum of 28 days must be allowed for compliance to be achieved, taking into account any requirement to obtain planning permission and so on.

A specimen notice with accompanying letter is appended (Appendices A & B). This should be sent using recorded delivery, on regional headed paper, in the name of a Senior Pollution Control Officer or equivalent.

Such notices should be served using the following procedures.

- Where there is

a significant risk of serious pollution [normally Category 1 or 2] a notice should be served immediately.

This should include situations where there is a man-made hole or breach in the wall of slurry lagoon (which has undermined its structural integrity). This approach will minimise the risk of pollution and provide a general deterrent against using installations in such an irresponsible manner.

- Where there is

a significant risk of minor (Category 3) pollution a written warning should be sent in the first instance, pointing out the ability of the NRA to serve a notice, if necessary.

Considerable time is wasted in trying to persuade farmers to attend to such problems. This can lead to "warning letters" being sent repeatedly, but not effectively acted upon by the farmer, until pollution has arisen. Such situations may also be responsible for chronic problems, leading to failure of River Quality Objectives.

The site will need to be re-inspected and the following action taken:

- if effective action has been taken by the farmer, no further action is required other than surveillance as circumstances dictate;
- if effective action has not been taken but the situation has not deteriorated, a "final warning" should be sent. If this final warning is not



effectively acted upon within the timescale requested, a notice should be served; and

- if the situation has deteriorated, a notice should be served.

2.3 Regulation 11 Notice of Construction (by farmer to NRA)

2.3.1 Explanation

From 1st September the NRA must be told in writing of the type and location of a relevant installation that is constructed, substantially enlarged or substantially reconstructed at least 14 days before it is used.

2.3.2 Guidance and Action

To assist farmers and ourselves, an explanatory letter and standard form (Appendices C & D) have been produced. These should be issued to farmers, advisers or consultants, on request, and also as part of the current Farm and Conservation Grant aid consultation arrangements.

The form should be partly completed by NRA staff and sent out with the "letter of acceptance" of farmers' proposals. This will allow the NRA to compare submitted notices and finished schemes quickly with its requirements as included in acceptance letters.

2.4 Regulation 3 and 7 Transitional Arrangements for Field Silage Making

2.4.1 Explanation

Field silage making has not been identified by the NRA as a significant or widespread practice that has caused pollution. The practice will be allowed to continue for a further 5 years provided that farmers, who under normal circumstances for the past 3 years, have been making the majority of their silage in the field, notify the NRA by 1st September 1991.

An explanatory letter and standard notification form (Appendices E & F) have been produced. These will help farmers show that the majority of silage has been made in this way previously. Explanation as dealing with such notification will be provided in the Field Guide.

There is no requirement for the NRA to respond to these notices. In the absence of any adverse response from the NRA, the farmer can continue making silage in this way until September 1996, subject to the silage not being within 10m of inland or coastal waters which silage effluent could enter, if it were to escape.

The NRA can however, (subject to appeal), require some or all of the standards included in the Regulations to be applied to field silage sites where there is a significant risk of pollution to controlled waters. This can include a requirement for an impermeable base and effluent containment facilities to be provided in sensitive areas, such as those to be identified in the Ground Water Protection Policy. Such large scale works would in effect create a "silo" and so bring it under the scope of the Regulations.

#### 2.4.2 Guidance and Action

- Where the required works will not make the existing arrangements into a "silo" a notice with an accompanying letter (Appendices G & H) should be served.
- Where these works are likely to create a "silo" then a notice with accompanying letter (Appendices J & K) should be served.

These should be sent using recorded delivery, on regional headed paper by a Senior Pollution Control Officer or equivalent. They should include a list of precautions, outlining principles not advice, completion date(s): outline new powers and penalties and the consequences of the notice - i.e. field silage making may have to cease at this location. This notice is subject to appeal.

#### 2.5 Regulation 3, Schedule 1 - Construction Standards for Silage Effluent Tanks

##### 2.5.1 Explanation

It was originally proposed that all new silage tanks where the base is below ground should be of one piece construction and complete before installation.

The Regulations now require that where any part of a silage effluent tank is installed below the ground level, it shall be designed and constructed so that - without maintenance - it is likely to remain impermeable for at least 20 years. This high specification is necessary because of the severe difficulties in maintaining such tanks.

It is anticipated that proprietary prefabricated tanks will be used in most cases. The Regulations, however, allow the NRA to accept appropriate multipiece tanks such as concrete ring sections. These are likely to be acceptable if properly designed and constructed.

2.5.2 Guidance and Action

Below ground silage effluent tanks should only be accepted by the NRA upon receipt of a suitably completed certificate which satisfies the NRA on the above points (Appendix L).

2.6 Slurry Storage Period - Schedule 2

2.6.1 Explanation

Where slurry is to be spread on the land, there is a requirement for a farmer to provide slurry storage capacity of at least "the maximum quantity of slurry which is likely to be produced in any continuous four month period" unless he can demonstrate to the NRA that a lesser storage period is required. The definition of slurry includes washings from parlours and so on, and contaminated yards.

2.6.2 Guidance and Action

2.6.3 Determination of Slurry Production and Appropriate Storage Periods

It will be the farmer's responsibility to provide the NRA with appropriate figures which can be checked against published ADAS data. Full account must be taken of likely rainfall.

Schedule 2 Para 5(1) refers to the requirement of a minimum storage capacity of two days in the case of reception pits. An allowance for rainfall should be based on the maximum rainfall anticipated during a 48 hour rainfall duration using a five year return period.

Schedule 2 Para 6(2) refers to the minimum 4 months storage period. The period 1st November - 28th February should normally be used. The long term average rainfall should be calculated for this period on a local basis, with an appropriate additional allowance to accommodate wetter than normal periods. This allowance should be based on the anticipated rainfall using a five year return period. Interim calculations from some regions suggest that between 35 and 40% of the long term average rainfall occurs in

this 4 month period, with the need to add a further 25% to accommodate a five year return period.

Winter rainfall maps for each region may be produced in due course.

2.6.4 Demonstration that less than 4 months slurry storage is required

Explanation

Where a farmer considers that his arrangement for storing slurry requires less than 4 months storage capacity, he must seek the NRA's acceptance.

Guidance and Action

In order to accept such a proposal, a professionally prepared effluent management plan will be required. This should take into account the following factors:

- effluent volumes - including information on its nature and the production period of the slurry;
- land available for spreading slurry, including its area, soil type, topography, proximity to watercourses/aquifers, field drainage arrangements, cropping patterns, use by livestock and field capacity period;
- growing season/cropping patterns;
- spreading period(s);
- methods of spreading; and
- contingencies (for adverse weather etc).

This requirement should be made clear to any farmer considering such a proposal. Such a plan will need to accompany any application for a low rate irrigation or weeping wall lagoon system, where the total slurry storage capacity is less than 4 months, i.e. virtually all such applications.

Explanation on dealing with such proposals will be provided in the Field Guide.



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