

Environmental Permitting Regulations (England and Wales) 2010

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Regulatory Guidance Series, No RGN 5

Operator competence

Record of changes

Version	Date	Change
1.0	March 2008	Issued for launch of EPR
Draft	December 2009	Draft for informal consultation. Incorporated mining waste, water discharge, groundwater and radioactive substances activities. No change necessary for batteries.
2.0	April 2010	Minor editing after considering comments.
3.0	March 2011	Correction of 'relevant waste operation' definition and general amendments.

Published by:

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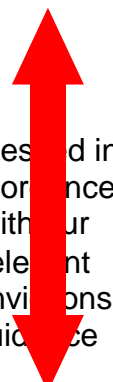


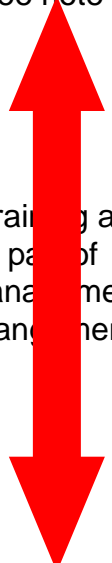
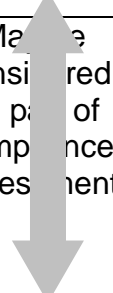

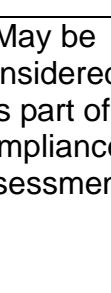

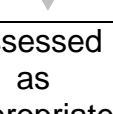
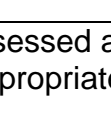
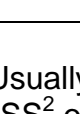
SUMMARY

This is high level guidance to our requirements for competence of operators.

We require operators holding environmental permits to be competent to deal with the environmental risks associated with their activities.

We must satisfy ourselves about the operator's competence when assessing applications for new permits and transfers of permits and throughout the life of the permit.

We assess requirements in the following areas:

	Management system	Technical competence	Relevant convictions	Financial competence	Financial provision		
Waste operations	 Proportionate complexity	Compliance with approved scheme	 Assessed in accordance with our relevant convictions guidance	 We must assess	 Inert landfills only		
Installations		See note 1			 Training as part of management arrangements	 May be considered as part of compliance assessment	 Landfills only
Mining waste operations							 May be considered as part of compliance assessment
Waste mobile plant					 N		
Water discharge activities							
Groundwater discharge activities							
Radioactive substances activities			 Assessed as appropriate	 Assessed as appropriate	 Usually HASS ² only		

¹Waste operations and certain installations (landfills and certain disposal and recovery activities of waste) are 'relevant waste operations' - so staff must be compliant with an approved scheme for technical competence. (See paragraph 3.4)

²HASS: High activity sealed sources

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Appendix: Further requirements for operating staff at relevant waste operations

1. Introduction

- 1.1 The Environmental Permitting (England and Wales) Regulations 2010 (the 'Regulations') and section 9 of the Government's core permitting guidance ('core guidance') set out requirements for the competence of operators holding environmental permits.
- 1.2 We may consider operator competence at any time, whether as part of determining an application for a new or varied permit or throughout the life of the permit – except at the time of transfers of standalone water or groundwater permits (done by notification). We will do this taking into account the principles in section 9 of the core guidance and further detail here.
- 1.3 We may refuse an application or revoke (or partially revoke) a permit if we consider the operator is not competent (i.e. will not comply with permit conditions) or not willing to comply with the conditions. Reasons we may consider that the operator is not able or willing to comply with permit conditions include, but are not limited to, their technical or financial competence, or their relevant convictions.
- 1.4 We apply these requirements in proportion to the complexity of the regulated facility and its environmental risks. For example, the environmental management system for a chemical process must be quite detailed to cover the range of possibilities but we only need simple written instructions and adequate training/supervision for spreading used sheep-dip on land or for a small sewage discharge to surface water.
- 1.5 This guidance is written for our staff but we make it available to help customers too.

2. Management systems

2.1 General guidance on environmental management systems (EMS) is set out in section 9 of the Core guidance and in our *How to Comply with your Environmental Permit* guide to what permit conditions/rules mean. We expect effective systems to be in place, appropriate to the complexity and nature of the operation and proportionate to the environmental risk, broadly as shown in Box 1. We encourage operators to use an externally certified EMS where appropriate.

Box 1	Management system
Waste operations	Formal EMS for the complex highest risk sites, down to basic in-house systems for simple low risk ones. Written odour and noise management plans where necessary.
Installations	Formal EMS for complex sites, preferably accredited. Basic in-house systems for simple low risk ones. Written odour and noise management plans where necessary.
Mining waste operations	Formal down to basic in-house systems for small low risk ones. Formal EMS for the complex highest risk sites.
Waste mobile plant	
Water discharge activities	Formal EMS for the complex highest risk sites, down to basic in-house systems for simple low risk ones.
Groundwater activities	The basic requirements and reference to Government Groundwater Protection Codes is sufficient for low risk small scale operations, e.g. disposal of used sheep dip and of pesticides. Where the complexity and risks are higher, then formal EMS is required.
Radioactive substances activities	Formal EMS for the complex highest risk sites, down to basic in-house systems for small users.

2.2 Applicants for standard permits are required to indicate the type of management system they intend to adopt by ticking the appropriate box on the application form, and providing a reference number. We do not require a copy of the management system to be submitted.

2.3 Applicants for bespoke permits (which tend to govern more complex and higher risk activities) should give us an outline summary (not a copy) of their management system. We will assess its scope to see if it is adequate and will refuse the application if we identify a serious deficiency.

- 2.4 Note, for some activities we may rely on competence requirements set by other legislation. For example, the Veterinary Medicines Regulations (VMR) require a person purchasing sheep dip - which will include controlled discharge to land - to have a *Certificate of competence in the use of sheep dips*. The VMR require dipping to be carried out by/under supervision of a person who holds this certificate.
- 2.5 We will plan our compliance assessment activities to check the adequacy and implementation of management systems, particularly at newly permitted operations.

3. Technical competence

General requirements

- 3.1 All operators should be technically competent to operate their facility and be capable of demonstrating their competence on an ongoing basis. They should know - how to operate the equipment; how to comply with the law and government policies; and how to minimise risk and the impact on people and the environment. That requires knowing where sensitive sites which may be affected are located (e.g. watercourses, housing, schools, nature conservation sites, local wildlife and heritage sites) and the pathways by which the emissions could get to them.
- 3.2 An operator's management system must cover staff training and development, and make provision to update staff competence in line with technical and legislative change. We consider it in that context at the application stage and throughout the life of a permit.

Requirements for different types of facility

- 3.3 Requirements for different types of facility are summarised in box 2. There are more requirements for some facilities because of the specific nature of the risks. For example, staff at 'relevant waste operations' need specific training in waste management and this is generally arranged through industry-developed specific training schemes. (See section 3.4 for an explanation of relevant waste operation).

Box 2	Technical competence
All facilities	Must meet the general requirements.
Relevant waste operations	Staff must be compliant with an approved scheme (see section 3.5).
Groundwater activities	Staff should have a good working knowledge of relevant Government Groundwater Protection Codes.
Radioactive substances activities	A 'Qualified Expert' under the Euratom Basic Safety Standards Directive (BSSD) must be consulted in relation to the disposal of radioactive waste.

Relevant waste operations

3.4 A relevant waste operation is defined in paragraph 3 of Schedule 9 of the Regulations as:

- (a) a waste operation that is not carried out at an installation or by means of Part A mobile plant or Part B mobile plant, or
- (b) a 'specified waste management activity'

where a specified waste management activity is one of the following installations:

- (a) disposal of waste in a landfill (Section 5.2 of Part 2 of Schedule 1).
- (b) disposal of waste other than by incineration or landfill (Section 5.3 of Part 2 of Schedule 1)
- (c) certain activities recovering hazardous waste at more than 10 tonnes per day as specified in Part A(1)(c)(i), (ii), (v) or (vii) of Section 5.4 of Part 2 of Schedule 1.

3.5 Operators of relevant waste operations will explain in their management system how they intend to demonstrate technical competence. They must also satisfy one of the following:

- Compliance with an approved industry scheme – details of compliant individuals / sites will be available on databases maintained by scheme providers. Currently there are two approved schemes (Box 3).

Box 3: Government approved schemes for operators of relevant waste operations

- The CIWM/ WAMITAB scheme that has been jointly developed by the Chartered Institution of Wastes Management (CIWM) and the Waste Management Industry Training and Advisory Board (WAMITAB).
- The ESA/EU Skills scheme that has been jointly developed by the Environmental Services Association (ESA) and the Energy and Utility Sector Skills Council (EU Sector Skills).

- Holding an appropriate Certificate of Technical Competence (CoTC) – this can be checked on the WAMITAB CoTC database.
- Holding registered and validated deemed competence status.
- Has previously completed an Environment Agency assessment for non-CoTC activities – details of all persons and the sites / activities for which they were assessed will be listed on an Environment Agency database. No new Agency assessments have been carried out since the first industry scheme was approved in December 2008 but previous assessments will remain valid.

- 3.6 Applicants are required to specify on the application form which option they will rely on. The operator's management system will include reference to the relevant scheme with details of any technically competent persons. All applications for the grant or transfer of a permit must be checked against the relevant database to verify that the operator's technical competence is valid.
- 3.7 Requirements for waste competence are detailed in Appendix 1. We say in *How to Comply with your Environmental Permit* how often these certified staff need to be at the site.

Groundwater activities

- 3.8 We expect operators to have a good working knowledge of relevant Government Groundwater Protection Codes. Management systems/instructions for disposal of sheep dip should require a VMR *Certificate of Competence in the use of sheep dips*. See section 2.4.

Radioactive waste

- 3.9 A 'Qualified Expert' under the Euratom Basic Safety Standards Directive (BSSD) must be consulted before radioactive waste can be disposed. The BSSD states these are :

'Persons having the knowledge and training needed to carry out physical, technical or radiochemical tests enabling doses to be assessed, and to give advice in order to ensure effective protection of individuals and the correct operation of protective equipment, whose capacity to act as a qualified expert is recognised by the competent authorities. A qualified expert may be assigned the technical responsibility for the tasks of radiation protection of workers and members of the general public'.

- 3.10 The role of a Qualified Expert is to advise an operator. Operators should satisfy themselves that the Qualified Experts they have decided to consult are suitable for their specific facility and the radioactive waste they are generating. In some cases, for instance in the non-nuclear sector, a Qualified Expert may also be a Radiation Protection Adviser, appointed under the Ionising Radiations Regulations 1999, who possesses sufficient knowledge and experience of radioactive waste management. An operator will need to use suitably qualified and experienced persons to implement the advice provided by a Qualified Expert. We will publish, and from time to time update, specific guidance on the Qualified Expert requirement.

4. Relevant convictions

- 4.1 Where an operator or other relevant person applying for or holding a permit for relevant waste operations, installations, mining waste operations, or mobile waste plant sustains a relevant conviction, we will consider the offence and the likelihood of re-offending in accordance with our relevant convictions guidance¹ forming part of our application form package. Relevant convictions may also be a consideration for radioactive substances, water discharge and groundwater activities, but our specific relevant convictions procedure does not apply in these cases. Additionally, in the case of stand-alone water discharge and groundwater activities, consideration of relevant convictions will only take place at the compliance assessment stage. We will normally revoke (or partially revoke) a permit, or refuse to grant any future permits, apart from stand-alone water discharge and groundwater discharge activities, where we are not satisfied that the person is a suitable person to hold the permit. We will be firm, but fair in our decision making.

Summary of our relevant convictions procedure

- 4.2 Only convictions for an offence relating to the environment or environmental regulation will be considered relevant. A list of these relevant offences is published on our website with the guidance to new applicants. The list will be amended as necessary to reflect changes in legislation.
- 4.3 We consider convictions held by relevant persons. Relevant persons are defined in Core Guidance as:
- the operator (i.e. the 'legal person' holding or applying for the permit – a person, persons in a partnership, or a corporate body); and
 - a director, manager, secretary or other similar officer of an operator (when it is a corporate body) and a partner in a limited liability partnership (LLP), who has either been convicted of a relevant offence themselves, or who held a position in another corporate body or LLP when it was convicted of a relevant offence.
- 4.4 Applicants are required to disclose in their application any relevant convictions against themselves or other relevant persons. The provisions of the Rehabilitation of Offenders Act 1974 apply, allowing convictions held by individuals to be treated as 'spent' after a prescribed period. Spent convictions are not disclosable. Although the 1974 Act does not apply to corporate bodies we will treat corporate bodies in the same way as individuals. Corporate bodies will not be required to declare any conviction that would be spent if it were held by an individual.

¹ [Relevant conviction guidance for permit applications for waste activities and installations only](#)
Environment Agency Operator competence

- 4.5 We check names of the relevant persons against our national enforcement database (NED) to ensure the accuracy of any declared convictions, and for evidence of undeclared convictions. NED only contains details of convictions for which we were the prosecuting authority.
- 4.6 The operator satisfies the competence assessment for relevant convictions if there is no evidence of convictions.
- 4.7 If relevant convictions are declared as part of an application, or are otherwise obtained or revealed during the life of a permit, their significance will be assessed using the following criteria:
- potential consequences for the environment and people;
 - the culpability of the operator and whether we consider that it is desirable they are allowed to hold a permit;
 - whether the offender's criminal record demonstrates repeated failures of infrastructure, procedures or other management controls;
 - whether the applicant or holder is reticent in explaining the circumstances;
 - whether the applicant or holder has previously had an application or permit refused or revoked.
- 4.8 If we identify previous relevant offences when determining a permit application, the applicant will be invited to submit a post conviction plan. This allows them to explain how a repetition of the offence will be avoided in a credible, comprehensive, systematic and auditable manner, and why we should continue to consider them to be competent.
- 4.9 If the post conviction plan does not sufficiently address our concerns or if the case is one of particular concern (i.e. involves acts of recklessness, dishonesty or deception, or a custodial sentence), the case will be referred to our central assessment panel. The panel, consisting of representatives from legal services, operations technical services, environment and business and the national enforcement service, will determine whether the operator may be considered competent to hold a permit, and will recommend the appropriate course of action.
- 4.10 A single serious offence is sufficient to warrant refusal or revocation if not properly dealt with under a post conviction plan. The final decision on whether to implement the panel's recommendation lies with the National Permitting Service if this arises during an application for a permit or with an Area if a conviction arises later.
- 4.11 Operators will be required to submit a post conviction plan following a successful prosecution, or where we otherwise become aware they have acquired a relevant conviction. Again, if a particular concern, the case will be referred to the central assessment panel.

4.12 Core guidance says refusal would normally be appropriate for offences that demonstrate deliberate disregard for the environment or for environmental regulation – for example, repeated convictions or deliberately making false or misleading statements.

5. Financial competence

- 5.1 We should only issue a permit if we believe the operator will be capable of meeting the financial obligations of the permit.

Financial competence checks are made at the permitting stage for installations, waste and mining waste operations.

We assess the risk based on whether they have any current or past insolvency and bankruptcy proceedings and a credit check where appropriate.

- 5.2 Where a declaration is made and consent for a credit check is not forthcoming the operator should be advised that the application may be refused.
- 5.3 The assessment is made by our National Permitting Service Financial Provision team, who may conduct further enquiries in making the assessment.
- 5.4 Financial competence may also be a consideration at the compliance assessment stage and could lead us to consider that an operator was not able to comply with permit conditions. Financial competence is considered at the compliance assessment stage for installations, waste operations, mining waste operations, water discharge and groundwater activities.

6. Financial provision

- 6.1 Some types of facility could present a significant financial liability if the operator was to cease trading without properly surrendering the permit (box 6). Operators of these facilities are required by the Regulations to make and maintain a financial provision.

Box 6	Financial provision
Installations	Required for landfills only
Mining waste operations	Category A and hazardous waste facilities only
Radioactive substances activities	For all HASS permits. Other permits will be assessed on a case by case basis.
Waste operations	Required for inert landfills only
Waste mobile plant Water discharge activities Groundwater activities	This section does not apply to these activities

Landfill operations

- 6.2 The Landfill Directive requires an operator to make sufficient financial provision prior to the operation of the landfill, adequate to discharge the obligations of the permit (including closure and aftercare). Operators of landfill sites must demonstrate they have fulfilled this requirement in accordance with our requirements, i.e. sufficient, secure and available to the operator.
- 6.3 Operators will specify the mechanism they have chosen to make financial provision and provide a plan of the estimated expenditure or each phase of the landfill. This information will be passed to the National Permitting Service financial provision team who will check whether appropriate provision is in place and advise permitting staff accordingly.

Category A and hazardous waste mining facilities

- 6.4 The Mining Waste Directive requires operators of Category A and hazardous waste mining facilities to make a financial guarantee to ensure the obligations arising from the permit are fulfilled.
- 6.5 The key principles of the financial guarantee are as follows:
- a financial guarantee to ensure that the obligations arising from a permit are fulfilled;
 - the provision has to be sufficient in monetary terms, secure and available when required;

- all aftercare costs will include a contingency sum that will remain after the period covered by detailed costings, in case additional expenditure is required;
- amounts of financial guarantees will be calculated based on third party costs and a contingency element.

We are developing further guidance on financial guarantees for mining waste operations.

High Activity Sealed Sources and Orphan Sources (HASS)

- 6.6 The HASS Directive requires that adequate provision is made for the safe management of radioactive sources when they have become disused, including where the holder becomes insolvent or goes out of business. This must be provided using a financial security or equivalent means appropriate to the type of source. We must ensure that the provision is in place before we can issue a permit and Defra has issued guidance to us on how it should be done².

² Guidance to the Environment Agency: High-activity Sealed Radioactive Sources and Orphan Sources Directive (Council Directive 2003/122/Euratom).
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Appendix: Further requirements for operating staff at relevant waste operations

1. Types of competence

Industry schemes

1.1 Technical competence schemes will be developed and run by industry in accordance with principles laid down in the Core Guidance. Each scheme must be approved by Government. Scheme providers will maintain databases of individuals and/or organisations qualifying as technically competent under their scheme. To establish whether an applicant has the appropriate level of technical competence it will be necessary to:

- check that the technically competent person/organisation appears on the chosen scheme's database; and
- check that the type and level of competence attained is appropriate to the operations being permitted

The databases will also be used by staff to carry out compliance assessment checks.

Certificates of Technical Competence (CoTCs)

1.2 Existing holders of CoTC issued by the Waste Management Industry Training and Advisory Board (WAMITAB) will continue to be recognised as competent to manage operations for which their certificate is valid. A database of CoTC holders will be maintained by WAMITAB and will be the definitive central record.

Deemed competence

1.3 Persons operating under a waste disposal licence before May 1994 have been deemed technically competent for that operation, and have never been required to demonstrate their technical competence. These individuals retain deemed competent status until 1 March 2011 when they will be expected to have passed the continuing competence assessment.

1.4 Where an operator claims deemed competent status, either at application or during compliance assessment, this should be checked against local records.

Our assessments

- 1.5 Industry schemes will provide full coverage across the waste industry and we will not routinely provide assessments ourselves.
- 1.6 We will try to identify the most appropriate industry scheme if an applicant claims their waste operation is not covered by any of them. If this is not possible, then exceptionally we may carry out an activity-specific competence assessment.
- 1.7 For transfers, an individual who has previously passed an Environment Agency assessment for a non-CoTC activity will remain competent if their responsibilities within the management structure do not substantially change as a result of the transfer. This also applies during the transitional period when a permit holder may need to transfer a permit because it is not the operator.

2. Grace periods

- 2.1 A period of grace is provided for operators who are unable at the time of application to demonstrate technical competence. Operators in this position are allowed a maximum of four weeks from the time at which permitted operations begin to obtain an Environmental Permit Operator Certificate (EPOC) awarded by the Chartered Institution of Wastes Management. For low risk operations this is a sufficient level of competence. Operators of medium or high risk operations will additionally be required to attain the appropriate level of competence within 12 months.
- 2.2 The provision of grace periods may be scheme specific, e.g. under Environmental Services Association and EU Skills scheme, no grace period is available to an operator intending to demonstrate technical competence through a competence management system.
- 2.3 If an applicant relies on a period of grace this should be recorded in the decision document and will be adequate for the purpose of the operator competence assessment.

3. Continuing competence

- 3.1 Technical competence must be maintained. Operators are required to update their skills and knowledge, and are required to pass a periodic assessment to demonstrate an understanding of changes affecting the waste industry (individuals are tested every 2 years and competence management systems are audited every year). Failure to do so causes technical competent status to lapse. Results of continuing competence assessments are recorded on scheme providers' databases. Previous written evidence of competence, such as letters or certificates, may not demonstrate current status so the validity of any claim must be checked against the appropriate database. This applies equally to permitting and

compliance assessment checks.

4. Specific permit requirements

- 4.1 Permit conditions may specify that an activity can only take place in the presence of a person with a specific level of qualification e.g. HND or higher in Chemistry for hazardous waste treatment. Such requirements are not included in the operator competence assessment during application. It may however be a priority when undertaking compliance assessment.