

<b>Title:</b> Amendments to the Environmental Permitting (England & Wales) Regulations 2010  <b>IA No:</b> DEFRA1068  <b>Lead department or agency:</b> Defra  <b>Other departments or agencies:</b> DECC,WAG	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 2/12/2011		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Chris Bower <b>020 72385935</b>			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> Amber
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0m	£0.18m	-£0.18m	Yes   OUT

**What is the problem under consideration? Why is government intervention necessary?**  
Regulators have historically relied on criminal prosecution at one extreme and warnings at the other, preventing them from responding proportionately and flexibly to many intermediate cases of offending, leading to a compliance deficit and uneven playing field. In recognition of this, provision was made in April 2010 for environmental regulators to use civil sanctions. However, legislative technicalities meant it was not possible to introduce civil sanctions for the streamlined environmental permitting system at the same time. Introducing civil sanctions for environmental permitting provides a legislative opportunity for further permitting simplifications and some refinements of registered waste exemptions

**What are the policy objectives and the intended effects?**  
The civil sanctions powers would enable the Environment Agency to be proportionate: make use of fixed monetary penalties for minor offences; variable monetary penalties to remove financial gain and level the playing field; and enforcement undertakings to correct damage and provide restitution to any affected communities. It also provides an opportunity to introduce further simplifications, cutting admin costs for existing business by £1.5 m over 10 years.  
A micro-business waiver is sought as the sanctions affect only offenders and the rest are simplifications. NB – the civil sanctions powers have subsequently been omitted pending cross-Govt clearance

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
This IA considers the option of doing nothing, three separate policy options and a fourth to implement all of them. The preferred option is option 4. None of the constituent options introduce new regulation but they make improvements to existing systems - or in the case of option 2, make an amendment necessary to comply with EU law. Claimed costs and benefits only consider existing business.

1. Provide for the Environment Agency to use civil sanctions for environmental permitting offences.
2. Clarify permitting arrangements and remove a specific regulatory block to capturing and storing carbon dioxide, as part of DECC's transposition of the Carbon Capture and Storage (CCS) Directive. (Note these have now been taken forward by DECC in a separate set of EP amending Regulations).
3. Permitting simplifications and other refinements, eg on waste exemptions.
4. Introduce the full package of measures as listed in Options 1 to 3

Costs and benefits for civil sanctions and waste exemptions are not claimed because covered in other IA.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 06/2015					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> 0		<b>Non-traded:</b> 0	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible SELECT SIGNATORY: Taylor of Holbeach Date: 16th/02/2012

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce Civil Sanctions for Environment Agency

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	0
High	Optional	Optional	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

There would be: direct costs on offenders of responding to civil sanctions; costs to regulators in training staff, issuing the sanctions and maintaining related systems and processes; and costs to the First Tier Tribunal for the additional cases. The direct costs are not sector specific and only fall on the non-compliant. They fall within the original IA for civil sanctions. Most of the costs for regulators and First Tier Tribunal have already been absorbed.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	0
High	Optional	Optional	0
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

The EA will be able to deal with some instances of non-compliance without resorting to the criminal courts. Environmental benefits stemming from enforcement undertakings offered by offenders including restoration and restitution; environmental risks reduced indirectly through greater compliance - more effective at changing behaviour to protect the environment and interests of compliant business. There will be some cost savings for the regulators and courts.

### Other key non-monetised benefits by 'main affected groups'

More proportionate interventions will bring higher levels of compliance; provide greater protection for the environment. Civil sanctions aim to encourage communication and co-operation between business and regulators, placing strong emphasis on restoration and restitution. Civil sanctions aim to change behaviour by seeking to address the cause of the non-compliance rather than simply punishing the offender. Offenders will not be allowed to profit from their breach of the law.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
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Results are most sensitive to the assumptions on the costs and benefits of responding to the civil sanctions and of the behaviour changes.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>	<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: 0      Benefits: 0      Net: 0	No	NA

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Clarify permitting arrangements and remove a specific regulatory block to capturing and storing carbon dioxide by implementing two Articles of the Carbon Capture and Storage Directive

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0

### Description and scale of key monetised costs by 'main affected groups'

DECC are introducing an offshore carbon dioxide storage licensing scheme. As part of that, two Articles of the CCS Directive are transcribed directly into the Regulations, i.e. without goldplating.

One makes it explicit that a permit is required but they would need one anyway and the other simply removes a block on storage - so there are no new obligations or costs.

Impact of the wider changes are covered in DECC's impact assessment.

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			0

### Description and scale of key monetised benefits by 'main affected groups'

There are no direct monetised benefits of these specific changes.

### Other key non-monetised benefits by 'main affected groups'

The offshore licensing regime will enable CCS developments to go forward. This will help deliver the UK's climate change commitments and facilitate those projects currently being progressed through the DECC CCS competition. Without the regime the UK's policy aims would be unattainable and the UK would be open to infraction proceedings for not implementing the EU Directive.

### Key assumptions/sensitivities/risks

None

### Discount rate (%)

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	NA

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Further permitting simplifications and other refinements

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.75	High: 2.26	Best Estimate: 1.50

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	0
High	Optional	Optional	0
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

The only cost to business is the effort associated with registering some waste exemptions rather than having to apply for permits (more costly) - giving a net benefit. These costs/benefits fall within the original IA for the Waste Exemptions Review, so are excluded from the totals here to avoid double counting. The proposals are cost neutral to the regulator

### Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	0.75
High	Optional	Optional	2.26
Best Estimate	0	0.15	1.50

### Description and scale of key monetised benefits by 'main affected groups'

The changes to permitting for waste-derived fuels could benefit existing business by £0.85 m (NPV across 10y), through avoided permitting costs. Existing AD operators could benefit in a similar way by £0.66m. A small fraction of those operators which require permission by 2013 would be able to use exemptions rather than have to get permits. These savings are within the Waste Exemptions Review IA.

### Other key non-monetised benefits by 'main affected groups'

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

We only consider existing businesses. The following numbers of plants would benefit from reduced permitting costs in 10 years:  
 13 < 50 MW & 5 < 3 MW existing plants burning formerly waste oil (we have tested sensitivity at plus & minus 50%);  
 40 existing AD plants using waste to produce gas for use on-site (across 2y only) (sensitivity tested at plus and minus 50%)  
 imum of 5 lines

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0.18	Net: -0.18	Yes	OUT

# Summary: Analysis & Evidence

# Policy Option 4

**Description:** Introduce the full package of measures listed in Options 1 to 3 above

## FULL ECONOMIC ASSESSMENT

<b>Price Base</b> Year 2012	<b>PV Base</b> Year 2012	<b>Time Period</b> Years 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			<b>Low: 0.75</b>	<b>High: 2.26</b>	<b>Best Estimate: 1.50</b>

<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Cost</b> (Present Value)
<b>Low</b>	Optional		Optional	<b>0</b>
<b>High</b>	Optional		Optional	<b>0</b>
<b>Best Estimate</b>	0		0	<b>0</b>

### Description and scale of key monetised costs by 'main affected groups'

These are a sum of the costs of Options 1-3.

### Other key non-monetised costs by 'main affected groups'

<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant Price)	<b>Total Benefit</b> (Present Value)
<b>Low</b>	Optional		Optional	<b>0.75</b>
<b>High</b>	Optional		Optional	<b>2.26</b>
<b>Best Estimate</b>	0		0.15	<b>1.5</b>

### Description and scale of key monetised benefits by 'main affected groups'

These are a sum of the benefits of Options 1-3.

### Other key non-monetised benefits by 'main affected groups'

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	

## BUSINESS ASSESSMENT (Option 4)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
<b>Costs: 0</b>	<b>Benefits: 0.18</b>	<b>Net: -0.18</b>	Yes	OUT

# Evidence Base (for summary sheets)

## References

No.	Legislation or publication
1	The Environmental Permitting (England and Wales) Regulations 2007 <a href="http://www.defra.gov.uk/environment/policy/permits/guidance-epp.htm">http://www.defra.gov.uk/environment/policy/permits/guidance-epp.htm</a>
2	Full RIA on proposals for creating a streamlined environmental permitting and compliance system, September 2007 <a href="http://www.legislation.gov.uk/ukxi/2007/3538/pdfs/ukxiem_20073538_en.pdf">http://www.legislation.gov.uk/ukxi/2007/3538/pdfs/ukxiem_20073538_en.pdf</a>
3	The Environmental Permitting (England and Wales) Regulations 2010 <a href="http://www.defra.gov.uk/environment/policy/permits/guidance.htm">http://www.defra.gov.uk/environment/policy/permits/guidance.htm</a>
4	Impact Assessment of the Environmental Permitting Programme – Phase 2, October 2009 <a href="http://www.legislation.gov.uk/ukxi/2010/675/pdfs/ukxiem_20100675_en.pdf">http://www.legislation.gov.uk/ukxi/2010/675/pdfs/ukxiem_20100675_en.pdf</a>
5	Regulatory Justice: Making Sanctions Effective <a href="http://www.berr.gov.uk/files/file44593.pdf">http://www.berr.gov.uk/files/file44593.pdf</a>
6	<a href="http://www.defra.gov.uk/environment/enforcement/report.htm">http://www.defra.gov.uk/environment/enforcement/report.htm</a>
7	Environmental Civil Sanctions (England) Order 2010, Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010 <a href="http://www.defra.gov.uk/environment/policy/enforcement/project/legislation.htm">http://www.defra.gov.uk/environment/policy/enforcement/project/legislation.htm</a>
8	Environmental Civil Sanctions (Wales) Order 2010 and Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010
9	Fairer and Better Environmental Enforcement Project Summary of responses and Government response to the consultation held from 21st July to 14th October 2009, February 2010 and guidance at <a href="http://www.defra.gov.uk/environment/policy/enforcement/project/index.htm">http://www.defra.gov.uk/environment/policy/enforcement/project/index.htm</a>
10	Consultation on draft Environmental Permitting (England and Wales) (Amendment) Regulations 2011, July 2010. <a href="http://www.defra.gov.uk/corporate/consult/env-permitting-regs/index.htm">http://www.defra.gov.uk/corporate/consult/env-permitting-regs/index.htm</a>
11	Fairer and Better Environmental Enforcement: Implementing the New Civil Sanctions. EA Consultation Feb 2010. <a href="https://consult.environment-agency.gov.uk/portal/ho/br/civil/sanctions">https://consult.environment-agency.gov.uk/portal/ho/br/civil/sanctions</a>
12	Consultation on Environmental Permitting (England and Wales) (Amendment) Regulations to transpose the directive on carbon capture and storage and to encourage anaerobic digestion, September 2010 Will appear at <a href="http://www.defra.gov.uk/corporate/consult/closed.htm">http://www.defra.gov.uk/corporate/consult/closed.htm</a>
13	Waste exemption review. <a href="http://www.defra.gov.uk/corporate/consult/waste-exemption-review/">http://www.defra.gov.uk/corporate/consult/waste-exemption-review/</a>
14	Second consultation on secondary legislation under the Marine and Coastal Access Act: Part 4 Marine Licensing, June 2010 <a href="http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm">http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm</a>
15	Impact Assessment on Fairer and Better Environmental Enforcement Options April 2010 <a href="http://www.defra.gov.uk/environment/policy/enforcement/project/legislation.htm">http://www.defra.gov.uk/environment/policy/enforcement/project/legislation.htm</a>
16	Impact assessment of offshore carbon dioxide storage licensing regime. <a href="http://www.decc.gov.uk/en/content/cms/consultations/co2_storage/co2_storage.aspx">http://www.decc.gov.uk/en/content/cms/consultations/co2_storage/co2_storage.aspx</a>
17	Impact Assessment of revised exemptions from environmental permitting, June 2008. <a href="http://www.defra.gov.uk/corporate/consult/waste-exemption-review/">http://www.defra.gov.uk/corporate/consult/waste-exemption-review/</a>
18	Marine Licensing Impact Assessment, June 2010 <a href="http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm">http://www.defra.gov.uk/corporate/consult/marine-licensing/index.htm</a>

## Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits	0.43	0.42	0.92	0.89	0.86	0.83	0.80	0.77	0.75	0.72
Total annual benefits	0.43	0.42	0.92	0.89	0.86	0.83	0.80	0.77	0.75	0.72

## BACKGROUND

1. The Environmental Permitting (England and Wales) Regulations 2007 ('EP Regulations 2007', ref 1, 2) established an environmental permitting framework for waste management licensing and pollution prevention and control and came into force in April 2008. The framework cuts administrative red tape without affecting environmental standards. For example, it allows businesses that would otherwise require several permits for activities falling under the regulations on a single site to have just one permit and enables regulators to focus resources on higher risk activities.
2. In April this year, the Environmental Permitting (England and Wales) Regulations 2010 ('EP Regulations 2010', ref 2, 3), revoked most of the EP Regulations 2007 and expanded the framework to include water discharge and groundwater activities and radioactive substances regulation. The net benefit from the permitting regime was estimated to be £121m NPV over 10 years. Civil sanctions and other changes proposed here would provide further costs/benefits, though we have excluded them from Summaries where they form part of other IAs (to avoid double counting).

## Policy objectives

3. The principal objective is to enable the Environment Agency to make use of civil sanctions under the environmental permitting system to facilitate a more proportionate, fair and effective approach to enforcing offences. This also provides an opportunity to:
  - \* remove specific regulatory blocks to capturing and storing carbon dioxide;
  - \* introduce simplifications which make permitting more proportionate and may cut admin costs for operators of existing plant by £1.5 m over 10 years.

**The costs and benefits of introducing civil sanctions under environmental permitting form part of an earlier IA on introduction of civil sanctions as a whole**, attached as Annex 5. We pull out the specific impacts for environmental permitting in discussion here, to aid transparency. We do not include them in the Summaries here to avoid double counting with the civil sanctions IA.

## The Proposals

4. This IA considers the option of doing nothing, three separate policy changes as separate options and a fourth option which is to implement all four options. The preferred option is option 4. None of the constituent options introduce new regulation but they make improvements to existing systems - or in the case of option 2, make an amendment necessary to comply with EU law.
  1. Provide for the Environment Agency to use civil sanctions for environmental permitting offences.
  2. Clarify permitting arrangements and remove a specific regulatory block to capturing and storing carbon dioxide.
  3. Further permitting simplifications and other refinements:
    - \* permitting of waste-derived fuels which have been recovered;
    - \* permitting of anaerobic digestion (AD) plants;
    - \* certain exempt wastes;
    - \* the relationship with off-shore licensing
    - \* the relationship with marine licensing;
    - \* arrangements for transfer of some permits.
  4. Introduce the full package of measures as listed in Options 1 to 3.
5. The main proposal is to introduce fairer and more effective enforcement mechanisms for the Environment Agency. The Macrory Review of regulatory sanctions (ref 5) and a Defra review of environmental enforcement (ref 6) both concluded that the current sanctioning framework for dealing with environmental offences was inadequate and inflexible. The problems identified were that:
  - a. Regulators often have to choose between issuing a warning letter or caution and taking criminal proceedings without easy access to proportionate intermediate sanctions that act as a deterrent, leading to a 'compliance deficit'

- b. The current enforcement system therefore relies heavily on criminal sanctions and this is sometimes disproportionate
  - c. Fines generally do not reflect the costs to the environment and communities that result from non-compliance or act as an appropriate deterrent also contributing to a 'compliance deficit'
  - d. Environmental damage and its effects are often not put right
  - e. Overall, the current system does not adequately encourage or take account of a good approach to compliance, or deter non-compliance, with environmental regulations. Potentially it gives those who do not comply with regulations a competitive advantage which is unfair to those who do comply.
6. In recognition of this, provision was made in April 2010 for environmental regulators to use civil sanctions. However, legislative technicalities meant it was not possible to introduce civil sanctions for the streamlined environmental permitting system at the same time.
7. The main objectives of using the new civil sanctions framework are to:
- a. Make enforcement more proportionate and appropriate to the circumstances
  - b. Reserve prosecution for the worst offences
  - c. Ensure restoration of environmental damage and certain adverse effects on local communities
  - d. Ensure 'polluters' pay the cost to society of their non-compliance
  - e. Remove financial benefit from non-compliance
  - f. Create a more level playing field in removing competitive advantages for non-compliant companies
  - g. Provide a stronger incentive for compliance in the future

## **Option 1 Introduce civil sanctions for EA**

### *Civil sanctions - the problem*

8. We need fairer and better sanctions which allow a proportionate response should business fail to comply with environmental regulations. So we need to introduce civil sanctions below criminal ones. **Note – these provisions have now been omitted from the amending Regulations pending cross-Govt clearance.**

### *Civil sanctions - rationale for intervention*

9. The Environment Agency has been assessed and found compliant with the principles of better regulation, as established by Hampton so allowing them to expand the enforcement tools available to their disposal. Orders were passed in England in April 2010 (ref 7) and Wales (ref 8) in July 2010 to give them civil sanctions powers. However, it was not possible to introduce civil sanctions into the EP Regulations 2010 at that time. The Environment Agency is already implementing civil sanctions in respect of other environmental legislation and these amending regulations will allow the Agency to adopt them for environmental permitting.
10. We consulted on the policy for the use of civil sanctions in a range of regimes – including environmental permitting - in an Environmental Civil Sanctions consultation in 2009 (ref 9) and specifically in the EP Regulations again in July 2010 (ref 10). We are proposing that the Environment Agency adopt sanctions which complement those already available, namely Fixed Monetary Penalties, Variable Monetary Penalties and Enforcement Undertakings. The Environment Agency has already consulted on how they would implement civil sanctions in general (ref 11).

## **Option 2 Implementing certain Articles of the CCS Directive**

### *CCS Directive – the problem*

11. The obligation to transpose two Articles in the Carbon Capture and Storage Directive that have an impact on the environmental permitting framework. The Articles require these activities to have a

permit (they would have to get one anyway but we want to make this clear) and a change to lift a block on storing it underground. Implementation of the Directive is being led by DECC (ref 12).

#### *CCS Directive – rationale for intervention*

12. We propose to amend the EP Regulations 2010 (covering IPPC activities, generally large industrial sites) to insert an activity description for capture of CO<sub>2</sub> streams from installations covered by the IPPC Directive for the purposes of geological storage pursuant to the CCS Directive. This would make explicit our compliance with the Directive.
13. We would also implement Article 32 of the CCS Directive which amends the Water Framework Directive by inserting an addition to the exceptions concerning the injection of carbon dioxide streams into geological formations which for natural reasons are permanently unsuitable for other purposes. (Note – **this transposition has now been taken forward by DECC in their set of EP amending regulations to bring into force the outcome of a review of exemption orders under radioactive substances regulation**).

### **Option 3 Introduce permitting simplifications and other clarifications**

#### *Waste-derived fuels*

14. Developments in technology mean that it is possible for a waste-derived fuel to be processed so as to cease to be waste before being burned as fuel. The EP Regulations need to be modified (ref 10) so that combustion plant burning a fuel which has ceased to be a waste is regulated in the same way as those burning virgin fuels; i.e. there is no need for the additional complexity and permitting costs associated with burning a waste because the fuels pose no more risk than equivalent virgin fuels. This would benefit plant burning waste-derived fuel in the 3-50 MW range. Those below 20 MW will fall out of environmental regulation. Those at 20-50 MW will be covered by simpler local authority regulation. This is a more appropriate, and de-regulatory, approach that will not compromise environmental standards.

#### *Simplify permitting of AD plants*

15. AD technology is being introduced to transform biowaste into energy, producing a useful fuel gas in small plants for use on site and in larger plants typically for wider distribution (ref 12). Currently, those not burning the gas on site and those that do burn it on site but in the 3-50 MW range (because the gas has produced from a waste) are subject to IPPC controls. The use of this technology is expected to develop from a low level quite quickly over the next 10 years and we want to align the permitting requirements within the EP framework according to the environmental risks, having regard for changes we can see will be necessary quite soon at 100 t/d of feedstock to implement the Industrial Emissions Directive (IED). (3 MW is equivalent to about 200 t/d of feedstock. Changes in the EP Regulations necessary for the IED are quite significant, require stakeholder involvement and will be implemented later).
16. The proposal is that AD plants producing gas **for use on site** in a 3 MW unit or more will no longer be subject to IPPC controls and would be regulated in a simpler and lower cost way, as waste operations. IPPC and waste controls fit within a common framework under the EP Regulations, with many common permit conditions and systems. Controls for waste operations include emissions to air and odour, where appropriate, but do not require the additional complexity of PPC Best Available Techniques.
17. Under the current regulations, AD technology **without** on-site combustion is subject to IPPC controls because until recently this type of plant would only be taking wastes. Now energy crops are being grown for use in such plants. Such AD is sufficiently low risk that it can be removed from permitting. Similarly, the risks are sufficiently small for AD that uses waste at less than 100 tonnes per day that controls as a waste activity are sufficient. AD plant taking in waste feed material above the 100 tonne threshold would continue to be subject to IPPC control.
18. Existing AD plant using waste will be subject to the IED from 2013 or 2015, depending on details of implementation. The directive introduces a threshold of 100 tonnes throughput of waste per day above which **all AD using waste** will be subject to IPPC control. Hence, 3-50 MW AD plant **with on-site combustion** benefiting from the changes proposed here can only do so until 2013 or 2015 at the latest, when they would join all above 100 t/d having to come under IPPC controls.

19. We are not proposing changes for AD taking in waste material with **no on-site combustion** above the 100 t/d threshold because we think few plants would be affected.

#### *Waste exemptions*

20. The Waste Exemption Review looked at what activities should be exempt from the need for an environmental permit because they are low risk, making use of flexibility in EU legislation. The arising policy decisions were implemented through the Environmental Permitting Regulations (England and Wales) 2010 (ref 13). Those regulations introduced the changes in a phased programme through to 2013 because a limited number of comparatively higher risk activities will no longer be covered by an exemption and so in future require a standard permit. The main purpose of these amendments is to avoid unintended consequences of some activities requiring a permit where that is not intended. A summary is given in Annex 4. The changes would not increase risks to the environment.

#### *Off-shore installations*

21. Certain off-shore combustion installations became subject to permitting requirements under the EP Regulations 2010 when adequate protection is already provided with a permit under the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. The requirement has not been implemented and needs to be removed.

#### *Relationship with the Marine and Coastal Access Act (M&CA Act) 2009*

22. The new marine licensing system under the M&CA has replaced Part 2 of Food and Environment Protection Act (FEPA) 1985 from April 2011 (ref 14). To avoid regulating activities twice, the EP Regulations 2010 need to be amended to exclude from Environmental Permitting an operation that is a licensable marine activity under Part 4 of the M&CA Act. This is an update of a similar exclusion for activities that were licensable under FEPA. However, we consider that the main effects of ship dismantling – even where part of the activity takes place below Mean High Water Springs – are felt on land and we consider that these effects are better regulated under environmental permitting and our amendments would achieve that.

#### *Transferring a permit held by an individual who dies*

23. Currently, for some types of business activity (e.g. a waste operation) an environmental permit held by an individual (sole operator) ceases to be valid if they die. Therefore, anyone wishing to continue the business would have to apply for a new permit, usually at a very difficult time. We propose to introduce a common approach to keeping it in force through automatically vesting it in the personal representatives of the deceased who would then have six months during which to obtain a transfer of the permit. This avoids the regulator taking a risk in say accepting a transfer application after the death.

#### *Make a permit easier to transfer if the holder cannot be located*

24. Occasionally, it can prove impossible to locate a permit holder which can cause difficulties in relation to transferring the permit where both the transferor and transferee need to make a joint notification to the regulator. In other cases, there may be a large number of joint holders, e.g. for a common sewage treatment plant. We propose to amend the EP Regulations 2010 to make it easier to transfer a permit (a) when an individual permit holder cannot be located and (b) in the case of a standalone water discharge or groundwater activity, where there are numerous individual permit holders.

### **Option 4 Introduce the full package of measures listed in Options 1 to 3 above**

25. Option 4 is a simple consolidation of the other options.

## **Assessment of options**

### **Do nothing**

26. This is the baseline. The main effect of doing nothing would be to perpetuate the costs of the current system of enforcement action by the Environment Agency. Table 1 summarises the current

pattern of use by the Environment Agency (EA) of formal cautions and prosecutions in connection with environmental permitting. It concludes they spend around £6.2m p.a. using them.

**Table 1: Environment Agency current use of enforcement mechanisms<sup>1</sup>**

	Number	Regulator costs per unit <sup>2</sup> £'000s	% of which served in connection with EP offences <sup>3</sup>	Total regulator costs £'000s
Site warnings	24800	0.1	50%	1240
Warning letters	6000	0.6		1800
Notices	559	1		279.5
Formal cautions	397	3.3		655.05
Prosecutions	804	5.6		2251.2
<b>Total costs</b>				<b>6225.75</b>

Notes:

1. Usage data based on an average across 2004-7. Costs based on EA expert advice.
2. Including a component for internal review and appeals.
3. Based on EA analysis of their statistics.

27. Use of enforcement mechanisms helps them secure the environmental outcomes that the environmental legislation aims to deliver.

28. The costs and risks of not introducing new civil sanctions proposals include:

- Issues identified in paragraph 5 persist, objectives identified in paragraph 7 are not realised and the net benefits identified in table 2 are not realised.
- Opportunity missed for better targeting of enforcement resources to better secure compliance.
- Current level of damage incidents and risks remains unnecessarily high. This included 827 serious (and 16,000 minor) pollution incidents reported to the Environment Agency and over 140 cases of damage recorded by Natural England and 66 recorded by CCW on sites protected for biodiversity.

29. The implications of not taking action on the other proposed changes include:

- It would not be possible to implement Government policy enabling carbon capture and storage.
- Unnecessarily expense for operators of anaerobic digestion plants and plants using fuels recovered from waste because they would have to pay for the more expensive PPC rather than waste permits.
- Some operators relying on waste exemptions would incur unintended additional costs and a number of minor simplifications would not be made.

## Option 1: Introduce civil sanctions

30. Environmental civil sanctions Orders are already in force in England and Wales and were subject to a full Impact Assessment (ref 15 and Annex 5). The introduction of civil sanctions creates no new regulatory requirements on business. Their purpose is to address offending where advice and guidance has either been ignored or would not be a sufficient enforcement response. They will reduce regulators reliance on prosecution, making enforcement more proportionate and appropriate to the circumstances of a case. Prosecution will be reserved for the worst offenders. These are typically operators who behave recklessly, committing offences intentionally or repeatedly and are obstructive with regulators. We have pulled out and summarised here the methodology as it applies to environmental permitting, based on the 50% of cautions and prosecutions that the EA cautiously estimates relate to offences under the EP Regulations. In brief:

## Direct effects

- (i) EA used their records to estimate the number of EP site warnings, warning letters, cautions and prosecutions that would be replaced by Fixed Monetary Penalties (FMPs), Variable Monetary Penalties (VMPs) and Enforcement Undertakings (EUs) (paragraph 31 and Table 2 col 2).
- (ii) EA provided data on their costs of existing enforcement arrangements and estimates using the civil sanctions, allowing the difference to be established (paragraph 32 and Table 2 col 3; more detail at paragraph 32 of original IA).
- (iii) EA and business provided estimates of the admin time/costs required by offenders under existing and proposed arrangements (paragraph 32 and Table 2 col 4; more at paragraph 33 and Annex 4 of original IA).
- (iv) EA and First-tier Tribunal provided estimates of admin time/costs of dealing with the offences under existing and proposed arrangements (paragraph 32 and Table 2 col's 5 & 6; more at paragraphs 34 and 35 of original IA).
- (v) EA estimated the policy costs to offenders of additional measures to comply with new sanctions (paragraph 34 and Table 2 col 7; more at paragraphs 36-38 of original IA).
- (vi) EA estimated the additional environmental benefits which would arise from work undertaken through EUs (paragraph 35 and Table 2 col 8; more at paragraph 41-46 of original IA).

## Indirect effects

- (vi) It is considered that businesses would recognise the effectiveness of the new civil sanctions and a proportion of the otherwise non-compliant would invest to ensure compliance. An estimate was made in the original civil sanctions IA and this has been pro-rated on the basis of the proportion of offender policy costs attributable to EP to give an estimate of indirect costs and benefits additional to Table 2 (paragraph 36; with more detail at paragraphs 49-50 of the original IA).

## Overall

Total costs and benefits are summarised in paragraph 37.

## Direct effects

31. The additional impact of using the sanctions will depend in any individual case on what other enforcement tool could have been used instead. The costs, for example, may be higher or lower than the other mechanism. The overall impact of introducing these sanctions also clearly depends on how often they are used. The starting point was therefore to collect information from the proposed regulators: the Environment Agency and Natural England on the number of times existing enforcement mechanisms are used and the extent to which the new sanctions might be used instead of them<sup>123</sup>.

32. The direct effects are:

- *costs and cost savings to the regulators who use them.* The regulators provided information on the costs incurred in using existing enforcement mechanisms and the estimated costs of using civil sanctions. These provide the basis for the estimated change in costs in using civil sanctions.

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<sup>1</sup> Civil sanctions might be used instead of existing arrangements either to close the compliance gap or where more proportionate than using prosecution.

<sup>2</sup> Regulators estimates of the future use for all civil sanctions have been used directly except for undertakings where the estimate used is higher than that provided by the Environment Agency taking account of views from the business community suggesting that undertakings would be a favoured approach where possible.

<sup>3</sup> These assumptions were made before the final planning of legislation to introduce civil sanctions. Civil sanctions will need to be introduced later for certain offences including one major regime, the Environmental Permitting Regulations. This phased introduction may mean that the true use levels will be lower than estimated in the first year or two until the planned legislation can be brought forward to apply civil sanctions to environmental permit offences. The sensitivity of the results to varying the level of use of civil sanctions was tested in the sensitivity analysis.

- *Costs and cost savings to the offenders on whom they are served.* This is in terms of both the administrative costs of co-operating with sanctions and of taking any measures required by the sanctions. Consideration was given to what action the offender might take compared to what action he would have taken under the mechanism that would otherwise have been used and the additional cost implications. The estimates of administrative time taken by offenders for the civil sanctions and the enforcement mechanisms they replace are guided by the time estimates provided by the regulators for each sanction and by discussions with businesses. The assessment estimates costs (and benefits) for undertakings (based on cost (and benefit) information for restoring damage to the environment in other contexts).
- *Costs to the First-tier Tribunal/Courts.* The FTT will be responsible for administering any appeals and will face increased costs; the costs to courts will be reduced to the extent that they will hear fewer prosecutions. The costs to the FTT are based on regulators' views on the proportion of cases in which appeals would be made and guided by information from the FTT on the costs of administering them. The estimate of cost saving to the Courts is guided by the views of regulators on the reduction of prosecution numbers and information in the RES Act IA on the costs to Courts of prosecution.
- *A transfer of funds from offenders to government for monetary penalties issued.* This is based on regulators views on the potential level of sanctions applied and a view of the potential level of penalties.
- *Benefits to the environment.* An enforcement undertaking would be expected to include restoration of damage that has been caused, in so far as possible, restitution to any community or organisation impacted by the offending and actions to ensure future compliance.

## Indirect effects

33. These are expected to include:

- *An improved environment resulting from change in behaviour towards greater compliance with existing regulations and greater care in avoiding offences and environmental damage.* This is expected as business sees enforcement, short of court action, becoming more effective with the introduction of civil sanctions. How much the benefits, from greater compliance with existing regulations, are compared with the costs is largely dependent on what the body of regulation, which is being enforced, is designed to achieve. Paragraph 36 provides an indication of the costs and benefits of this change in behaviour.
- *A more level playing field as a result.* Improved enforcement is likely to benefit legitimate businesses i.e. those who typically comply with regulations. This is because companies with a less scrupulous approach to compliance are more likely to have had reduced costs as a result of not complying with environmental regulations (e.g. reduced monitoring costs, not investing in appropriate equipment or not paying waste disposal charges) and may have been able to achieve greater market share from being able to charge lower prices. To the extent that costs are increased as a result of these proposals either directly or from moving to greater compliance, the relevant businesses will either have reduced profits or pass costs on and may lose business as a result. This and the fact that, in some cases, offenders may move out of illegal activities (e.g. illegal waste disposal) will make more market share available for companies that generally comply with regulations. Without detailed financial information from non-compliant business it is difficult to predict how they will respond to increased costs.
- *Competitive advantage from effective environmental regulation.* There is a growing literature to support the theory that countries can achieve a competitive advantage from implementing environmental regulations<sup>4</sup>. This is both because companies become good at complying with regulations and can then compete more effectively as other countries implement similar regulations and because the environmental sector develops expertise that it can then sell to other markets. These effects are likely to be undermined to the extent that there is non-compliance with regulations; more effective enforcement may therefore enhance these advantages.

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<sup>4</sup> [http://en.wikipedia.org/wiki/Porter\\_hypothesis](http://en.wikipedia.org/wiki/Porter_hypothesis)

34. The Table also sets out the estimated administrative costs to regulators, offenders, the First-tier Tribunal and the Courts (cost savings) and the policy costs and benefits of using the civil sanctions. In the civil sanctions IA, policy costs are based on assumptions advised by the Environment Agency of what proportion of each type of criminal sanction that would have involved restoration previously anyway (so do not count) and damage cost estimates from the Environmental Damage Regulations IA for the relatively serious types of incident (Category 1 and 2) they have on their records, i.e. that could attract a civil sanction in future. Generally these were water pollution incidents.
35. Similarly, environmental benefits were estimated using the Environment Agency methodology for calculating the value of benefits for the programme of work required for the 4<sup>th</sup> Periodic Review of the water industry in England and Wales in 2004. Across the range of cases considered, the environmental benefits were estimated to outweigh policy costs by a factor of 2.3:1, so this factor is used in the Civil Sanctions IA to estimate environmental benefits pro rata from policy costs.
36. Table 2 does not include the wider behaviour change that we expect will result from civil sanctions. The civil sanctions IA considers the impacts of civil sanctions across relevant regulation applied by the Environment Agency, Natural England and Countryside Council for Wales as a whole, including EPR. It assumes that a high proportion of damage (75%) is caused by a relatively small number of businesses (10% of businesses in sectors that pose environmental risks) that are characterised as non-compliant – on the basis of evidence that damage is rarely caused when businesses are fully compliant with regulations. It then examines the costs if a modest proportion of non-compliant businesses (0.5%<sup>5</sup> or 195 businesses) went from zero expenditure on environmental protection to the average level of environmental expenditure (£12k on the basis of the Environmental Protection Survey 2006). This gives an overall cost of £2.4m. Finally, it assumes that those businesses now investing in environmental management no longer cause damage leading to a corresponding reduction in the total costs of environmental damage in England and Wales<sup>6</sup>. This gives an overall benefit of £4.0m. It seems reasonable to assume this behavioural effect will be driven by offender policy costs (on the basis that it will be this additional cost that would receive publicity), so we have taken the proportion of offender policy costs in the original IA which relates EP offences (28%) to estimate that civil sanctions under EPR would have indirect behavioural costs of £0.7m costs p.a (as a proportion of £2.4m). and benefits of £1.1m p.a (as a proportion of £4.0m). NB: these are additional to direct costs and benefits in Table 2.

**Table 2: Predicted use, direct costs and benefits to the EA of new sanctions relative to the current situation (excluding indirect behavioural impacts, which are additional)**

	Number	Regulator costs <sup>1</sup>	Offender (admin) costs	Courts costs	FTT costs	Offender (policy) costs	Environmental benefits
		£'000s	£'000s	£'000s	£'000s	£'000s	£'000s
Site warnings to (site warnings) + FMPs	248	196	8		10		
Warning letters to (WLs) + FMPs	60	32	2		3		
Cautions to FMPs	10	-25	-9		1		
Cautions to VMPs	40	-108	82		3		
Prosecutions to VMPs	40	-207	257	-10	3		
Warning letters to (WLs) + VMPs	30	8	90		2		
Warning letters to undertakings	30	69	25		0	336	774
Cautions to undertakings	50	-21	-8		0	557	1280
Prosecution to	40	-114	-347	-10	0	492	1132

<sup>5</sup> The civil sanctions are expected to have some effect on behaviour of generally non-compliant companies either where businesses are subject to them directly or in response to their availability. There is no direct evidence to inform this proportion. Around 3% of non-compliant companies might receive civil sanctions each year (estimated on the basis of the estimated number of non-compliant businesses overall, the estimated number of civil sanctions served each year and the estimated proportion served on non-compliant businesses). It is also likely that some businesses that take action will do so on an ongoing basis. This might suggest that 0.5% is a low estimate.

<sup>6</sup> This is based on the number of recorded incidents each year multiplied and the costs of environmental damage using information on remediation costs for different sized incidents from the Environmental Damage Regulations IA as a proxy.

undertaking							
<i>Total costs and benefits</i>		<b>-170</b>	<b>100</b>	<b>-20</b>	<b>22</b>	<b>1385</b>	<b>3186</b>

Notes:

1. Positive numbers are an increase in costs and a negative number is reduced costs.
37. The Environmental Civil Sanctions consultation in 2009 (ref 9) addressed the possible impacts on compliant business, including micro-businesses and concluded that there would be no adverse impacts, including increased cost, on them. Overall for environmental permitting, including both the direct effects of using civil sanctions and the indirect behavioural effects, our analysis suggests present value costs of £17.2m and benefits of £37.1m leading to a NPV of £19.9m (10 years; discount rate of 3.5%). Transitional costs and benefits are insignificant because systems are in place and arrangements being rolled out as a whole rather than for environmental permitting alone. **These costs and benefits would be enabled by the amendment Regulations but have already been claimed as part of the civil sanctions IA at Annex 5, so are not included in the Summaries.**

## Option 2 Implement certain articles of the CCS Directive

38. The changes to EP Regulations 2010 to prepare for CCS are simply adjustments in the Regulations to provide absolute clarity for the purposes of satisfying the Directive. They have no significant costs or benefits in themselves. An IA has been prepared for the wider system (ref 16).

## Option 3 Further permitting simplifications and other clarifications.

### *Waste-derived fuels*

39. Much interest is being generated in using waste derived fuels which has already passed the Environment Agency's 'end of waste test' in combustion plant. Passing the test will ensure they present no more risk to the environment than the equivalent virgin fuel. As well as processed fuel oil, there is considerable interest with regard to using used vegetable oil. As more end of waste submissions are made, more waste derived fuels will come on to the market. The Environment Agency anticipates this will be a growth area involving both new plant and fuel switching within existing plants. This will help to create opportunities for business and a level playing field between virgin and equivalent waste-derived fuels. There will be substantial benefits arising from this expanding sector but we focus on existing businesses for the purpose of the IA.
40. The EA provided the following estimates of existing plant burning waste-derived oil, based on the permits they have issued:
  - 3 - 20 MW:** 10 plants.
  - 20 - 50 MW:** 3 plants.
  - >50MW:** the end of waste test will have no regulatory impact on plant >50 MW. The Environment Agency would continue to regulate them with bespoke PPC permits irrespective of them using a virgin fuel or a waste derived fuel no longer considered a waste.
41. There are currently 31 plants at 0.4-3 MW scale permitted as Part B installations to burn wastes other than oil. We are assuming 5 of these would drop out of regulation using 'end of waste' arrangements.
42. The reduced level of regulation would bring lower charges for permit applications and subsistence and require less resource to service them (see Table 3). We have no information on avoided business costs.
43. Table 3 suggests that about £0.85m would be saved in unnecessary costs, as NPV over 10 years. As one would expect, the savings are largest for the large plant. Implementation would be a minor matter of adjusting charging bands and advising operators through existing channels, so transitional costs and benefits are insignificant.
44. An uncertainty range of 50% should cover the range of possibilities, i.e. the NPV could range £0.42 – 1.27m. Discussions with EA experts concluded that the true value was unlikely to be outside this range.

**Table 3: Cost projections for combustion plant fired with fuels which have ceased to be waste**

	Plants	Subsistence costs for an operator <sup>1</sup> £'000s/y	Subsistence Charge <sup>2</sup> £'000s/y	NPV over 10y £000's
<b>Costs now for waste oil under PPC:</b>				
20-50 MW	3	1.8	10	305
Sub 20 MW	10	1.8	10	508
<b>Costs now for waste biomass as Part B:</b>				
0.4-3 MW existing	5	0.9	1.1	86
<b>Costs under Option 3:</b>				
Bespoke Part B permit 20-50 MW oil-burners	3	0.9	1.1	52
Oil burners no longer falling under EP Regulations	10	0	0	0
0.4-3 MW existing biomass	5	0	0	0
<b>Total saving in costs</b>				<b>847</b>

Notes

- Costs to an operator of complying, excluding the regulator's charge. For a bespoke Part B: 37h of effort at £24.3/h, keeping records and reporting. For a bespoke PPC: 74 h of effort for monitoring, reporting, inspection and admin at larger scale. (EA advice).
- From regulator's charging scheme.

*Anaerobic digestion*

- AD plant which will burn their gas on-site in combustion units greater than 3 MW thermal input will temporarily move from IPPC control to control as a waste activity until the 100 tonne/day criteria in the IED is implemented. We have assumed this will be two years but it may be longer, depending on implementation arrangements to be developed. We expect about 40 existing AD plants to benefit from lower charges.
- Some AD plant which move from IPPC controls to waste activity controls will be eligible for standard rules permits now in development. Standard rules permits are simpler to administer than the equivalent bespoke permit and hence charges are lower. The Environment Agency will investigate making the rules suitable for use under IED too (the environmental risks will not have changed).
- Table 4 suggests that about £0.66m would be saved in unnecessary costs. Implementation would be a minor matter of adjusting charging bands and advising operators through existing channels, so transitional costs and benefits are insignificant.
- An uncertainty range of 50% should cover the range of possibilities, i.e. the NPV could range £0.42 – 1.27m. Discussions with EA experts concluded that the true value was unlikely to be outside this range.

**Table 4: Cost projections for AD plants**

	Existing plants using wastes producing gas for on-site use at 3-50 MW, for 2y	Subsistence costs for an operator <sup>1</sup> £'000s/y	Subsistence charge £'000s/y	NPV over 10 y £'000s
<b>Costs now</b>				
Bespoke PPC installation permit	40	1.8	10	928
<b>Costs under Option 3</b>				
Bespoke waste permit	10	0.9	3	77
Standard rules waste permit	30	0.9	2.4	195
<b>Total saving in costs</b>				<b>657</b>

Notes

- For the waste permits, the compliance effort should be the same - estimated at 37h of effort at £24.3/h for keeping records and reporting. 74h for PPC permits because systems designed for higher risks (EA advice).

### *Waste exemptions*

49. The baseline is no intervention. The changes are necessary to help a tiny fraction of the operators who would otherwise have to get a permit in 2013, in order to realise the original aims and impact assessment of the Waste Exemptions Review. We have taken Environment Agency advice on the effect of not intervening and intervening for each exemption - summarised in Table A4 in Annex 4. Based on this advice, we have taken a base scenario of 1% of exemption holders are affected. Intervening to make the changes would reduce 2013 costs to give a NPV £1.9m benefit. Implementation would be a minor matter of adjusting charging bands and advising operators thorough existing channels, so transitional costs and benefits are insignificant. We have been advised the proportion affected could be between 0% (i.e. no impact) up to say 5%. At 5% the benefit could be £7.0m. **These benefits fall within the original Waste Exemptions Review IA, so are not included in the Summary tables to avoid double counting.** There is no increase in risk to the environment by making these changes.

### *Off-shore installations*

50. This simply maintains the status quo. There are no impacts of the changes for offshore installations because they will have not applied for an environmental permit. This change will simply avoid introducing the need for two permits. There will be no quantitative costs or benefits associated with this change or increase in risk to the environment.

### *Relationship with the Marine and Coastal Access Act (M&CA Act) 2009*

51. Again, this maintains the status quo. The consequential changes to EP Regulations arising from the marine licensing changes are an integral part of the M&CA Act IA (ref 18). The change will simply avoid introducing the need for two permits. There will be no quantitative costs or benefits associated with the change in regulations or increase in risk to the environment.

### *Keeping a permit in force if held by an individual who dies*

52. Currently, if the deceased personal representatives would like to keep the business running without interruption, a regulator would have to take a small legal risk in backdating an application to transfer the permit. It is matter of giving a legal basis for a regulator being helpful. There are no quantifiable costs or benefits associated with this change because one assumes the regulator would do it anyway. The number of businesses benefitting each year is expected to be no more than a handful. There is a possibility that the personal representative does not have the necessary technically competence available to them to operate the site without putting the environment at risk but this will be managed by the regulator, who can revoke the permit if necessary.

### *Make a permit easier to transfer if the holder cannot be located*

53. Again, this is a matter of giving a legal basis for a regulator to help business through an administrative process. There are no costs and benefits are too variable and uncertain to be quantifiable. There would be in no increase in risk to the environment.

## **Option 4 Introduce the full package of measures listed in Options 1 to 3 above**

54. There are no interactions between the options, so it is simply a matter of adding the costs and benefits together.

## **Risks and assumptions**

55. There is a risk that the personal representatives are unaware of the need for a permit and continue to operate without reference to the regulator. Communications with business would cover the issue.

## **Administrative burden and policy savings calculations**

56. We have included policy savings only in the civil sanctions assessment.

## Wider impacts

57. The changes are delivering a policy of simplifying regulation to help business. Wider impacts are considered in Annex 3.

## Summary and preferred option with description of implementation plan

58. Existing guidance would be updated and published (at least in draft) 3 months before the changes would become effective on 6 April 2012. Awareness would be raised in EA publications for business.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

**Basis of the review:** [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];

Environmental permitting will be reviewed as a whole in 2015. Similarly, civil sanctions will be reviewed as a whole in a separate review in 2013 (considered further in Annex 2).

**Review objective:** [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

To determine whether the policy objective of reducing the admin burden on business and regulators has been met and the impact as expected (costs and benefits), with compliance levels indicating that the enforcement regime is effective and no deterioration of environmental standards.

**Review approach and rationale:** [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The review approach and rationale would be an impact assessment of costs and benefits, supported by primarily qualitative feedback collection from operators and their representative groups as to their experience of EP. This would provide strong evidence as to whether the policy had met its objectives in reducing burdens on regulators and business

**Baseline:** [The current (baseline) position against which the change introduced by the legislation can be measured]

Regulatory regimes have been added, so the baseline will be that used for EPP1 & 2, as changed by amending regulations (if/where appropriate).

**Success criteria:** [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Reduced administrative burden on business

Comparison with the costs and benefits predicted for EPP1, EPP2 (total £121m NPV over 10 years) and in amending regs, eg in lower charges/costs and quicker provision of permits.

Customer views on how much the common framework has helped them.

Any unforeseen unintended consequences.

Continuing monitoring of the application of the regs as a flexible framework is likely to identify further opportunities for deregulatory amendments

**Monitoring information arrangements:** [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

An initial PIR was undertaken in Nov 2008, to get early feedback and experience. It has been published on Defra web site. EA is tracking whether the predicted costs/benefits are being realised (they are almost entirely under their aspects) and routinely monitors permitting performance and customer satisfaction. A plan will be agreed with EA and the Defra policy lead for local authority regulation (Part B installations) on how to collect sufficient information, particularly customer effort costs and views

**Reasons for not planning a review:** [If there is no plan to do a PIR please provide reasons here]

## Annex 2: PIR for civil sanctions

### **Basis of the review:**

There is a public commitment to review civil sanctions. It is part of the plan in the Project Initiation Document. It will look across all regimes covered, i.e. beyond EPR.

### **Review objectives:**

- What has happened
- Whether we have achieved the intended objectives of civil sanctions
- What the costs and benefits have been
- Whether improvements could be made
- What we have learnt about responding proportionately and effectively to environmental non-compliance

### **Review approach and rationale:**

Defra and WAG will be delivering the review, with input and assistance of EA and NE to meet public commitments and inform a ministerial view on how well civil sanctions are working as part of the enforcement system. This will involve:

- Establishing project management arrangements
- Engaging stakeholders
- Agreeing input, including data collection and monitoring requirements, from regulators
- Designing questionnaires in agreement with regulators/others
- Commissioning social research input
- Collating and analysing data
- Publish the report

### **Baseline:**

Baseline is defined in Table 1, drawn from the final IA for civil sanctions.

### **Success criteria:**

- Comparison with the costs and benefits predicted for EPP1, EPP2 (total £121m NPV over 10 years) and in amending regs, egg in lower charges/costs and quicker provision of permits.
- Customer views on how much the common framework has helped them.
- Any unforeseen unintended consequences.

### **Monitoring information arrangements:**

EA is tracking whether the predicted costs/benefits are being realised. A plan will be agreed with EA to ensure adequate information is collected for the PIR, particularly customer effort costs and views.

### **Reasons for not planning a PIR:**

Not applicable.

## Annex 3: Specific Impact tests

### Statutory equality duties

1. None of the options should have a discriminatory effect on individuals in respect of disability, gender, including gender identity, racial equality or wider equality aspects.

### Competition

3. The following impacts have been identified.

#### *Civil sanctions*

4. The regulations are unlikely to have significant impacts on competition for firms who comply with existing environmental regulations. This is because the new civil sanctions and improved sentencing structure will only affect non-compliant companies.

5. Systematically non-compliant companies, however, are likely to have reduced costs as a result of non-compliance with environmental regulations (e.g. reduced monitoring costs, not investing in appropriate equipment or not paying waste disposal charges) and may have been able to achieve a higher market share by charging lower prices. Improving the effectiveness of existing enforcement would force non-compliant companies to move to greater compliance or, in some cases, move out of illegal activities (e.g. illegal waste disposal). Some of these previously non-compliant companies would either need to increase their costs or might choose to exit the industry. This could therefore cause compliant companies to achieve greater market share and increase their prices with reduced competition.

6. Only a small proportion of businesses are systematically non-compliant owing to the existing deterrents from not complying with environmental regulations. We are not aware of data to determine what proportion of business is either systematically or occasionally non-compliant.

#### *Recovered waste-derived fuels and anaerobic digestion*

7. Simplifying permitting requirements reduce a regulatory barrier to new entrants into the energy market using waste fuels.

### Small firms and micro businesses

8. A micro business waiver is being sought on the basis that the civil sanctions changes will affect only offenders and other changes are simplifications which should help small firms and micro businesses.

#### *Civil sanctions*

9. Civil sanctions apply where an offence has been committed, typically when advice and guidance from the regulator has either been ignored or would not constitute a sufficient enforcement response due to the seriousness of the offending. They principally affect the non-compliant, along with those who would have been non-compliant but were incentivised to invest to become compliant (para. 30). There are no transitional or ongoing costs for compliant small and micro businesses. The Civil Sanctions IA (Annex 5) estimates that offenders' administration costs as a whole could increase by £0.6m a year. Of course, while the costs in absolute terms for both large and small firms are small, in relative terms the time invested by an offender in finding out about the new civil sanctions is likely to be more costly for a small business than for a larger company. Equally, the time and cost savings from not being prosecuted will be relatively more important for small firms than large companies. A key focus of the regulator's communication plan for the regulations will be engaging with small and micro firms.

10. This is supported by the IA of the Regulatory Enforcement and Sanctions Bill (May 2008) which concluded that the negative impact on small business would be minimal and proportionate as the new sanctions would be applied across all business. This was the result of extensive contact with small businesses and small business groups. This was conducted in several ways, through submissions, bilaterals, one-to-ones and focus groups. The responses pointed to a general welcoming of the proposals.

#### *Recovered waste-derived fuels and anaerobic digestion*

11. Currently large companies operate these sectors, i.e. oil recycling and food companies respectively. The only implication is that the measures would make it easier to get the permissions necessary for business start-ups.

### *Clearer waste exemptions and easier transfer of permits*

12. These changes are to specifically help small and micro businesses. A full assessment of the impacts of exemptions on small business was undertaken when revised exemptions were made in the EP Regulations 2010 (ref 17). The Environment Agency does not collect business size data from applicants but from working with the sectors estimates **about 40% of the exemptions affected would likely be held by micro-businesses**. There would be no increase in transitional costs as operators would have to be reminded to act anyway and these changes would mean they would simply have to register on-line rather than apply for a permit, as indicated in Annex 4. There are no transitional costs regarding making it easier to transfer a permit, as the regulator would provide the help only when necessary – which will only be a few times per year.

## **Greenhouse Gas Assessment**

### *Carbon capture and storage*

13. The changes would not of themselves impact on the potential emissions of carbon dioxide, but will remove a regulatory blockage to storing carbon dioxide underground.

### *Recovered waste-derived fuels*

14. There may some overall decrease in carbon dioxide emissions if waste-derived fuels are used for productive purposes (probably heat generation but perhaps some electricity generation) rather than incinerated. However, it is impossible to meaningfully assess the amount of fuel switching and emissions reduction that could be attributed to these changes in the Regulations.

### *Anaerobic digestion*

15. Lower permitting costs should help to encourage development of anaerobic digestion capacity and hence some reduction in fugitive methane emissions from decomposition of wastes. However, it is too small to meaningfully estimate.

## **Wider environmental issues**

### *Civil sanctions*

16. The following impacts have been identified, though they would be local and therefore a relatively minor part of the national picture:

- **Waste management.** It could increase the financial costs of waste management if it reduces illegal waste disposal and increases demand for waste management. Negative environmental and health impacts should also reduce as waste would be dealt with more responsibly.
- **Landscape and townscape.** More effective environmental enforcement should reduce environmental offending. To the extent that it reduces those environmental offences that have detrimental effects on landscape and townscape, such as fly-tipping, it should materially improve the appearance of landscape and townscape.
- **Water pollution, levels of water abstraction and exposure to flood risk.** Some improvements to water quality are expected, directly from more restoration of the water environment and indirectly to the extent that it encourages businesses and others to avoid causing water pollution.
- **Nature conservation.** As for water quality, enhancements to habitat and wildlife are expected.
- **Noise.** More effective environmental enforcement should increase compliance with regulation and reduce the numbers of people exposed to noise.

## **Health and well-being**

### *Civil sanctions*

17. There are likely be health benefits associated with actions taken by business to reduce environmental risks. There are direct benefits to the public of reduced illnesses and adverse conditions and indirect benefits in terms of reduced stress (worrying about one's own or others' conditions) and reduced time off work, which in turn has a positive impact on the economy. Fewer environmental damage health effects would reduce the burden on public health services.

## **Human Rights**

18. None identified.

**Justice impact**

19. None identified additional to the civil sanctions impacts above.

**Rural proofing**

*Waste-derived fuels, anaerobic digestion, and changes in waste exemptions*

20. These will introduce a little more flexibility for activities which support rural communities, notably in the use of agricultural wastes like used sheep dip.

**Sustainable development**

21. The options are all positive in terms of impacts on law abiding members of the community. Implementing the CCS Directive would remove a regulatory blockage to underground carbon dioxide storage. Otherwise, there are no significant environmental, social or intergenerational impacts.

## Annex 4: Refining the definition of certain exempt waste activities

- Changes are proposed generally to either improve clarity or increase the scope of activities covered by an exemption to better reflect the original intention. These are summarised in Table A4. The EA have supplied the total number of exemptions that *could* be affected but there is uncertainty over the proportion that *would* because it will be a small proportion and driven by sector specific factors. So we have generally assumed that 1% might be affected as a base case (except where we have better information) and considered the implications at 5%.

**Table A4: Summary of the changes to waste exemptions, the impacts and estimated costs**

Exemption	Detail of change	Potential population	What will happen if no intervention	What will happen if intervene	NPV at base case 1%	NPV at 5%
					£'000s	£'000s
					2013-2021	2013-2021
<b>U1</b>	The exemption is clarified so that it is clear that no treated wood is allowed. Additionally, three new waste streams are added to the exemption	556	Buy standard permit	Take exemption	69	344
<b>T5</b>	Three new waste streams are added to this exemption	1476	Buy standard permit	Take exemption	183	913
<b>T6</b>	Three new waste streams are added to this exemption	1476	Buy standard permit	Take exemption	183	913
<b>U8</b>	Clarifying that wood shavings, wood chip and oversized compost can only contain untreated wood. Treated wood waste would be excluded.	3021	Take exemption	Business will exclude treated waste without incurring costs.	0	0
<b>U8</b>	Add additional wastes streams: hazardous telegraph poles and railway sleepers	3021	Change behaviour	Take exemption	0	0
<b>U8</b>	Certain paper and paper pulp waste streams are clarified to ensure that only de-inked paper is used for bedding etc.	3021	Buy standard permit	Take exemption but at no cost because they will be registering others at the same time	380	1899
<b>U10</b>	Add a sludge waste code to this land spreading exemption	115	Would find another disposal route	Take exemption but at no cost because they will be registering others at the same time	0	0
<b>T16</b>	Add a waste code to cover waste ink	53	Buy standard permit	Take exemption	7	33
<b>T16</b>	Change in the limit from 50,000 units to a tonnage (150 tonnes)	53	ALL would buy standard permit (EA advised by trade assoc)	Take exemption	656	656
<b>T11</b>	Expanding the exemption to cover dismantling for recovery.	509	Small businesses cease the work and larger ones buy a standard permit	Take exemption	31	31
<b>T19</b>	To allow the chemical treatment of edible oil and fat (up to 250 tonnes)	10	Change behaviour	Take exemption	0	0
<b>T23</b>	To allow the composting of used/soiled animal bedding produced under U8	1188	Buy standard permit	Take exemption but at no cost because they will be registering others at the same time	149	747

<b>T24</b>	To allow the anaerobic digestion at farms of used/soiled animal bedding produced under U8	1188	Buy standard permit	Take exemption but at no cost because they will be registering others at the same time	149	747
<b>T25</b>	To allow the anaerobic digestion at premises other than farms of used/soiled animal bedding produced under U8	1188	Buy standard permit	Take exemption	147	735
<b>TOTAL</b>					<b>1954</b>	<b>7018</b>

1. Assumptions are drawn from the Exemptions Review IA (ref 17):

1. The impacts all occur in 2013, i.e. the date when EA enforcement positions generally cease to provide cover for operators.
2. Standard permits have an initial cost of £1.9k (operator cost + regulator's charge) and annual cost of £1.5k/y (operator cost + regulator's charge).
3. Exemptions have an initial effort cost of £0.2k and insignificant annual cost. The EA does not charge for these exemptions.