

The Groundwater (England And Wales) Regulations 2009

November 2009

New regulations which came into force on 30th October 2009 will potentially have direct and significant impacts on discharges of radioactive substances to groundwater.

Background

- The 1980 Groundwater Directive controlled direct discharges to groundwater of particularly polluting substances, and sought to control the indirect pollution of groundwater by other less obviously polluting substances. The 1980 Directive was implemented in part by the Water Resources Act 1991, but also by the Groundwater Regulations 1998. The 1998 Regulations controlled direct discharges of 'List I' substances, and activities leading to indirect pollution from 'List II' substances.
- The Water Framework Directive of 2000 ('WFD') led to a major overhaul of water protection legislation with a view to achieving good chemical and ecological status in all Community waters by 2015. One major change in the WFD, not much remarked at the time it was concluded, was that because it was silent on the subject of application to radioactive substances, they were considered to be within its scope.

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- In 2006, as a Daughter Directive to the WFD, a new Groundwater Directive was agreed. This is what is being implemented in The Groundwater (England and Wales) Regulations 2009. The distinction between List I and List II substances is to be replaced. Instead, there will be "hazardous substances" and "non-hazardous pollutants". The 2009 Regulations will prevent the input of hazardous substances, and will limit the input of non-hazardous pollutants. A hazardous substance is defined as any substance or group of substances that are toxic, persistent and liable to bio-accumulate (this should probably read "or" liable to bioaccumulate to be consistent with the WFD).

- There is a non-exclusive list of hazardous substances in the Regulations, but the Environment Agency is also required to publish a list, of substances which it considers to be hazardous. It is understood that the Environment Agency will regard radioactive substances as hazardous substances.
- **The key change for nuclear operators is that radioactive substances will now no longer be exempt from groundwater controls. The 2009 Regulations will come under the overall Environmental Permitting Regulations and be enforced by the Environment Agency. There is therefore a new regime of controls, backed by criminal offences, applicable to groundwater pollution by radioactive substances that will have potentially wide implications for nuclear operators.**

At Burges Salmon we have detailed knowledge and experience in both nuclear and water law, including advice to government on both fields, which gives us good practical insight and ability to help as required.

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Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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