Response form
Onshore Oil & Gas Sector Guidance Consultation

Your details

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When we come to analyse the results of this consultation, it would help us to know if you are responding as an individual or on behalf of an organisation or group. Please select from the following options:

☐ Responding as an individual

✓ Responding on behalf of an organisation (Please specify which organisation or group you are responding on behalf of and include what type it is e.g. business, environmental group)

UKELA

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA’s members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared with the help of the waste, climate change and energy, and water working parties.

☐ Other (please specify) _______________________________
Please tell us if you would like to (tick all that apply):

✓ Receive an email acknowledging your response
✓ Receive an email to let you know that the summary of responses has been published

If you have ticked any of the boxes above, please provide us with your email address:

Email: rosie@ukela.org

☐ Put a cross in this box if you are requesting non-disclosure of your response. Please provide an explanation to support your request.
Please tell us how you found out about the Onshore Oil & Gas Sector Guidance consultation:

- [x] From the Environment Agency
- [ ] From another organisation
- [ ] Through an organisation you’re a member of
- [ ] Advert
- [ ] Press article
- [ ] Social media e.g. Facebook, Twitter
- [ ] Through a meeting you attended
- [ ] Other (please specify)________________________________________________

How we will use your information

The Environment Agency will look to make all responses publicly available during and after the consultation, unless you have specifically requested that we keep your response confidential.

We will not publish names of individuals who respond.

We will also publish a summary of responses on our website in which we will publish the name of the organisation for those responses made on behalf of organisations.

In accordance with the Freedom of Information Act 2000, we may be required to publish your response to this consultation, but will not include any personal information. If you have requested your response to be kept confidential, we may still be required to provide a summary of it.

Returning your response

Your response to this consultation needs to be returned by 3 March 2016.

We would like you to use this form if you are not submitting your response online. You can return it by email to oilandgasconsultations@environment-agency.gov.uk. Please use this email address if you have any questions regarding this consultation or call us on 03708 506 506.

Or by post to:

**FAO Onshore Oil and Gas Programme**
**Environment Agency**
**Horizon House**
**Deanery Road**
**Bristol BS1 5AH**
We welcome your views on our Onshore Oil & Gas Sector Guidance

Q1. The purpose of this guidance is to signpost the reader to the appropriate regulatory regimes for onshore oil and gas exploration and extraction. Do you feel the document fulfils this purpose?

*Please tick the relevant box*

- [✓] Yes
- [ ] No
- [ ] Don’t know

*Please explain your answer.*

We were grateful to Mark Ellis Jones for speaking to UKELA members on 9 February about the Agency’s role regulating the onshore oil and gas sector (and hydraulic fracturing in particular), and about the draft Guidance.

As a general observation, we welcome this Guidance as a clear explanation of what is a rather complex web of regulatory regimes. In particular, we welcome the clear drafting and organisation of the document under relevant topics, appropriate level of detail, ease of navigation around the guidance, and the use of hyperlinks to take readers to relevant external websites and documents.

We understand that the document is to be reformatted and changed before final publication on Gov.UK. We would urge that the clarity, detail, links, ease of navigation etc are preserved and not lost in this process.

We make this point, because in our experience some of the new generation of guidance on Gov.UK falls short of the high standard set in the draft Guidance, due to a lack of detail. The present guidance is technical guidance for the industry and its advisers – not general information for the layman. As such, preserving the level of detail is of paramount importance.

Specific comments on the draft Guidance include:

- Obviously there will be a need to update what is said about the draft Onshore Hydraulic Fracturing (Protected Areas) Regulations 2015 once these are finalised (p9 and 34).

- On page 6, the addition of the regulatory overview slide from Mark Ellis Jones’ presentation would be very useful in order to make clear the Environment Agency’s remit and its relationships with other regulators. This is not really clear from the draft guidance.

- In the “Other sources of useful information” section on page 6, we would query whether it is appropriate to refer to the industry’s own guidelines in the
Environment Agency’s guidance. This may be more a question of perception, but an important one given the controversy surrounding hydraulic fracturing.

Q2. Does the guidance clearly outline the Environment Agency permits that are needed for onshore oil and gas?

*Please tick the relevant box*

- [ ] Yes
- [ ] No
- [ ] Don’t know

Please explain your answer.

As above (response to Q1), we welcome the overall clarity of tone and structure/navigability in this document.

Specific points include:

- a need to update references to the Environment Permitting Regulations 2010 once these are consolidated;
- on page 13 the reference to RGN1 in the “Defining an operator” section needs to be amended, as RGN 1 was withdrawn on 1 February 2016.

Q3. Does the guidance clearly outline the other Environment Agency permissions that are needed for onshore oil and gas?

*Please tick the relevant box*

- [ ] Yes
- [ ] No
- [ ] Don’t know

Please explain your answer.

Q4. Is there anything missing that you feel should be included in the guidance?

*Please tick the relevant box*

- [ ] Yes
- [ ] No
- [ ] Don’t know
Please explain your answer.

In general, it is difficult to tell whether there are any important omissions at this early stage in hydraulic fracturing in the UK. Once the regimes have been ‘road tested’, issues may emerge on which more guidance is necessary. For that reason, we would suggest that this guidance is revisited in a few years, and re-consulted on, to take into account experience of how the regimes work, and to deal with any specific issues arising (including, for examples, matters of legal interpretation).

At this stage, we had one specific question on which we would welcome further guidance, namely:

• In the “Extractive waste and waste classifications” section on pages 17 to 22, how is the Environment Agency proposing to track hazardous waste arising from onshore oil and gas activities following the abolition of the requirement to notify premises producing more than 500kg of hazardous waste annually in April this year?

See also our comments on BAT, below.

Q5. Please tell us if you have any other views or comments on the guidance that have not been covered by previous questions.

There are currently no BAT Reference Documents (BREF notes) referred to in the Guidance specific to the Onshore Oil and Gas industry. This means that neither applicants nor the Environment Agency (EA) have a benchmark for performance of the technology proposed in such an operation.

The Guidance recognises that there is no BAT reference document, and instead refers to other guidance or prescribes the Agency’s stance on BAT. For example, it outlines what the EA considers BAT on flaring systems, and storage and handling of crude oil, and refers readers to the Common waste water and waste gas treatment BREF notes for treatment of effluents.

The BREF notes represent the best practice of industry across the whole of the European Union. Each document generally gives information on a specific industrial/agricultural sector in the EU, on the techniques and processes used in this sector, current emission and consumption levels, techniques to consider in the determination of the best available techniques (BAT) and emerging techniques.

UKELA considers that the Environment Agency should develop a BAT reference document for the onshore oil and gas industry, in order to provide greater certainty. The absence of a BAT reference document for onshore oil and gas creates uncertainty for applicants as to what constitutes compliance with their permit requirement to demonstrate best available techniques, and uncertainty for the Environment Agency when assessing whether an operator is in compliance with its permit.
Absent a BAT reference document, UKELA recognises that the approach taken in the Guidance of cross referring to standards in other documents, or prescribing the Agency’s own stance on BAT, is the next best solution to address this uncertainty. It would, however, be helpful if the Guidance clarified:

- whether the techniques specified have been drawn from international best practice and experience as in the BREF notes;
- whether they are subject to review as in the BREF notes;
- and how emerging techniques will be dealt with in the permitting process.