

# Low Risk Passive Dewatering

Regulatory Position Statement: [LIT 16814]

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## Passive Dewatering Exclusion from Abstraction Licensing Control

### Introduction

New regulations introduced in January 2018 mean certain previously exempt water abstractors will need to apply for an abstraction licence as part of the final stage of implementing the Water Act 2003. The changes have removed the exemptions for dewatering (limited exemptions remain in place for construction dewatering only, under the Water Abstraction and Impounding (Exemptions) Regulations 2017).

Although there is no legal definition of passive dewatering, it is still classed as an abstraction under the definition in the Water Resources Act 1991. Abstraction, “in relation to water contained in any source of supply” is defined as the “the doing of anything whereby any of that water is removed from that source of supply, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another source of supply” (section 221 Water Resources Act 1991).

Passive dewatering generally refers to groundwater being discharged directly from the strata to the surface under the influence of gravity without the need of pumping equipment, as a result of the excavation or manipulation of the subsurface. The term covers dewatering as a result of the source of supply being removed (rather than taking of water from the supply itself) and operations required to maintain the long term integrity of a construction or excavation. Examples of these operations include, but are not limited to, dewatering to prevent the inundation/flooding of road and railway cuttings/tunnels and back-wall drainage at landfill sites.

It has become evident that there are significant numbers of ‘passive’ dewatering schemes across England. As such, to avoid unnecessary regulatory burdens upon both the Environment Agency and operators, the Environment Agency generally does not wish to regulate passive dewatering through licensing where we can avoid it and there is no environmental risk. We have therefore prepared a Regulatory Position Statement (RPS) that distinguishes between passive and active dewatering, the operations that can remain exempt and when the abstraction (including transfer) of groundwater would become licensable.

The majority of passive dewatering schemes are small scale, presenting minimal risk to the environment and local groundwater table. Many passive dewatering schemes are not actively managed, making regulation and enforcement impracticable. Passive dewatering of, for example, road and railway tunnels and cuttings is essential to maintain the integrity of nationally significant infrastructure.

Initial phases of work during construction and/or excavation of the subsurface requiring the active abstraction of groundwater using pumping equipment, will necessitate a licence as any other abstraction would. However, if a final passive drainage system is installed for continued operation of the works, such as a pipe network to collect run off and seepage, the activity will be treated as land drainage works and as such no further authorisation will be required.

We have provided detailed supporting scenarios as guidance to ensure consistency and to enable adjustments to be made to dewatering systems. This may allow operators to make changes to sites to utilise the exemption.

## Our Approach

- The Environment Agency does not wish to regulate low-risk passive dewatering and has therefore worked to produce this Regulatory Position Statement, where we can safely exclude this from regulation.
- This has been achieved by providing clarity for operators on what the Environment Agency class as low-risk passive dewatering, and thereby keeping it outside the licencing requirement.
- To assist consistent application of the Regulatory Position Statement, we have also provided detailed scenarios for our regulatory teams.
- For some sites, by simple adjustment of the dewatering arrangements, it may also be possible to operate within one of these scenarios and thereby stay outside the need for licensing.
- There will still be some situations – usually where passive dewatering is likely to cause environmental damage, or where the water is utilised for a subsequent purpose – in which licensing will still be required.

We will be happy to provide support to operators to understand their situation and if needed, indicate if any simple changes could assist them to not needing a licence.

## Passive Dewatering Exclusion from Abstraction Licensing

1. The Environment Agency does not intend to license groundwater dewatering operations classed as 'passive dewatering'. This means groundwater being discharged or drained directly from underground strata to the surface under the influence of gravity, without the need of pumping equipment.

2. We will therefore not require those persons that undertake passive dewatering to hold an abstraction licence for that part of their operation so long as they comply with the following conditions:
- (i) the dewatering scheme must not incorporate any form of pumping equipment for the abstraction and subsequent relocation of groundwater;
  - (ii) the dewatering must take place under the influence of gravity;
  - (iii) abstraction does not cause or is not likely to cause:
    - (a) damage to a conservation site or specific features in or on such a site
    - (b) damage to protected species
    - (c) loss or damage to any spring, well or borehole used to supply water for any existing lawful use;
  - (iv) the dewatering scheme must be in place to allow the construction of, or maintain the operational life of the infrastructure with which it is associated only;
  - (v) there is no further use of the groundwater following the passive dewatering;
  - (vi) the water must be returned to an online source of supply without intervening use.
3. This RPS will operate for 2 years with reviews undertaken periodically before expiry.

### Further Information

We have produced separate detailed guidance including a number of different scenarios, which will help you in deciding if a licence will be required. The scenario guidance is available on request from our National Customer Contact Centre, details below.

If there is any doubt about whether an abstraction licence is required contact the Environment Agency.

### Enforcement

A Regulatory Position Statement means that the Environment Agency will not normally take enforcement action against you provided:

- Your activity meets the description set out in this RPS
- You comply with the conditions set out in this RPS

## Contact the Environment Agency

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