

## **Natural Resources Wales' role and remit in the environmental regulation of onshore oil and gas in Wales**

The regulatory framework governing unconventional gas is complicated, with a number of organisations involved. DECC controls the extent and pace of onshore oil and gas development across England and Wales. This includes coal bed methane, shale gas, and underground coal gasification. DECC issue Petroleum Exploration and Development Licences (PEDL) under the Petroleum Act 1989. This matter is not devolved to Welsh Ministers.

Once a developer has secured a PEDL they must seek additional permissions from the local authorities, Natural Resources Wales, Coal Authority, British Geological Survey and Health and Safety Executive (HSE) before exploratory work can start. Operators must also serve a notice to Natural Resources Wales under Section 199 of the Water Resources Act 1991 to “construct a boring for the purposes of searching for or extracting minerals”.

At each site there are likely to be three phases to the development of onshore oil and gas resources:

- Exploratory activity, involving test drilling;
- Appraisal; usually involves pilot production
- Full scale commercial production.

Movement from one stage to the next may not occur, depending on the resource assessment, technical feasibility and economics. This decision is taken by the developer.

The operator will be required to secure permissions at each stage. This means that we expect the developer to apply for the necessary environmental permits, consents and licences at each stage. Our role as an environmental regulator is to assess individual proposals under a number of different pieces of legislation, and if appropriate issue permits/licences.

There are potentially eleven licences or consents required from Natural Resources Wales, five of which fall under the Environmental Permitting (England & Wales) Regulation 2010 (EPR). The list is set out in Annex 1. The specific list of requirements is likely to change over time as EU and UK legislation changes and evolves.

In England and Wales only exploratory activity is underway. To date developers operating in Wales have focussed on securing planning permission. Only one developer has submitted an application for an environmental permit. This application is still in progress.

# Issues raised by Gareth Clubb, FOE Cymru, in a letter to the Petitions Committee related to the role of Natural Resources Wales in the environmental regulation of onshore oil and gas in Wales.

## 1. Statement by Gareth Clubb FOE Cymru:

In their written evidence to the Welsh Affairs Committee, Natural Resources Wales stated that they “would welcome further guidance and a policy framework from the UK and Welsh Governments”. This seems to indicate that in NRW’s opinion there is no policy framework and insufficient guidance, which would hardly be an appropriate basis on which to regulate a new industry in Wales.

### 1.1 NRW Response:

We believe our written evidence may have been misunderstood. We believe there is a clear policy framework and guidance in place for the exploratory phase of onshore oil and gas developments in the UK and Wales. Since the publication of our evidence paper, additional reports have been released by DECC and the other regulators which clarifies the position and evidence base. Welsh Government recognises the role of gas in the transition to the low carbon economy. Nevertheless, the evidence on the potential oil and gas resource available in Wales is very limited. Further work is required in this area

We are clear on our roles in onshore oil and gas in Wales and the regulatory framework that applies (see annex 1 & 2). We believe the current regulatory regime is appropriate for the exploratory stage. We will keep this under review as we gain experience of regulating exploratory activity. We will also review new evidence as it becomes available and consider the implications for our approach to regulation.

NRW is working with the Environment Agency, other devolved environmental bodies and the Office of Onshore Oil and Gas at DECC to ensure that we are aware of and have an opportunity to contribute to new initiatives in developing evidence and approaches to regulate and manage onshore oil and gas activities.

In the autumn we wrote to and subsequently met the 10 companies who hold the 24 PEDL licences in Wales to confirm the role of Natural Resources Wales and our approach to regulation.

## 2. Statement by Gareth Clubb FOE Cymru:

The Environment and Sustainability Committee recently stated ‘we believe it is important that NRW urgently clarifies its position on the permitting, regulating and monitoring of UCG sites’.

### 2.1 NRW Response

In the autumn of 2013, NRW wrote to all the developers who hold PEDL licences in Wales to clarify our approach to regulation and to confirm the range of permits and consents which may be required. Please see the information in annex 1 & 2.

## 3. Statement by Gareth Clubb FOE Cymru:

Furthermore, the Environment Agency says it does not have the resources to monitor impacts if the industry develops to scale. The Minister's letter seems to indicate that NRW will be dependent on the EA for advice and support on regulatory and technical matters. How this will take place with the EA already stretched, losing 10% of its headcount, and potentially beyond capacity in the near future remains unresolved.

### **3.1 NRW Response:**

NRW is working with the Environment Agency, other devolved environmental bodies and the Office of Onshore Oil and Gas at DECC to ensure that we are aware of and have an opportunity to contribute to new initiatives in developing evidence and approaches to regulate and manage onshore oil and gas activities.

All permitting decisions in Wales are taken by staff employed by NRW, aligned to our own policies and approaches and those of Welsh Government.

### **4. Statement by Gareth Clubb FOE Cymru:**

NRW doesn't believe that EIAs are necessary for exploratory drilling although it does require Mineral waste permits and radioactive waste permits. It is difficult to reconcile the idea that there would be minimal risk of environmental impact given the other permits required.

### **4.1 NRW Response:**

The drilling of shale gas wells, whether for exploration or production, is currently subject to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) (the Regulations).

All deep drilling operations, including shale gas wells, can be Schedule 2 developments under the regulations and should be screened by the local planning authority to assess whether they are likely to have any significant effects on the environment. The Local Planning Authority shall determine whether or not a particular development is EIA development under the 1999 Regulations, and may consult NRW and other consultees in the screening process to inform its decision. The LPA must also consult with NRW and other consultation bodies in adopting a Scoping Opinion in determining the information that is to be provided in the Environmental Statement.

The Regulations do not specify whether fracking/ hydraulic fracturing is EIA development. NRW is of the opinion that where developments are considered likely to have significant effects on the environment by virtue of their nature, size or location, they could potentially comprise EIA development under Schedule 2 Paragraphs 2(d) and 2(e) provided that the respective threshold criteria are met and/or whether or not the development is located in a sensitive area (as defined).

Additionally, Regulation 4(8) of the EIA Regulations entitle Welsh Ministers to screen Schedule 2 development that does not meet the threshold or satisfy any of the criteria for screening if they consider it appropriate.

In summary, NRW has a statutory advice role, providing advice to local authorities and/or the Minister on whether a particular development requires an Environmental Statement. Ultimately it is the decision maker, the Local Authority and/or Minister,

who makes the final decision as to whether a development is a Schedule 2 development under the 1999 Regulations.

## **Annex 1: Environmental permits and consents required from Natural Resources Wales**

### **Types of Permits**

#### **Groundwater Activity**

#### **Conditions**

Unless we are satisfied that there is no risk of inputs to groundwater

#### **Mining Waste Activity**

Likely to apply in all circumstances

#### **Industrial Emissions Activity**

When the Operator intends to flare more than 10 tonnes of gas per day). If it is less than 10 tonnes of gas per day it is subject to Mining Waste Activity.

#### **Radioactive Substances Activity**

Likely to apply in all circumstances

#### **Water Discharge Activity**

If surface water run-off becomes polluted, for example due to a spill of diesel fuel

### **Licences**

#### **Conditions**

#### **European Protected Species**

May be required where there is potential to have adverse effects.

May also be subject to assessment under the Conservation of Habitats and Species Regulations 2010.

#### **Water Abstraction License**

If the Operator plans to abstract more than 20m<sup>3</sup>/day for their own use, rather than purchasing water from a public water supply utility company

#### **Marine Licence**

Any activity which involves placing any infrastructure on, or removing any material from, the seabed inside of 12 nautical miles

### **Consents**

#### **Conditions**

#### **Groundwater Investigation Consent**

To cover drilling and test pumping where there is the potential to abstract more than 20m<sup>3</sup>/day in the production process

**Flood Risk Consent**

If the proposed site is near a watercourse or main river

**Site of Special Scientific Interest (SSSI's)\***

Consent required where there is potential to impact these sites

May also be subject to assessment under the Conservation of Habitats and Species Regulations 2010

**Annex 2: The roles of Natural Resources Wales in onshore oil and gas**

Natural Resources Wales plays four main roles:

**Advisory role**

- As a statutory consultee to planning authorities on planning permissions for surface operations at a site;
- Advice and guidance to a developer, on the potential environmental and landscape impacts at a site, which may need to be addressed in a permit application and/ or an Environmental Impact Assessment;
- At designated sites, providing advice on the consenting activities which may have an impact on the integrity of those sites.

**Regulatory role**

As an environmental regulator we will have to assess individual onshore oil & gas proposals under a number of different pieces of legislation, and issue consents/ permits. This may include:

- Issue a consent, under the Water Resources Act 1991, to construct a borehole for the purpose of extracting minerals;
- Issue water abstraction licences;
- Issue flood risk consent;
- Depending on the nature of the site and the proposed operation up to 5 permits may be required under the Environmental Permitting (England and Wales) Regulations 2010(as amended). (See annex 1 for full list).
- Underground coal gasification operations that store large quantities of oxygen, carbon monoxide and hydrogen will be subject to COMAH regulations.

In issuing these permits Natural Resources Wales will have to screen for and carry out Habitats Regulation Assessment (HRA) for any consent that is likely to have a significant impact on N2K sites.

**Monitoring and compliance role**

- Monitor compliance at each site to ensure that the environmental risks are properly managed through audits, site inspections, spot check monitoring and reviewing operator records and procedures.

**Incident Management role**

Respond to pollution events, act to minimise the impact on residents and the local environment.