Country land and Business Association response to Reservoir Safety in England and Wales consultation on the implementation of the Implementation of Amendments to the Reservoirs Act 1975 (February 2012)

The CLA represents the interests of 34,500 land managers and rural businesses who between them manage a variety of businesses ranging from agriculture, forestry, fishing, tourism and a wide range of diversified enterprises. These businesses are at the heart of the rural economy and as well as impacting on the surrounding environment, as all industries do to some extent, land managers are good stewards of the land, and create and enhance the beautiful landscapes and habitats which the public greatly enjoy visiting. Our farmers and land managers have a long term interest in continuing to maintain and conserve the water that they manage on their land.

General points

Whilst the CLA welcomes the deregulation of reservoirs over 25,000 cubic metres on the basis of risk we are opposed to the proposal to change the threshold and the introduction of a bureaucratic process of registration for reservoirs over 10,000 cubic metres - this will ultimately cost. The potential cost for individual reservoir owners who have to comply with the new regulations have still not been clearly set out by the Environment Agency,. The methodology for for assessing the risk rating and the level of regulation is still being developed and will affect these costs.

The fact that there have been no deaths to date in relation to on farm reservoir failure may have something to do with the fact that they are already low risk and have been through a planning and design process already. Currently we don’t think the changes to regulation are proportionate to the identified risk.

It is expected that some of those over 25,000 cubic meters will be deregulated and the costs incurred could be considerably lowered which is welcomed, but the reality is that many have been built just under the threshold (the EA and planners know where these are) to avoid the larger reservoir costs of panel engineers etc.

It is the CLA’s experience that those over 25,000 cubic metres have had all cost fully integrated from outset and included in their business plan but some which were below the threshold could find it considerably harder to meet the new regulation if considered high risk as the business planning did not include the extra overheads.

Discussions with Government have suggested that the threshold change will affect a relatively small number of reservoir owners and some might even be deregulated and of course those that pose greatest risk need to be addressed because of public safety but we believe these issues can be addressed without registering a further 5000 reservoirs.

Currently there are 2,100 reservoirs registered (i.e. those over 25,000 cubic metres) and after a risk assessment of reservoirs the Environment Agency say there will be about 2,500 that would fall into medium or high risk regardless of whether they are over the volumetric threshold or not. This means there will be as many as 400-500 that will definitely have higher costs because of their risk status.
The CLA strongly recommends that the threshold for large raised reservoirs remains at 25,000 M$^3$

**QUESTIONS:**

1. Do you agree that road and rail embankments should be excluded from the Act, unless they are deliberately used for storing water?  
Yes, agree

2. Do you agree that the definition of “capable of storing” should not include the blocked spillway scenario?  
Yes, agree

3. Do you agree with the proposed approach to the calculation of capacity? If not, how would you calculate capacity?  
Yes, agree

4. Do you agree with the proposed approach to reservoirs in cascade?  
This should be based on risk not the size or the fact that they are in cascade

5. Do you have any additional recommendations for deciding whether reservoirs should be considered to be in a cascade?  
Practical assessments on the ground are still needed to ground truth inundation mapping.

6. Do you agree with the proposal that all undertakers of reservoirs in cascade should be required to register their reservoirs based on a reduced threshold capacity? If so, how would you assess the reduction?  
No. This should be considered on the basis of risk

7. Do you agree with the proposed exemptions?  
Yes

8. Are there any other structures or areas that you would consider exempting and why would you consider doing so?
Yes reservoirs under 25,000 m$^3$. As well some flood defence structures that form temporary reservoirs, farm scale lagoons and slurry stores as well as natural ponds and lakes.

9. Do you agree with the proposed approach to registration?
This should apply to new reservoirs above the 25,000m3 threshold and alterations that increase the size.

10. Do you agree with the proposed approach to the provision of information or a change of information with regards to the registration of a large raised reservoir?
This does not require a change as it is already set out and addressed in the Reservoirs Act ‘75.

11. Do you agree with the list of information to be provided?
This is also already addressed by the 75 Act.

12. Do you believe that guidance on supervision of high risk reservoirs and the performance of supervising engineers is required?
Wherever possible low cost options should be used for low risk reservoirs and avoiding the unnecessary use of panel engineers. The self assessment approach needs to be developed further.

13. Do you agree with the proposed approach to statutorily required inspections?
Yes but only for high risk reservoirs.

14. Do you support longer inspection periods in certain exceptional circumstances?
No this is unnecessary because they will already have a supervising engineer who can make these judgments.

15. Do you agree with the proposals for abandonment and bringing back into use?
Yes

16. Do you agree with the proposal to require a specified person to report to the Environment Agency on any incident of a specified kind which affected or could have affected the safety of a large raised reservoir?
The CLA is uncomfortable about the use of criminal sanctions because of the possibility of abuse.
and the unfair pressure to accept them when the liability may not have been the undertakers. In principle we are opposed to the parking ticket mentality.

17. Do you agree that it is appropriate to vest the power to hear all appeals under the 1975 Act in the First Tier Tribunal?

This process will rely upon the appropriate expertise being brought in to assess appeals. We would want to be assured that the right professional skills were engaged.

18. Do you consider that the General Regulatory Chamber Rules will suit the handling of the appeals set out above? If not, why not?

It still remains to be seen if 28 days is appropriate for complex cases for appeal to be submitted and is sufficient. We will be watching with interest how other environmental matters are handled. A longer appeals window should be introduced.

19. Do you agree that the current rules relating to Referees are fit for purpose? If not, why not?

N/A

20. Do you agree that the creation of the new criminal liabilities set out in the amendments to the 1975 Act are necessary? If not, which would you retain, and which would you reject, giving your reasons?

We don’t agree that is necessary for a blanket registration

21. Do you agree that civil sanctions (as discussed above) are preferable, if available?

We are yet to be reassured that this would be a fair and proportionate approach as far as our members are concerned.

22. Should commencement of the provisions on expenses be undertaken in Phase 1 (from Autumn 2012) or in Phase 2 or following Phase 2?

In principle the CLA has particular problems with the Environment Agency approach to cost recovery as there is a danger that systems are put in place, for example, like registration processes which then encourage and require the administrative cost to be recovered from undertakers. This could be little else than a low risk reservoir sitting on a register which than needs a charge applied because of cost recovery.
23. Do you agree that undertakers for high risk reservoirs should not be required to fund the emergency planning and warning and informing functions? If not why not?

Yes agree

24. Do you believe any further changes to the Reservoirs Act 1975 are required, and why?

Yes the removal of the requirement to register and changing the threshold back to 25,000 m³

25. Do you agree that the proposed review should only be initiated once full implementation of the specified amendments has been made and the Environment Agency has completed the high risk designation process? If not, why not?

Yes agree that only after the EA has completed the high risk designation process

26. Do you agree that this measure should be commenced in Phase 1? If not, why not?

It is dependent on the robustness and completeness of the EA process

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