Consultation on the Private Water Supplies (England) Regulations 2008

The CLA represents the interests of 36,000 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 high quality of water that they manage on their land.

General points

The new regulations would require Local Authorities to annually test private water supplies and the CLA is concerned that it is not clear how much more testing may be required for commercial operations that are supplied.

The CLA consider this proposal to be over burdensome as, in addition to testing private water supplies at source the new regulations would require, for example – a caravan park on an estate (fed with a private water supply) to be further tested on an annual basis. The consultation recommends that Local Authorities also charge for visits as well as sampling costs on top, the CLA does not agree with the proposed charging structure.

The regulations would require Local Authorities to complete risk assessments of all small and large suppliers within 5 years of the regulations coming into force. Risk assessments will involve surveying the private water supply to minimise the contamination of source water. The Proposed regulations recommend that councils may also charge to carry out a risk assessment, sampling and audit. In our view we think that that there is a real danger that more powers may be given to the Local Authorities than is necessary or than what is required under the directive.

Further more there is a specific exemption under Article 3, Section 2.b of the Directive which clearly states:-

“Member States may exempt from the provisions of this Directive…water intended for human consumption from an individual supply providing less than 10m3 per day as an average or serving fewer than 50 persons, unless the water is supplied as part of a commercial or public activity.”
The CLA feel that this exemption should be used to allow flexibility along with existing controls as well as the Food Hygiene Regulation (2006) (to reduce the likelihood of “gold plating” which will otherwise undoubtedly take place place.

Our specific concerns are that this proposed system will introduce massive impacts on rural business unnecessarily, now and in the future, through:-

1. an uneconomic costly regime
2. costs of testing may escalate in future years
3. frequency of testing may be burdensome
4. the need for local authority be charged with this responsibility when independent test results could be submitted when required by the undertaker.

1. Bearing in mind the obligation to implement the Directive fully, do you agree that the proposed Regulations should apply to “private distribution systems”?
   In particular -
   (a) should a water supply that is made to premises by means of a private distribution system be treated as if it was a private supply in some or all cases, and
   (b) should monitoring be restricted to specified parameters or be determined by risk assessment?

Not in the way outlined, see earlier comments.

2. Should small domestic supplies of less than 10 m³/day (except supplies to single private dwellings) be included fully in the proposed Regulations and therefore required to comply with the proposed regulatory standards and other requirements (options 2(a) and 3(a) in the Impact Assessment)?

The article 3 exemption should be used here

3. Do you agree that single private dwellings be subject to the provisions for monitoring and improvement -
   (a) with a duty to carry out a risk assessment or monitoring if an owner or occupier requests the authority to do so? and
   (b) with improvement powers applied at the discretion of the local authority?

See question 2.

4. Do you agree with Defra’s policy of giving consumers of private supplies the same degree of health protection as consumers of public supplies by including national requirements (standards) in the Regulations as part of the definition of wholesomeness?

We do not agree with the process by which Defra are trying to achieve this
5. Do you agree that for new installations for the preparation and distribution of private supplies, the suppliers shall be required to use only substances and products that the Secretary of State has approved under the 2000 Regulations for the purposes of public water supplies?

Agree

5. Do you agree that local authorities should carry out risk assessments of private supplies to assist them in carrying out their duties under the proposed Regulations, particularly in respect of monitoring and remedial action (options 3(a) and 3(b) in the Impact Assessment)?

We have concerns that this is a requirement for implementing the Directive fully and also appears to be an unnecessary cost when existing measures could be used satisfactorily

7. Do you agree with the minimum check monitoring frequency for relevant supplies? The necessary frequency of monitoring should become apparent from the extent to which any tested supply varies from test to test.

8. Do you agree –

   (a) with the minimum audit frequencies for relevant supplies, and
   (b) that local authorities should take into account the findings of risk assessments when deciding whether to exclude parameters from audit monitoring?

   From their nature and location some supplies will have greater risk factors than others and each should be considered on its merits.

9. Do you agree that small domestic supplies of less than 10 m³/day should be monitored as proposed:
   (a) domestic supplies to more than one dwelling but less than 10 m³/day once per year minimum;
   (b) discretion to monitor single private dwellings with duty to monitor on request?

There is no requirement to monitor under the exemption in article 3.

10. Are the requirements for the information that local authorities should include in their record of private supplies satisfactory? In particular -
   (a) is the correct information specified; and
   (b) are the times within which the records should be completed, and the periods for retention appropriate?

See earlier comments

11. Do you agree with –
   (a) the framework for investigating a failure, remedial action, serving and enforcing improvement notices, and restriction notices;
(b) the policy to negotiate with owners in an attempt to solve problems informally, and only where this does not work that they should grant authorisations, or serve improvement notices or restriction notices, as appropriate?

See earlier comments in relation to article 3

12. Do you agree that it is unnecessary for local authorities to have specific powers to grant authorisations for less than 30 days for trivial failures of chemical parameter values?

We do not see a need for this

13. Does the proposed new scheme of offences, and appeals by persons who are aggrieved by improvement notices or restriction notices, protect owners and users of private supplies from possible unreasonable actions by local authorities? In particular, do you agree that –

(a) there should be a new offence to fail to comply with an improvement notice, or to breach or fail to comply with a restriction notice; and
(b) a person aggrieved by an improvement notice or a restriction notice should be able to appeal to the magistrates’ court against the notice?

The CLA is extremely concerned that this will just criminalise owners and users for the sake of bringing in further gold plated regulation

14. Are the proposed maximum fees that local authorities may charge appropriate? In particular -

(a) are the prescribed fees for monitoring appropriate;
(b) is the list of other activities for which local authorities may charge fees satisfactory and are the prescribed amounts reasonable; and
(c) is the system of invoicing and apportionment of costs appropriate?

See earlier comments in relation to article 3

15. Are the proposed powers of entry sufficient to enable local authorities to fulfil all of their functions and discharge their duties under the proposed Regulations?