Chartered Institute of Environmental Health

Private Water Supplies Regulations 2008

Response to the consultation from the Department for Environment, Food and Rural Affairs

31 October 2008

The Private Water Supplies Regulations 2008 – CIEH Response

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,

Though the Department's explanation for this proposal is less than complete, for example omitting any discussion of the means by which the Directive's objectives are already met in respect of these systems or of why these Regulations (and not some other mechanism) should plug any gaps, we do agree that the owners of such systems should be formally responsible for the maintenance of water quality within them, and that that responsibility needs to be clear and suitably monitored and, where necessary, enforced. Local authorities are the obvious bodies to do that.

The paper suggests that private distribution systems serving a number of dwellings within a larger building should not be treated as private supplies where the occupiers are billed directly by a licensed undertaker but if that is a suitable criterion we do not see why it should not apply in the case of larger systems too. Alternatively, the private distribution systems within these developments should be recognised as such and also brought within the scope of the Regulations.

and (b) should monitoring be restricted to specified parameters or be determined by risk assessment?

As the water up to the point where the Water Undertaker's responsibility ends should be assumed to be of good quality, there is no need for extensive chemical parameter testing. The best way to ensure downstream water safety from that point is therefore best

addressed by the list of parameters (a) to (g) in proposed Regulation 12(1), including the risk assessment. That should serve to identify any particular possible problems (e.g. lead piping, holes in the pipes, inappropriate storage containers) whilst retaining an adequate overview of the safety of the water from microbiological and physico-chemical points of view.

2. Should small domestic supplies of less than 10 m^3/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)?

We do think these supplies should be included in the Regulations and be subject to risk assessment; this category of supply includes a large number of unsafe supplies and this is really the only way to identify those with the potential to cause ill health so that they might be improved. We nevertheless think that full audit and check monitoring would be excessive;

the monitoring regime outlined in Regulation 12 would be, in our view, appropriate and sensible and adequate to highlight problems (as it is allied to risk assessment) without undue expense.

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?

A single domestic supply is unique in that the owner of the house has control over both the provision (at least within the curtilage) and consumption of the supply. It is appropriate therefore that they should be responsible for risk assessment and monitoring and to a large extent be exempt from these Regulations. It is nonetheless a necessary safeguard for tenants and for (perhaps elderly) owners to provide that the local authority should do this on request provided (since it is in the nature of a contractual service) it can recover its full costs.

(b) with improvement powers applied at the discretion of the local authority?

The concession from a duty on the part of local authorities to apply the risk assessment and monitoring requirements of larger supplies in these cases is based on the notion that the consumers of these small domestic supplies are in control of them and, for the most-part, therefore, have a choice in whether to drink unwholesome water or to up-grade the supply. It rests on control, however, not on the size of the supply and whereas it would be consistent to provide that authorities should exercise a discretion over the improvement of "owner-user" supplies, we think they should have a duty to use their improvement powers where any third-party, e.g. a tenant, is reliant on them.

It needs to be acknowledged nonetheless that a great number of single supplies are a health risk and many owners are unwilling to improve them voluntarily or seem able to understand the danger they expose themselves (or their families and visitors) to when they drink the water. Whereas we would hope local authorities would require improvements in particular cases, e.g. where a child is brought into the dwelling or, perhaps, on a change of ownership, this approach will leave many homes with an unwholesome supply for a long time to come. What would help speed improvements, of course, would be financial incentives and we hope the Department will encourage local authorities to provide grants for this purpose.

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?

Yes, nevertheless we think this is something of a diversion; whereas public supplies are subject to rigorous and in particular very frequent monitoring to the extent, in fact, of millions of samples per year, the safety of private supplies rests on more effective sampling against key parameters rather than on ineffective sampling against a longer list. While we understand the Department has no choice about including European requirements because of the Directive, they are not particularly indicative of health risk and testing for them results in an unnecessary financial burden. We have to question the point in adding to the costs of local authorities and owner/users of supplies by adding ten more.

Instead, we think it would be more sensible if only the parameters in Regulation 12, including the risk assessment element, were monitored for all supplies but more frequently, with an insistence for monitoring to be allied to post-rainfall events when water quality will be at its worst. Then, and only then, would we have a realistic idea of the water's quality and its risk to health.

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?

We would be concerned at the cost burden attached to this compared to any possible benefit, not least since we have seen no evidence that the materials used in new installations present any problem. In addition, there are few, if any, materials (except standard piping) that are already approved and the existing UK system for gaining approval is expensive and subject to five-yearly renewal, even if nothing has changed in the material's manufacture. This is a regulation that will be burdensome and appears to be solving a problem that doesn't exist.

6. 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)?

Yes. "Routine" monitoring is largely pointless as the water tested is only representative of the supply at the moment in time it is sampled; it has thus been consistently found to underestimate problems with the quality of drinking water from PWS. Risk assessment allows an overview of the potential for risk throughout the year. It also brings a more modern approach to this area, in line with tried and tested food safety and health and safety procedures, where reliance on simple end-testing has shown to be counter-productive, as well as alerting people to a problem only after it has happened and the water/food has gone into distribution.

7. Do you agree with the minimum check monitoring frequency for relevant supplies?

No. Once a year for the majority of supplies is neither frequent enough to alert the users and authorities to potential problems nor infrequent enough to reduce the requirements of the Directive's extensive list of water quality parameters to be monitored. Neither does it take notice of the overwhelming evidence of the connection between rainfall and water quality in private water supplies. If monitoring takes place, laboratories and local authorities must be persuaded of the importance of timing their sampling and not adopting daily or weekly sampling programmes that merely make sure water is sampled from each supply once a year.

8. Do you agree –

(a) with the minimum audit frequencies for relevant supplies,

No, see reply to 7 above.

and (b) that local authorities should take into account the findings of risk assessments when deciding whether to exclude parameters from audit monitoring?

Yes, any sensible and robust way of reducing the monitoring of parameters that will not affect health or are unlikely to be found in the given water supply is to be welcomed.

9. Do you agree that small domestic supplies of less than 10 m^3/day should be monitored as proposed –

(a) domestic supplies to more than one dwelling but less than 10 m^3/day once per year minimum;

The proposal for a reduced number of parameters is a sensible one and the parameters in draft Regulation 12 are appropriate, however, (see the reply to question 7 above) sampling needs to be directed in time and there is a danger here that, without qualifying the frequency requirement, authorities could take samples at times convenient to them but which would be ineffective in characterising the supply.

(b) discretion to monitor single private dwellings with duty to monitor on request?

Yes, this is also a very sensible proposal. It is entirely in line with modern risk-based approaches to monitoring and enforcement. See also answer to question 3(b).

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

Yes, they seem to cover all that would be necessary without being excessive.

(b) are the times within which the records should be completed, and the periods for retention appropriate?

No, six months is far too short for authorities with a lot of supplies and many other competing priorities for whom these Regulations will present a significant resource requirement. Also, 30 years is far too long – medical records only need to be kept for 28 years – and we suggest a period of 10 years i.e. always including the results of the last two 5-yearly risk assessments, would be sufficient.

11. Do you agree with –

(a) the framework for investigating a failure, remedial action, serving and enforcing improvement notices, and restriction notices;

Yes; this is appropriate, logical, proportionate and consistent with other legislation. It ties local authorities to actually ensuring improvements are brought about for PWS presenting health risks when progress towards that end previously has been slow. The transfer of appeals to Magistrates' courts, requiring mandatory service of notices and the giving of powers to prosecute and carry out work in default are all to be welcomed.

We nevertheless have concerns about the definition of 'responsible person' in Regulation 4: "any other person who exercises power of management or control" does not seem clearly to identify the person who owns the field where the supply arises and who has the power to improve the source to protect it from contamination. This is a potentially important point since householders have very restricted abilities to carry out protective work on other people's land. If land owners are not clearly responsible, reliance will be placed on end-on treatment instead of on the multiple barrier approach which is actually needed. If a second example is needed, it is not immediately clear on whom a notice should be served in the case of bacteriological failures for a row of cottages (all domestic) where the spring is in one of the householder's gardens if 'responsible persons' are —
(a) the owner or occupier of the premises supplied (other than the owner or occupier of a private dwelling); and (b) any other person [ie excluding persons included in (a)] who exercises powers of management or control in relation to the supply.

(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?

While this would let improvements be brought about voluntarily by the more sensible owners, at the same time allowing local authorities to concentrate on the remainder, in reality this always happens anyway, it is already enshrined in authorities' enforcement policies and the latest mandatory code of conduct from the BRE and including it in the Regulations is unnecessary.

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?

Yes, these failures involve no health risk at all and it would be disproportionate to introduce a formal authorisation process in such circumstances.

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;

Yes; as experience under the current Regulations shows, relying on default powers is not sufficient (as well as being almost impossible to carry out in many cases as work is often to be done in someone's home). A simple offence of non-compliance makes the whole process easier, fairer and more efficient. An appeal against notices to the Magistrates court will make sure that authorities do not abuse their powers.

(b) a person aggrieved by an improvement notice or a restriction notice should be able to appeal to the magistrates' court against the notice?

Yes. The current system of appeals to the Secretary of State is lengthy, cumbersome, bureaucratic and unfair. The standard, tried and trusted system of Magistrates' courts is a far

superior and transparent system.

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

(a) are the prescribed fees for monitoring appropriate;

We have no direct experience of laboratory costs and have to take it that the sample seen by the Department are representative of current costs and are likely to remain so until it is prepared to re-make the Regulations. We doubt it though, and it would nonetheless seem to us wiser for the department to reserve a power to revise its caps, at least annually, to ensure that authorities can recover their costs without that. That said, we have to question whether the costs which will be passed back to consumers are commensurate with the benefits they receive and suggest they would get better value, and no less protection, from the monitoring of a shorter list of parameters.

On a technical point, we are not clear whether the cost of monitoring Regulation 12 supplies (<10m^3 domestic only), is covered in the Schedule 5, part 2, section 5 phrase "The fee for monitoring a supply to a single dwelling is £25". The supply for a Regulation 12 supply is not a supply to a single dwelling, even if the sample would be taken from one dwelling on the supply. Schedule 5 then goes on to talk about Check and Audit monitoring, which are also not Regulation 12 type supplies. This needs further clarification.

(b) is the list of other activities for which local authorities may charge fees satisfactory and are the prescribed amounts reasonable;

They seem reasonable except for the cost of risk assessment. The problem is one of balancing the cost to the authority – probably a day and a half to two day's work including travel, finding the source, examining all the parts of the system, explaining, educating, writing up the report, deciding what to do, sorting out problems getting access and accurate information as to the source, ownership and usage, to up date the records and answer subsequent questions – with the cost to the PWS's responsible person, who will not want this to be done anyway. We would strongly suggest that this initial risk assessment work should be funded centrally, based on the number of supplies local authorities have in their area. This would smooth the introduction of the Regulations and avoid damaging the delicate financial position of many of those most at risk in the rural parts of the country.

and (c) is the system of invoicing and apportionment of costs appropriate?

Yes.

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?

Yes.

Additional points:

1 Regulation 5 water used for washing crops being exempt –

Previous legislation exempted water used for food production which, although it failed the standards, was made safe via the production process, e.g. whisky production. We should

have thought that this exemption should stay, as long as the water used for washing bottles, premises etc. was safe microbiologically.

2 Definition of water covered by these regulations –

There is no definition of drinking water in these regulations and Regulation 13, for example, refers to water used for domestic purposes at a tap used to provide water for human consumption. A definition which specifically included water used for personal washing, teeth brushing and general domestic cleaning, e.g. work surfaces in kitchens, would be better; contaminated water can be ingested in showers, baths and at wash hand basins and E. coli outbreaks from private water supplies have occurred where children have been ill including one who only brushed their teeth in the water. An all-inclusive definition would prevent the problem of a treatment system being provided only to the kitchen tap instead of a “whole house” system.

3 Training

The Chartered Institute has already undertaken some training in the regime behind the new Regulations and, if the Department has a requirement for further training of local authority personnel, would be pleased to discuss how we might help in that.