

Report to the Cabinet

Report reference: C-038-2010/11
Date of meeting: 25 October 2010



**Epping Forest
District Council**

Portfolio: Environment

Subject: Private Water Supplies (England) Regulations 2009 – charging for the monitoring and assessment of private water supplies.

Responsible Officer: Paul Baccarini (01992 564537)
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Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) To note the introduction of the Private Water Supplies (England) Regulations 2009;
- (2) To implement a charging regime for work carried out at the maximum level permitted by the Regulations;
- (3) Subject to recommendation (2), to not charge for initial risk assessments required by the new Regulations; and
- (4) To note that a further report will be submitted to the Cabinet once the initial risk assessments have been completed and the numbers and types of Private Water Supplies are known.

Executive Summary:

The Private Water Supplies (PWS) (England) Regulations 2009 were implemented in 2010 to meet the UK's obligations under the revised European Union Directive 98/83EC. They replace earlier regulations with respect to private water supplies, which historically have been enforced by the Council since the early 1990s. The regulations place a number of additional requirements on the Council and consequently increase the burden on both staff and financial resources. The regulations allow for a Local Authority to charge for services provided and suggest a maximum fee structure for certain activities. This report seeks to inform Members with regard to the additional requirements the new regulations place upon the Council and recommends a charging regime.

This is a key decision.

Policy theme one "A safe, healthy and attractive place" - 1(a) address local environmental issues.

Reasons for Proposed Decision:

To agree to introduce a system of charging for testing and other activities to be carried out in order to implement the requirements of the new legislation. This will assist the Council to

meet the increased financial burden imposed by the regulations.

Other Options for Action:

The Council has a duty to implement the PWS Regulations 2009. The alternative options considered and rejected were:

(i) The Council could continue to provide the testing of PWS free of charge. However due to the increased requirements upon the council, there are currently insufficient funds in the budget allocation to assess and test all the PWS in the district. The testing of supplies free of charge, particularly for single dwellings where there is no mandatory requirement to do so and where past knowledge and/or a risk assessment has not shown it to be necessary, is not considered a sensible use of resources; and

(ii) The Council could provide a free service for supplies where there is a statutory obligation for the Council to sample. This will result in charging for single dwelling properties (which currently represent the majority of the PWS within the district) and any request-based testing, whilst the sampling of larger PWS will be undertaken free of charge. This option offers a benefit in ensuring co-operation from the owners/occupiers of the larger supplies (which have a greater potential to impact on public health due to the numbers of people they serve) and reduce the anticipated increase in officer's time spent in enforcing the regulations. However, this option will have financial implications for the Council with regard to the testing of the larger supplies.

Report:

1. The PWS Regulations (England) 2009 came into force in 2010 to meet the requirements of the 1998 EU Water Directive. The new regulations have reclassified supplies increasing the number of sampling and monitoring visits required in respect of supplies serving a large number of consumers, public premises or commercial units..
(Recommendation 1).

2. Greater emphasis is placed on risk-based monitoring and requires all supplies (other than single dwelling supplies) be risk-assessed by Local Authorities. There is now a statutory requirement for the Council to risk assess each supply on a catchment basis from 'source to tap'. This is a significant undertaking and will take considerable time to complete. The process must be reviewed in light any of new circumstances and repeated every 5 years. The regulations move 'private distribution systems' within the remit of the Council for the first time, meaning that the Council will now be responsible for monitoring water quality, by risk assessment and sampling, at large privately owned sites which are supplied by a water undertaker or licensed water supplier (i.e. the public system). This may include sites such as hospitals, educational establishments, shopping centres, airfields and privately owned estates or residential developments. Single dwelling supplies are excluded from the mandatory testing requirements; however there is a requirement for the Council to comply with any request for monitoring or risk assessment when made by an owner or occupier. The Council has a duty to enforce at any supply which is subject to failure regardless of testing being mandatory or request-based. The Council also has a duty to investigate failures of risk assessments and/or water quality standards. The above increased duties and responsibilities will place an additional burden on Local Authorities with regard to monitoring PWS both in terms of staff and financial resources.

3. Previous sampling has been carried out under the PWS Regulations (1991). The Council has provided this service free of charge. However, due to the number of supplies and the escalating costs of analysis, testing over the last four years has only been carried out in

accordance with the statutory requirements, by request, or at the Council's discretion. The current service cannot continue in light of the requirements of the new legislation without increased resources, despite the expectation of owners and occupiers of premises supplied by PWS.

4. There are currently 50 known PWS in the District as follows:

- 30 domestic PWS supplying single dwellings;
- 6 domestic PWS supplying up to 25 persons; and
- 14 larger supplies either domestic and/or commercial.

5. These numbers are likely to increase with the new regulations as larger properties/premises served by a 'private distribution network', which could include hospitals, campsites, colleges and large supplies to commercial (e.g. horticultural nurseries) or public premises now fall within the remit of the legislation.

6. It is considered that in order to assist the Council to meet the increased financial burden imposed by the new legislation that a regime of charges be implemented. The new legislation sets out the maximum fees that may be charged for the various activities prescribed. This will apply to work carried out on all PWS including those where there is a mandatory requirement to monitor and test. The charges are set out in Table 1 below:

Table 1; Maximum Fees

Service (activity)	Maximum fee permitted by the Regulations
Risk assessment (each assessment)	£500
Sampling (each visit)	£100
Investigation (each investigation)	£100
Granting an authorisation (each authorisation)	£100
Analysing a sample:	
taken under Regulation 10	£25
taken during check monitoring	£100
taken during audit monitoring	£500

7. It is proposed that the Council's introduces a charging regime for the above activities based on the maximum allowable fee as specified by the regulations (**Recommendation 2**).

8. Discussions have taken place with other Local Authorities who have indicated that they will be adjusting their services in line with the requirements of the PWS Regulations 2009 and intend to adopt a charging regime for such services.

9. Once established, it is anticipated that the testing service will be largely self-sustaining, with the income being able to cover a considerable portion of the analytical costs. The Government considered that the maximum permitted fees were the reasonable costs of carrying out the services specified.

10. In order to allow a smooth transition of services operated under the new Regulations and to maintain continuity of public health protection, it is strongly considered that the initial risk assessments, mandatory or request-based, be conducted without charge. The cooperation of owners and occupiers is identified as being crucial to this process and it is anticipated that the Council will benefit from a reduction in the amount of officer time and enforcement action required (**Recommendation 3**).

11. A considerable amount of work is required to establish a definitive list of the type and numbers of supplies. This additional work is currently being absorbed by one officer and unless additional staffing resources can be secured it is estimated that it will take at least a further six to nine months before more accurate numbers and costs can be confirmed. Therefore a further report will be presented to Cabinet (**Recommendation 4**).

Resource Implications:

By maintaining a free service the continued high demand for single-dwelling testing is likely to continue. Current financial and staff resources are insufficient to maintain the service offered previously particularly in light of the additional requirements placed upon the Council by the new regulations. If it is decided not to implement a charging regime then a report will be presented to Cabinet when the estimated costs involved have been established.

The additional work is currently being absorbed within existing staff resources. The report has highlighted the likely delays and potential risks to the Council and the public that exist due to this situation. When further progress has been made with regard to the assessment and investigation of the additional larger supplies it may be necessary to present a report to Cabinet detailing the effects of the new statutory requirements.

Legal and Governance Implications:

Water Industry Act (1991).

Private Water Supply (England) Regulations 2009 – the Council has a duty to enforce the legislation and must report its activities annually to the Drinking Water Inspectorate.

Safer, Cleaner and Greener Implications:

Pollution of the land, water and air are inherent issues that need to be addressed to ensure the district is greener and sustainable. A source of wholesome, potable water is essential for the health and well being of residents via its direct consumption and as a facet of satisfactory sanitary systems. It plays a key role in supporting agricultural and commercial activity, and acts as an indicator of environmental quality.

Consultation Undertaken:

- Welwyn and Hatfield Council;
- Kings' Lynn and West Norfolk Council; and
- The Drinking Water Inspectorate.

Background Papers:

- Report to Portfolio Holder: ENV-010-2009/10, 29th April 2010; and
- Private Water Supplies: Technical Manual (April 2010).

Impact Assessments:

Risk Management

Risk assessment is the essence of the new legislation and is a driver behind testing frequencies and many testing parameters. Enforcement action must now be taken if inspection identifies significant risk.

This report has identified that the requirements of the new legislation place an additional

burden on the Council both in terms of financial and staff resources. The introduction of a charging regime seeks to assist the Council with regard to the financial impact. However, it must be noted that although the report is not seeking additional staff resources it has highlighted that this additional work is currently being absorbed by one officer. Unless additional staff resources can be secured it is estimated that it will take at least a further six to nine months (which is dependent on every day competing priorities) until much of the assessment work can be completed. Further delays may result if enforcement action is necessary. This affords an increase in a number of risks to the Council from criticism from the Government with regard to delays in implementing the new legislation, the reputation of the Council and increase ill health risks to residents from poor water quality.

The inability to implement the requirements of the Private Water Supply Regulations 2009 within existing resources and the afore mentioned risks are itemised in the Risk Matrix in the Environment and Street scene's Business Plan 2010/2011. It is not considered necessary at this time to amend the risk assessment. However, this may need to be re considered and will be dependent on the number, nature and quality of any new private water supplies that require assessment and investigation under the new regulations.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? Yes

What equality implications were identified through the Equality Impact Assessment process?
None.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
Not applicable.