
**PUBLIC HEALTH (POLLUTION OF THE AQUATIC
ENVIRONMENT) RULES, 1994**

**Repealed
Subsidiary
1994/123**

Rules made under s.95 and paragraphs (a) and (d) of section 337.

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Repealed by LN. 2010/168 as from 22.12.2012

(LN. 1994/123)

3.11.1994

Amending enactments	Relevant current provisions	Commencement date
L.N. 1997/111 r. 2		1.6.1997

ARRANGEMENT OF RULES.

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1950-07

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Public Health

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Title.

1. These Rules may be cited as the Public Health (Pollution of the Aquatic Environment) Rules, 1994.

Interpretation.

2. (1) In these Rules–

“competent authority” means the person designated by the Government from time to time by notice in the Gazette as the competent authority for the purposes of implementing the Directives in Gibraltar;

“the Directives” means Council Directives 76/464/EEC, 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC and 86/280/EEC and includes any changes made to those Directives to reflect technical or scientific change and any further Directives made pursuant to articles 6 and 12 of Directive 76/464/EEC for the purpose of laying down limit values for emission standards, quality objectives in the aquatic environment, time limits for compliance and reference methods of measurement to determine the polluting content in discharges and in the aquatic environment and thereby to give effect to Council Directive 76/464/EEC.

- (2) Unless otherwise provided for in these rules, words and terms used in Council Directives 76/464/EEC, 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, and 86/280/EEC shall, in these rules, have the meaning given to them in those Directives.

Application for authorisation.

3. (1) Any person who establishes or carries on any trade, business or manufacture which falls within section 94(1)(b) of the Act shall, prior to doing anything which produces or may produce a discharge to which Council Directive 76/464/EEC applies, apply to the competent authority for authorisation.

- (2) An application for authorisation shall contain information necessary for the competent authority to determine emission standards and quality objectives in respect of the substances which are or may be contained in the discharge.

- (3) The competent authority may require from a person making an application under these rules such further information as in the opinion of the competent authority is necessary for it properly to lay down such standards

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and objectives, and in the absence of such further information, the competent authority shall not be required to consider the application.

(4) Where the competent authority incurs costs in laying down the standards and objectives necessary to consider an application or to make an authorisation, it may charge a fee to the applicant, such fee to be determined in accordance with the provisions of this rule.

(5) The fee referred to in sub-rule (4) shall not exceed the sum of the costs reasonably incurred by the competent authority and where the costs are incurred in respect of more than one applicant, the fee charged to each applicant shall be the total cost divided by the number of applicants in respect of whose applications the costs have been incurred, taking into account the substances likely to be in the discharge and the costs of laying down standards and objectives in respect of each such substance.

(6) Where, in the opinion of the competent authority, the competent authority can properly lay down standards and objectives only by engaging specialists and consultants either to evaluate information provided by the applicant or to lay down the standards and objectives, the cost of such specialists or consultants shall be included in the fee payable under this rule.

(7) The competent authority may determine the cost of employing an officer, including a public officer, for any period on work appropriate to his grade by reference to the average cost to it of employing officers of his grade for that period.

(8) The competent authority shall, at the time he receives an application, make an estimate to the applicant of the fee to be paid by the applicant and the applicant shall pay the estimated amount, and in the absence of such payment the competent authority shall not be required to consider the application.

(9) When the competent authority has completed the work necessary to lay down the standards and objectives required in respect of any particular application, it shall prepare and give to the applicant a detailed statement of the work done and the costs incurred and—

- (a) where the amount so calculated exceeds the amount paid under sub-rule (8), the applicant shall pay the additional amount and the competent authority shall not be required to issue an authorisation until such amount has been paid; or
- (b) where the amount so calculated is less than the amount paid under sub-rule (8), the competent authority shall refund to the applicant the amount of the excess.

Substances in List I.

4. (1) No person shall discharge anything into the public sewer or into internal coastal waters or territorial waters which is liable to contain any substance belonging to the families and groups of substances in List I, except with prior authorisation by the competent authority, which authorisation may contain such conditions as are, in the opinion of the competent authority necessary to give effect to the Directives.

(2) Any authorisation made under sub-rule (1) shall lay down emission standards, which emission standards shall not exceed the limit values specified in the Directives for the various substances within List I with regard to discharges of any such substances into the public sewer or into internal coastal waters or territorial waters.

(3) Where, at the effective date of this rule, a substance specified in sub-rule (1) is being discharged into the public sewer or into internal coastal waters or territorial waters, the person discharging that substance shall comply with the conditions laid down in the authorisation within the period specified in that authorisation.

(4) The period specified in an authorisation to which sub-rule (3) applies shall not exceed the time limit laid down in the Directives in respect of that substance.

(5) An authorisation under sub-rule (1) shall be valid for the period specified in it, which period shall not exceed the maximum period permitted under any of the Directives applicable to a substance in respect of which the authorisation is given and maybe for a shorter period and in either case may be renewed only subject to any amendment necessary to take account of any changes in any relevant limit value.

(6) The emission standards specified in any authorisation under sub-rule (1) shall determine—

- (a) the maximum concentration of the substance permissible in a discharge and, in the case of dilution, the limit value shall be divided by the dilution factor;
- (b) the maximum quantity of a substance permissible in a discharge during one or more specified periods of time, which quantity may, if necessary, also be expressed as a unit of weight of the pollutant per unit of the characteristic element of the polluting activity (for example, unit of weight per unit of raw material or per product unit).

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(7) The competent authority may, if it is of the opinion that it is necessary, taking into account, in particular, the toxicity, persistence, and bioaccumulation of the substance concerned into the environment into which it is discharged, impose in any authorisation under sub-rule (1) more stringent emission standards than those resulting from the application of the limit values.

(8) No authorisation shall be issued under sub-rule (1) unless the competent authority is satisfied that the person discharging or suffering or permitting the discharge is able to comply with the required emission standards.

(9) Without prejudice to the requirements of any of the Directives in respect of limit values and time limits applicable under any of the Directives and to the provisions of Directive 76/464/EEC, the competent authority may grant an authorisation for a new plant only if the new plant applies the standards corresponding to the best technical means available when that is necessary for the elimination of pollution in accordance with Article 2 of Council Directive 76/464/EEC or for the prevention of distortion of competition, and where the competent authority in accordance with the provisions of this sub-rule proposes to grant an authorisation where for technical reasons the intended measures do not correspond to the best technical means available, the competent authority shall inform the Government of its intention before granting an authorisation and the Government shall take the steps necessary to provide to the Commission evidence in support of those technical reasons.

(10) If it appears to the competent authority that the emission standards specified in any authorisation are not being complied with, the authority shall—

- (a) by notice, require the person to whom the authorisation was issued or by whom the discharge is being made, to take such steps as, in the opinion of the authority, are necessary to ensure compliance with the standards; or
- (b) if in the opinion of the authority it is necessary, issue a notice to that person or persons prohibiting the discharge, and
- (c) advise the Government of the action it has taken and the reasons for that action.

(11) The provisions of section 330 shall apply in relation to any notice given under sub-rule (10) as if the references in that section to Government were references to the competent authority.

Substances in List II.

5. (1) No person shall discharge anything into the public sewer or into internal coastal waters or territorial waters containing any substance in List II except in accordance with an authorisation issued by the competent authority.

(2) Where an application for an authorisation in respect of any substance in List II is received by the competent authority, the competent authority shall determine the quality objectives in accordance with any relevant provisions of the Directives for internal coastal waters and territorial waters in respect of such substance.

(3) An authorisation issued under sub-rule (1) shall specify the emission standards to be satisfied, which standards shall be based on the quality objectives fixed in accordance with sub-rule (2).

(4) An authorisation issued under sub-rule(1) may specify a time by which an emission standard shall be attained and where, in the opinion of the authority it is appropriate, stages by which that standard is to be attained.

(5) No authorisation shall be issued under sub-rule (1) unless the competent authority is satisfied that the person discharging or suffering or permitting the discharge is able to comply with the required emission standards.

(6) If it appears to the competent authority that the emission standards specified in any authorisation are not being complied with, the authority shall—

- (a) by notice, require the person to whom the authorisation was issued or by whom the discharge is being made, to take such steps as, in the opinion of the authority, are necessary to ensure compliance with the standards; or
- (b) if in the opinion of the authority it is necessary, issue a notice to that person or persons prohibiting the discharge, and
- (c) advise the Government of the action it has taken and the reasons for that action.

(7) The provisions of section 330 shall apply in relation to any notice given under sub-rule (6) as if the references in that section to Government were references to the competent authority.

Monitoring.

6. (1) The competent authority shall take the steps necessary to monitor the aquatic environment for the purposes of determining—

- (a) the presence of a discharge to which the Directives apply and which has not been authorised;
- (b) the effect on the aquatic environment of industrial discharges.

(2) Where the competent authority incurs costs in carrying out its functions under sub-rule (1), it may—

- (a) charge to any person who has discharged other than in accordance with an authorisation a fee,
- (b) charge to each person to whom an authorisation had been issued under these rules a fee,

such fee to be determined in accordance with this rule.

(3) The fee referred to in sub-rule (2) shall not exceed the sum of the costs reasonably incurred by the competent authority in undertaking monitoring required by sub-rule (1), and where a fee is charged to more than one person, the sum of the costs incurred shall be divided between those persons in proportion to their number and the number of substances in respect of which an unauthorised discharge has been made or in respect of which an authorisation has been granted and, where this is relevant, the costs incurred in monitoring in respect of each substance discharged or in respect of which a discharge has been authorised.

(4) Where, in the opinion of the competent authority, the competent authority can properly carry out its functions under this rule only by engaging specialists and consultants to monitor the aquatic environment and to evaluate the information thereby obtained, the cost of such specialists or consultants shall be included in the fee payable under this rule.

(5) The competent authority may determine the cost of employing an officer, including a public officer, for any period on work appropriate to his grade by reference to the average cost to it of employing officers of his grade for that period.

(6) When requiring payment, the competent authority shall send or give to the person to be charged a detailed statement of the work done and costs incurred, and where a fee remains due for a period in excess of one month, the competent authority—

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- (a) may recover the fee under the provisions of the Act as a civil debt;
- (b) shall not be required to grant any new authorisation to that person;
- (c) may revoke an existing authorisation granted to that person.

Inventory.

7. The competent authority shall draw up an inventory of the discharge into sewers, internal coastal waters and territorial waters which may contain substances in List I.

Annual report.

8. (1) The competent authority shall, in each period of twelve months, prepare a report, which report shall—

- (a) specify the actions taken by the competent authority to obtain compliance with the requirements of rule 5;
- (b) list those discharges into sewers, internal coastal waters and territorial waters which may contain substances in List I;
- (c) give details of authorisations granted pursuant to rules 4 and 5;
- (d) give the results of monitoring exercises undertaken by the competent authority in respect of discharges falling within the Directives;
- (e) give such further information as is required to be so reported by the Directives.

(2) Where a request is made by the Commission, the competent authority shall make available to the Commission the information specified in Article 13 of Council Directive 76/464/EEC, and in the Articles of such other Directives as contain provisions corresponding to those of Article 13.

(3) Summaries of the actions taken in accordance with rule 5, together with the record of results of implementation under that rule, shall be communicated to the Commission.

Unauthorised discharges.

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9. Where the competent authority is satisfied that a person is discharging or has discharged substances to which the Directives apply other than in accordance with an authorisation made under these rules, the competent authority shall forthwith inform the Government and shall provide to the Government such information as may be necessary for the purpose of a prosecution under the provisions of the Act.

Discretion of competent authority.

10. (1) Where, in the opinion of the competent authority, it is appropriate to do so, it may impose on any trade, business or manufacture to which these rules apply, more stringent measures in respect of pollution of the aquatic environment than those provided for in the Directives, and a failure to comply with any such requirement as in the exercise of its discretion under this rule the competent authority has imposed, shall be deemed to constitute an unauthorised discharge.

(2) Without prejudice to the generality of sub-rule (1), in granting authorisations under rules 4 and 5 and in exercising its discretion to impose more stringent measures, the competent authority shall take account of the need not, either directly or indirectly, by virtue of measures taken under these rules, to thereby increase the pollution of internal coastal waters, territorial waters and waters other than internal coastal waters and territorial waters.

Discharges of mercury.

11. The competent authority shall where it is satisfied that such sources of pollution exist in Gibraltar draw up specific programmes for mercury discharges by multiple sources which are not industrial plants and for which the emission standards laid down in Article 3 of Directive 84/156/ EEC cannot be applied in practice, and such programmes shall conform with the requirements of Article 4 of that Directive.