

Rules made under s.70.

**PUBLIC HEALTH (GROUNDWATER) RULES, 1995**

**(LN. 1995/009)**

**19.1.1995**

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**ARRANGEMENT OF RULES**

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**Title.**

I. These Rules may be cited as the Public Health (Groundwater) Rules, 1995.

**Interpretation and application.**

2. (1) In these Rules—

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

“direct discharge” means the introduction into groundwater of substances in List 1 or List 2 without percolation through the ground or subsoil;

“the Directive” means Council Directive 80/68/EEC;

“indirect discharge” means the introduction into groundwater of substances in List 1 or List 2 after percolation through the ground or subsoil;

“groundwater” means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;

“List 1” means List 1 in the Annex to Council Directive 80/68/EEC;

“List 2” means List 2 in the Annex to Council Directive 80/68/EEC;

“pollution” means the discharge by man, directly or indirectly, of substances or energy into groundwater, the results of which are such as to endanger human health or water supplies, harm living resources and the aquatic ecosystem or interfere with other legitimate uses of water.

(2) Unless otherwise provided for in these Rules, words and phrases used in the Directive shall in these Rules have the meaning given to them in the Directive.

(3) These Rules do not apply to—

- (a) discharges of domestic effluents in isolated dwellings not connected to a sewerage system and situated outside areas protected for the abstraction of water for human consumption;
- (b) discharges which the competent authority is satisfied on the evidence of persons recognized by the competent authority as qualified for the purpose contain substances in List I or List 2 in a quantity and concentration so small as to obviate any present or future danger of deterioration in the quality of the receiving groundwater;
- (c) discharge of matter containing radioactive substances.

(4) The application of these Rules shall not permit either by direct or indirect means pollution of groundwater.

**Conditions for the issue of authorisations.**

3.(1) The competent authority shall not consider an application for an authorisation in respect of—

- (a) any disposal or tipping for the purpose of disposal of a substance in List 1 which might lead to an indirect discharge into groundwater of such a substance;
- (b) any disposal or tipping for the purpose of disposal of a substance in List 2 which might lead to an indirect discharge into groundwater of such a substance;
- (c) a direct discharge into groundwater of a substance in List 1; or
- (d) a direct discharge into groundwater of a substance in List 2;

unless it is accompanied by—

- (a) evidence of prior investigation prescribed in respect of the application, undertaken and presented by a person recognized by the authority as qualified for the purpose; and
- (b) the prescribed fee.

(2) Without prejudice to any other requirements prescribed in these Rules, the prior investigation referred to in sub-rule (1) shall include examination of the hydrogeological conditions of the area concerned, the possible purifying powers of the soil and sub-soil and the risk of pollution

and alteration of the quality of the groundwater from the discharge and shall establish whether the discharge of substances into groundwater is a satisfactory solution from the point of view of the environment.

(3) The competent authority shall not issue an authorisation in any case within sub-rule (1) unless it is satisfied that the groundwater, and in particular its quality, will undergo the requisite surveillance, which, if so required by the authorisation, shall be undertaken by a person recognized by the authority as qualified for the purpose.

(4) In a case within sub-rule (1)(a) or (c)–

(a) where the competent authority is satisfied that the evidence submitted of prior investigation shows that the groundwater which may be effected by a direct or indirect discharge of a substance in List 1 is permanently unsuitable for other uses, especially domestic or agricultural, an authorisation may be issued only if the competent authority is also satisfied by that evidence that–

(i) the presence of that substance once discharged into groundwater will not impede exploitation of ground resources; and

(ii) all technical precautions are in place and the applicant has the ability to operate those precautions to ensure that no substance in List I can reach other aquatic systems or harm other ecosystems; and

(b) where the competent authority is not satisfied, on the evidence submitted of the prior investigation, that the groundwater which may be effected by such discharge is permanently unsuitable for other uses, especially domestic and agricultural, it may only issue an authorisation if that authorisation is made subject to such conditions as the authority, in the light of the evidence of the investigation, is satisfied will ensure the observance of all technical precautions necessary to prevent any discharges into groundwater of substances in List 1.

(5) In any case within sub-rule (1)(b) or (d), any authorisation issued by the competent authority shall be issued subject to such conditions as the authority, on the evidence submitted to it of the prior investigation, is satisfied will ensure the observance of all technical precautions for preventing groundwater pollution by substances in List 2.

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(6) Where in any case within sub-rule (1)(a) or (b) the competent authority issues an authorisation such authorisation shall be issued on such terms and subject to such conditions as specify—

- (a) the place where any disposal or tipping which might lead to a discharge into groundwater of any substances in List 1 or List 2 is to be done;
- (b) the methods of disposal or tipping which may be used;
- (c) the essential precautions which must be taken, paying particular attention to the nature and concentration of the substances present in the matter to be disposed of or tipped, the characteristics of the receiving environment and the proximity of the water catchments areas, in particular those for drinking, thermal and mineral water;
- (d) the maximum quantity permissible, during one or more specified periods of time, of matter containing substances in List 1 or List 2 and, where possible of those substances themselves, to be disposed of or tipped and the appropriate requirements as to the concentration of those substances;
- (e) the technical precautions required by sub-rule (4)(b) or (5);
- (f) if necessary, the measures, which the competent authority may require to be undertaken by a person recognized by the authority as qualified for the purpose, for monitoring the groundwater, and in particular its quality.

(7) Where in any case within sub-rule (1)(c) or (d) the competent authority issues an authorisation such authorisation shall be issued on such terms and subject to such conditions as specify—

- (a) the place where any substances in List 1 or List 2 are to be discharged into groundwater;
- (b) the method of discharge which may be used;
- (c) the essential precautions which must be taken, paying particular attention to the nature and concentrations of the substances present in the effluents, the characteristics of the receiving environment and the proximity of the water catchment areas, in particular those for drinking, thermal and mineral water;

- (d) the maximum quantity of a substance in List I or List 2 permissible in the effluent during one or more specified periods of time and the appropriate requirements as to the concentration of those substances;
- (e) the arrangements enabling effluents discharged into groundwater to be monitored;
- (f) if necessary, the measures, which the authority may require to be undertaken by a person recognized by the competent authority as qualified for the purpose, for monitoring the groundwater, and in particular its quality.

(8) Where the competent authority has received evidence from prior investigation that all technical precautions are in place the competent authority may issue an authorisation in respect of discharges by way of re-injection into the same aquifer of water used for geothermal purposes, water pumped out of mines and quarries or water pumped out of civil engineering works.

#### **Groundwater management.**

4. (1) Notwithstanding rule 3, artificial recharges for the purpose of groundwater management shall be subject to a special authorisation issued by the competent authority on a case by case basis.

(2) An application for an authorisation under sub-rule (1) shall be accompanied by—

- (a) such evidence, to be provided by a person recognized by the competent authority as qualified for the purpose, as the competent authority may require; and
- (b) the prescribed fee.

(3) The competent authority may issue an authorisation in respect of an application under sub-rule (1) only where it is satisfied that by so doing there is no risk of polluting groundwater.

#### **Application for authorisation.**

5. (1) An application for an authorisation under rule 3 or 4 shall—

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- (a) be in writing and in the form, if any, specified by the competent authority;
  - (b) contain all the information necessary for the authority to determine the application.
- (2) Where a prior investigation is required by these Rules to have been undertaken, the information referred to in sub-rule (1)(b) shall include the details of the investigation and the conclusions, if any, reached by the person undertaking the investigation.
- (3) The competent authority may require from a person making an application under these Rules such further information as in the opinion of the authority is necessary for it to properly determine the application, and—
- (a) such information may include information to be obtained from the person who undertook or should have undertaken any relevant investigation;
  - (b) in the absence of such further information, the authority shall not be required to consider the application.
- (4) The competent authority shall be entitled to rely on the information supplied to it by an applicant in respect of an investigation and any conclusion reached by the person who undertook the investigation as if the investigation had been carried out on behalf of the authority.
- (5) Where the competent authority occurs costs in making a proper determination of an application or in establishing the terms of an authorisation or the conditions to which an automations subject, it may charge, in addition to the prescribed fee, an additional fee to be calculated in accordance with the provisions of this rule.
- (6) The additional fee referred to in sub-rule (5) 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 amount to be 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 account of the substances in respect of which authorisation is sought and the costs in respect of each substance.
- (7) Where, in the opinion of the competent authority, the authority can properly determine an application or establish the terms of an authorisation or the conditions to which an authorisation is subject only by engaging

specialists and consultants, the cost of such specialists and consultants shall be included in the additional fee referred to in sub-rule(5).

(8) 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.

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

(10) When the competent authority has completed the work necessary to determine the application and to establish the terms of the authorisation, if any, and the conditions, if any, to which the authorisation is subject, 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 (9), the applicant shall pay the additional amount and the authority shall not be required to issue an authorisation until such an amount has been paid; or
- (b) where the amount so calculated is less than the amount paid under sub-rule (9), the authority shall refund to the applicant the amount of the excess.

(11) In this rule and in rule 8, “properly” in respect of—

- (a) the determining of an application by the competent authority, or
- (b) the establishing by the authority of the terms or conditions of an authorisation, or
- (c) the monitoring of groundwater,

means the carrying out of those functions in a manner likely to ensure so far as possible the protection of groundwater from pollution in accordance with the Directive.

**Ability to comply with terms and conditions.**



6. (1) No authorisation shall be issued under these Rules unless the competent authority is satisfied that the applicant is able to comply with the terms and conditions of—

- (a) the Directive relevant to that authorisation, and
- (b) the authorisation

(2) If it appears to the competent authority that the terms and conditions of—

- (a) the Directive relevant to an authorisation; or
- (b) the authorisation,

are not being complied with, the authority—

- (i) shall by notice require the person to whom the authorisation was issued to take such steps as in the opinion of the authority are necessary to ensure that the terms and conditions are fulfilled; or
- (ii) if in the opinion of the authority it is necessary, may issue a notice to that person withdrawing the authorisation; and
- (iii) shall advise the Government of the actions it has taken and the reasons for that action.

(3) The provisions of section 330 of the Act shall apply in relation to any notice given under sub-rule (2) as if the references in that section to Government were references to the competent authority.

### **Duration of authorisation etc.**

7.(1) Subject to rule 6, an authorisation issued under these Rules shall be valid for the period specified in the authorisation and in any case for no longer period than four years.

(2) The provisions of these Rules in respect of an application for an authorisation shall apply to an application to renew an authorisation.

(3) Where for the purpose of satisfying the relevant requirements of the Directive or these Rules the competent authority is of the opinion that it is necessary to amend the terms or conditions of an authorisation, the authority

shall by notice so advise the person to whom the authorisation was issued, and the authorisation is thereby so amended.

(4) Where by virtue of subsection (3) an authorisation is amended the provisions of rule 6 shall apply as if the references in that rule to an authorisation were references to an amended authorisation.

(5) The provisions of section 330 shall apply in relation to a notice given under sub-rule (3) as if the references in that section to Government were references to the competent authority.

(6) An authorisation issued under these Rules is not transferable.

#### **Monitoring.**

8. (1) The competent authority shall take the steps necessary to monitor groundwater for the purpose of determining—

- (a) pollution of groundwater;
- (b) the presence in groundwater of a discharge of a substance in List 1 or List 2 and which has not been authorised;
- (c) compliance with the terms and conditions of any authorisation.

(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 a substance in List 1 or List 2 other than in accordance with an authorisation a fee,
- (b) charge to each person to whom an authorisation has been issued under these Rules a fee,

such fee to be calculated 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 List 1 and List 2 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 authority can properly carry out its functions under this rule only by engaging specialists or consultants to monitor as required by sub-rule (1) 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 of employing officers of his grade for that period.

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

- (a) may recover the fee under the provision of the Act as a civil debt;
- (b) shall not be required to issue any new or renewed authorisation to that person;
- (c) may revoke an existing authorisation issued to that person.

### **Inventory.**

9. The competent authority shall keep an inventory of the authorisations issued by the authority under these Rules.

### **Provision of information to the Government.**

10.(1) In order that the Government may fulfil its obligations to supply information under Article 16 of the Directive the competent authority shall supply to the Government whenever required the information listed in paragraphs (a), (b), (c) and (d) of Article 16.1 of the Directive.

(2) Information acquired as result of the application of sub-rule (1) shall be used only for the purpose for which it was requested.

(3) The Commission and the competent authorities of member states, their officials and other servants and agents shall not disclose information acquired by them pursuant to these Rules or the Directive and of a kind covered by the obligation of professional secrecy.

(4) The provisions of sub-rules (2) and (3) shall not prevent publication of general information of surveys which do not contain information relating to particular undertakings or associations of undertakings.

**Cross-Frontier information and consultation.**

11. (1) Where the competent authority intends to issue an authorisation for a discharge which may enter transfrontier groundwater the authority shall in inform the relevant authority of the neighbouring state.

(2) At the request of the competent authority or the relevant authority of the neighbouring state and prior to the issue by the competent authority of the authorisation referred to in sub-rule (1) consultation shall be held in which the Commission may participate.

**Unauthorised discharges.**

12. Where the competent authority is satisfied that a person is discharging or has discharged substances in List 1 or List 2 other than in accordance with an authorisation issued 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 prosecution under the provisions of the Act.

**Discretion of competent authority.**

13. (1) Where in the opinion of the competent authority, and for the purpose of preventing pollution to groundwater it is appropriate to do so, the authority may impose on any person to whom these Rules apply more stringent measures in respect of pollution of groundwater than those provided for in the Directive, 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 issuing authorisations under rule 3 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 pollute groundwater.

**Offences in respect of false or misleading information.**

14(1) Where—

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- (a) for the purpose of making an application under these Rules, or
- (b) required by the competent authority to provide information in accordance with these Rules, or
- (c) knowing that information is to be relied upon for the purpose of determining an application, establishing terms or conditions of an authorisation or for monitoring groundwater,

a person knowingly or recklessly supplies information which is false or misleading in any material particular, he is guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(2) Where information subsequently found to be false or misleading has been supplied and an authorisation has been issued in reliance on the information, the competent authority may withdraw that authorisation and shall not be required to consider any other application from the person who supplied or caused the false or misleading information to be supplied or from a person in which that person has any interest.