SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3822 of 25 November, 2010

LEGAL NOTICE NO. 168 OF 2010.

INTERPRETATION AND GENERAL CLAUSES ACT

PUBLIC HEALTH (WATER FRAMEWORK) (AMENDMENT) REGULATIONS 2010

In exercise of the powers conferred on it by section 23(g)(ii) as read with section 27 of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2008/105/EC of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council, the Government has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Public Health (Water Framework) (Amendment) Regulations 2010 and, with the exception of regulation 8, come into operation on the day of publication.

Amendments to the Public Health (Water Framework) Rules 2004.

2. The Public Health (Water Framework) Rules 2004 (the Rules) are amended in accordance with the provisions of regulations 3 to 9.

Amendment to rule 2(1).

3. The Rules are amended in rule 2(1) by inserting the following definition after the definition of "groundwater"–

> ""priority substances" means the substances identified in accordance with Article 16(2) of the Directive and listed in Schedule 10 to these Rules;".

Insertion of rules 10A and 10B.

4. The Rules are amended by inserting the following rules after rule 10–

"Environmental quality standards.

10A.(1) The Competent Authority must apply the Environmental Quality Standards(EQS) listed in Part A of Schedule 9 to these Rules for bodies of surface water in accordance with the requirements laid down in Part B of that Schedule.

(2) The Competent Authority may opt to apply EQS for sediment or biota or both instead of those laid down in Part A of Schedule 9 in certain categories of surface water.

(3) Where the Competent Authority decides to apply the option mentioned in subrule (2), it must–

(a) apply, for mercury and its compounds, an EQS of 20 µg/kg, and/or for hexachlorobenzene, an EQS of 10 µg/kg, and/or for hexachlorobutadiene, an EQS of 55 µg/kg, these EQS being for prey tissue (wet weight), choosing the most appropriate indicator from among fish, molluscs, crustaceans and other biota;

(b) establish and apply EQS other than those mentioned in paragraph (a) for sediment or biota or both for specified substances and these EQS must offer at least the same level of protection as the EQS for water set out in Part A of Schedule 9;

(c) determine, for the substances mentioned in paragraphs (a) and (b), the frequency of monitoring in biota or sediment or both and such monitoring must take place at least once every year, unless technical knowledge and expert judgment justify another interval; and

(d) ensure that the Commission and Member States are notified of–

(i) the substances for which EQS have been established in accordance with paragraph (b);

(ii) the reasons and basis for using this approach;

(iii) the alternative EQS established, including the data and the methodology by which alternative EQS were derived;

(iv) the categories of surface water to which they would apply; and

(v) the frequency of monitoring planned, together with the justification for that frequency.

(4) The Competent Authority must arrange for the long-term trend analysis of concentrations of those priority substances listed in Part A of Schedule 9 that tend to accumulate in sediment or biota or in both, giving particular consideration to substances numbers 2, 5, 6, 7, 12, 15, 16, 17, 18, 20, 21, 26, 28 and 30, on the basis of monitoring of water status carried out in accordance with rule 9 and they shall take measures aimed at ensuring, subject to Schedule 7, that such concentrations do not significantly increase in sediment or relevant biota or in both.

(5) The Competent Authority must determine the frequency of monitoring in sediment or biota or in both so as to provide sufficient data for a reliable long-term trend analysis and, as a guideline, such monitoring must take place every three years, unless technical knowledge and expert judgment justify another interval.

Transboundary pollution.

10B.(1) The Competent Authority shall not be in breach of its obligations under these Rules as a result of the exceedance of an EQS if it can demonstrate that–

(a) the exceedance was due to a source of pollution outside Gibraltar;

(b) it was unable, as a result of such transboundary pollution, to take effective measures to comply with the relevant EQS; and

(c) it had applied the coordination mechanisms set out in Article 3 of the Directive and, as appropriate, taken advantage of the provisions of Article 4(4), (5) and (6) of the Directive for those water bodies affected by transboundary pollution.

(2) In a situation under subrule (1), the Competent Authority must use the mechanism laid down in Article 12 of the Directive to ensure that the Commission is provided with necessary information and a summary of the measures taken in relation to any transboundary pollution in the relevant river basin management plan in accordance with the reporting requirements under Article 15(1) of the Directive".

Insertion of rule 11A.

5. The Rules are amended by inserting the following rule after rule 11–

"Mixing zones.

11A.(1) The Competent Authority may designate mixing zones adjacent to points of discharge.

(2) Concentrations of one or more substances listed in Part A of Schedule 9 may exceed the relevant EQS within such mixing zones if they do not affect the compliance of the rest of the body of surface water with those standards.

(3) In designating the mixing zones, the Competent Authority must include in river basin management plans produced in accordance with rule 11 a description of–

(a) the approaches and methodologies applied to define such zones; and

(b) measures taken with a view to reducing the extent of the mixing zones in the future, such as those measures taken pursuant to Article 11(3)(k) of the Directive or

by reviewing relevant permits or prior regulations as referred to in Article 11(3)(g) of the Directive.

(4) In designating mixing zones the Competent Authority must ensure that the extent of any such zone is–

(a) restricted to the proximity of the point of discharge; and

(b) proportionate, having regard to the concentrations of pollutants at the point of discharge and to the conditions on emissions of pollutants contained in the prior regulations, in accordance with the application of best available techniques and Article 10 of the Directive, in particular after those prior regulations are reviewed. ".

Insertion of rule 17A.

6. The Rules are amended by inserting the following rule after rule 17–

"Inventory of emissions, discharges and losses.

17A.(1) The Competent Authority must, on the basis of the information collected in accordance with rules 5 to 7, Regulation (EC) No 166/2006 and other available data, establish an inventory, including maps, if available, of emissions, discharges and losses of all priority substances and pollutants listed in Part A of Schedule 9 for the Gibraltar River Basin District or part of a river basin district lying within Gibraltar including their concentrations in sediment and biota, as appropriate.

(2) The Competent Authority must–

(a) ensure that the inventories established under subrule (1) are communicated to the Commission;

(b) update those inventories as part of reviews under rule 5(2); and

(c) publish those updated inventories in its updated river basin plans under rule 11(2).

(3) The reference period for the establishment of –

(a) pollutant values to be entered in the inventories referred to in subrule (1) shall be one year between 2008 and 2010; and

(b) values in the updated inventories under subrule (2) shall be the year before the analysis is to be completed.".

Amendment to rule 19.

7. The Rules are amended in rule 19 by substituting "Article 13(2)" for "Article 13(2)(a)".

Repeals.

8. The following are repealed with effect from 22 December 2012–

(a) Public Health (Pollution of the Aquatic Environment) Regulations 1994 (Legal Notice No. 122 of 1994); and

(b) Public Health (Pollution of the Aquatic Environment) Rules, 1994 (Legal Notice No. 123 of 1994).

Insertion of new Schedules.

9. The Rules are amended by inserting the following two Schedules after Schedule 8–

"SCHEDULE 9

Rules 10A and 11A

ENVIRONMENTAL QUALITY STANDARDS FOR PRIORITY SUBSTANCES AND CERTAIN OTHER POLLUTANTS

PART A: ENVIRONMENTAL QUALITY STANDARDS (EQS)

AA: annual average;

MAC: maximum allowable concentration.

Unit: [µg/l]

(1)	(2)	(3)	(4)	(5)	(6)	(7)
No	Name of substance	CAS number (1)	AA-EQS (2) Inland surface waters (3)	AA-EQS (2) Other surface waters	MAC-EQS (4) Inland surface waters (3)	MAC-EQS (4) Other surface waters
(1)	Alachlor	15972-60-8	0,3	0,3	0,7	0,7
(2)	Anthracene	120-12-7	0,1	0,1	0,4	0,4
(3)	Atrazine	1912-24-9	0,6	0,6	2,0	2,0
(4)	Benzene	71-43-2	10	8	50	50
(5)	Brominated diphenylether (5)	32534-81-9	0,0005	0,0002	not applicable	not applicable
(6)	Cadmium and its compounds (depending on water hardness classes) (6)	7440-43-9	≤0,08 (Class 1) 0,08 (Class 2) 0,09 (Class 3) 0,15 (Class 4) 0,25 (Class 5)	0,2	≤0,45 (Class 1) 0,45 (Class 2) 0,6 (Class 3) 0,9 (Class 4) 1,5 (Class 5)	≤0,45 (Class 1) 0,45 (Class 2) 0,6 (Class 3) 0,9 (Class 4) 1,5 (Class 5)
(6a)	Carbon-tetrachloride (7)	56-23-5	12	12	not applicable	not applicable
(7)	C10-13 Chloroalkanes	85535-84-8	0,4	0,4	1,4	1,4
(8)	Chlorfenvinphos	470-90-6	0,1	0,1	0,3	0,3
(9)	Chlorpyrifos (Chlorpyrifos-ethyl)	2921-88-2	0,03	0,03	0,1	0,1

(9a)	Cyclodiene pesticides: Aldrin (7) Dieldrin (7) Endrin (7) Isodrin (7)	309-00-2 60-57-1 72-20-8 72-20-8 465-73-6	Σ = 0,01	Σ = 0,005	not applicable	not applicable
(9b)	DDT total (7) (8)	Not appli-cable	0,025	0,025	not applicable	not applicable
	para-para-DDT (7)	50-29-3	0,01	0,01	not applicable	not applicable
(10)	1,2-Dichloroethane	107-06-2	10	10	not applicable	not applicable
(11)	Dichloromethane	75-09-2	20	20	not applicable	not applicable
(12)	Di(2-ethylhexyl)-phthalate (DEHP)	117-81-7	1,3	1,3	not applicable	not applicable
(13)	Diuron	330-54-1	0,2	0,2	1,8	1,8
(14)	Endosulfan	115-29-7	0,005	0,005	1,01	1,004
(15)	Fluoranthene	206-44-0	0,1	0,1	1	1
(16)	Hexachloro-benzene	118-74-1	0,01 (9)	0,01 (9)	0,05	0,05
(17)	Hexachloro-butadiene	87-68-3	0,1 (9)	0,1 (9)	0,6	0,6
(18)	Hexachloro-cyclohexane	608-73-1	0,02	0,02	0,04	0,02
(19)	Isoproturon	34123-59-6	0,3	0,3	1,0	1,0
(20)	Lead and its compounds	7439-92-1	7,2	7,2	not applicable	not applicable
(21)	Mercury and its compounds	7439-97-6	0,05 (9)	0,05 (9)	0,07	0,07
(22)	Naphthalene	91-20-3	2,4	1,2	not applicable	not applicable
(23)	Nickel and its compounds	7440-02-0	20	20	not applicable	not applicable
(24)	Nonylphenol (4-Nonylphenol)	104-40-5	0,3	0,3	2,0	2,0

(25)	Octylphenol ((4-(1,1′,3,3′-tetramethylbutyl)-phenol))	140-66-9	0,1	0,01	not applicable	not applicable
(26)	Pentachloro-benzene	608-93-5	0,007	0,0007	not applicable	not applicable
(27)	Pentachloro-phenol	87-86-5	0,4	0,4	1	1
(28)	Polyaromatic hydrocarbons (PAH) (10)	not appli-cable	not applicable	not applicable	not applicable	not applicable
	Benzo(a) pyrene	50-32-8	0,05	0,05	0,1	0,1
	Benzo(b)fluor-anthene	205-99-2	Σ = 0,03	Σ = 0,03	not applicable	not applicable
	Benzo(k)fluor-anthene	207-08-9				
	Benzo(g,h,i)-perylene	191-24-2	Σ = 0,002	Σ = 0,002	not applicable	not applicable
	Indeno(1,2,3-cd)-pyrene	193-39-5				
(29)	Simazine	122-34-9	1	1	4	4
(29a)	Tetrachloro-ethylene (7)	127-18-4	10	10	not applicable	not applicable
(29b)	Trichloro-ethylene (7)	79-01-6	10	10	79	01
(30)	Tributyltin compounds (Tributhyltin-cation)	36643-28-4	0,0002	0,0002	0,0015	0,0015
(31)	Trichloro-benzenes	12002-48-1	0,4	0,4	12002	48
(32)	Trichloro-methane	67-66-3	2,5	2,5	not applicable	not applicable
(33)	Trifluralin	1582-09-8	0,03	0,03	not applicable	not applicable

(1) CAS: Chemical Abstracts Service.

(2) This parameter is the EQS expressed as an annual average value (AA-EQS). Unless otherwise specified, it applies to the total concentration of all isomers.

(3) Inland surface waters encompass rivers and lakes and related artificial or heavily modified water bodies.

(4) This parameter is the EQS expressed as a maximum allowable concentration (MAC- QS). Where the MAC-EQS are marked as 'not applicable', the AA-EQS values are considered protective against short-term pollution peaks in continuous discharges since they are significantly lower than the values derived on the basis of acute toxicity.

(5) For the group of priority substances covered by brominated diphenylethers (No 5) listed in Decision No 2455/2001/EC, an EQS is established only for congener numbers 28, 47, 99, 100, 153 and 154.

(6) For cadmium and its compounds (No 6) the EQS values vary depending on the hardness of the water as specified in five class categories (Class 1: < 40 mg CaCO3/l, Class 2: 40 to < 50 mg CaCO3/l, Class 3: 50 to < 100 mg CaCO3/l, Class 4: 100 to < 200 mg CaCO3/l and Class 5: ≥ 200 mg CaCO3/l).

(7) This substance is not a priority substance but one of the other pollutants for which the EQS are identical to those laid down in the legislation that applied prior to 13 January 2009.

(8) DDT total comprises the sum of the isomers 1,1,1-trichloro-2,2 bis (p-chlorophenyl) ethane (CAS number 50-29-3; EU number 200-024-3); 1,1,1-trichloro-2 (o-chlorophenyl)-2-(p-chlorophenyl) ethane (CAS number 789-02-6; EU number 212-332-5); 1,1-dichloro-2,2 bis (p-chlorophenyl) ethylene (CAS number 72-55-9;

EU number 200-784-6); and 1,1-dichloro-2,2 bis (p-chlorophenyl) ethane (CAS number 72-54-8; EU number 200-783-0).

(9) If the Competent Authority does not apply EQS for biota it must introduce stricter EQS for water in order to achieve the same level of protection as the EQS for biota set out in rule 10A(3). The Competent Authority must notify the Commission and other Member States, through the Committee referred to in Article 21 of the Directive, of the reasons and basis for using this approach, the alternative EQS for water established, including the data and the methodology by which the alternative EQS were derived, and the categories of surface water to which they would apply.

(10) For the group of priority substances of polyaromatic hydrocarbons (PAH) (No 28), each individual EQS is applicable, i.e. the EQS for Benzo(a)pyrene, the EQS for the sum of Benzo(b)fluoranthene and

Benzo(k)fluoranthene and the EQS for the sum of Benzo(g,h,i)perylene and Indeno(1,2,3-cd)pyrene must be met.

PART B: APPLICATION OF THE EQS SET OUT IN PART A

1. Columns 4 and 5 of the table: For any given surface water body, applying the AA-EQS means that, for each representative monitoring point within the water body, the arithmetic mean of the concentrations measured at different times during the year does not exceed the standard.

The calculation of the arithmetic mean, the analytical method used and, where there is no appropriate analytical method meeting the minimum performance criteria, the method of applying an EQS must be in accordance with implementing acts adopting technical specifications for chemical monitoring and quality of analytical results, in accordance with the Directive.

2. Columns 6 and 7 of the table: For any given surface water body, applying the MAC-EQS means that the measured concentration at any representative monitoring point within the water body does not exceed the standard.

However, in accordance with section 1.3.4 of Annex V to the Directive, the Competent Authority may introduce statistical methods, such as a percentile calculation, to ensure an acceptable level of confidence and precision for determining compliance with the MAC-EQS. If it does so, such statistical methods shall comply with detailed rules laid down in accordance with the regulatory procedure referred to in Article 9(2) of Directive 2008/105/EC.

3. With the exception of cadmium, lead, mercury and nickel (hereinafter 'metals') the EQS set up in this Schedule are expressed as total concentrations in the whole water sample. In the case of metals the EQS refers to the dissolved concentration, i.e. the dissolved phase of a water sample obtained by filtration through a 0,45 μm filter or any equivalent pre-treatment.

The Competent Authority may, when assessing the monitoring results against the EQS, take into account:

(a) natural background concentrations for metals and their compounds, if they prevent compliance with the EQS value; and

(b) hardness, pH or other water quality parameters that affect the bioavailability of metals.

SCHEDULE 10

Rule 2(1)

LIST OF PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY

Number	CAS number (1)	EU number (2)	Name of priority substance (3)	Identified as priority hazardous substance
(1)	15972-60-8	240-110-8	Alachlor	
(2)	120-12-7	204-371-1	Anthracene	X
(3)	1912-24-9	217-617-8	Atrazine	
(4)	71-43-2	200-753-7	Benzene	
(5)	not applicable	not applicable	Brominated diphenylether (4)	X(5)
	32534-81-9	not applicable	Pentabromodiphenylether (congener numbers 28, 47, 99, 100, 153 and 154)	
(6)	7440-43-9	231-152-8	Cadmium and its compounds	X
(7)	85535-84-8	287-476-5	Chloroalkanes,	X
(8)	470-90-6	207-432-0	Chlorfenvinphos	
(9)	2921-88-2	220-864-4	Chlorpyrifos (Chlorpyrifos-ethyl)	
(10)	107-06-2	203-458-1	1,2-dichloroethane	
(11)	75-09-2	200-838-9	Dichloromethane	

(12)	117-81-7	204-211-0	Di(2-ethylhexyl)phthalate (DEHP)	
(13)	330-54-1	206-354-4	Diuron	
(14)	115-29-7	204-079-4	Endosulfan	X
(15)	206-44-0	205-912-4	Fluoranthene (6)	
(16)	118-74-1	204-273-9	Hexachlorobenzene	X
(17)	87-68-3	201-765-5	Hexachlorobutadiene	X
(18)	608-73-1	210-158-9	Hexachlorocyclohexane	X
(19)	34123-59-6	251-835-4	Isoproturon	
(20)	7439-92-1	231-100-4	Lead and its compounds	
(21)	7439-97-6	231-106-7	Mercury and its compounds	X
(22)	91-20-3	202-049-5	Naphthalene	
(23)	7440-02-0	231-111-14	Nickel and its compounds	
(24)	25154-52-3	246-672-0	nonylphenol	X
	104-40-5	203-199-4	(4-nonylphenol)	X
(25)	1806-26-4	217-302-5	Octylphenol	
	140-66-9	not applicable	(4-(1,1′,3,3′-tetramethylbutyl)-phenol)	
(26)	608-93-5	210-172-5	Pentachlorobenzene	X
(27)	87-86-5	231-152-8	Pentachlorophenol	
(28)	not applicable	not applicable	Polyaromatic hydrocarbons	X

	50-32-8	200-028-5	(Benzo(a)pyrene) X	X
	205-99-2	205-911-9	(Benzo(b)fluoranthene)	X
	191-24-2	205-883-8	(Benzo(g,h,i)perylene)	X
	207-08-9	205-916-6	(Benzo(k)fluoranthene)	X
	193-39-5	205-893-2	(Indeno(1,2,3-cd)pyrene)	X
(29)	122-34-9	204-535-2	Simazine	
(30)	not applicable	not applicable	Tributyltin compounds	X
	36643-28-4	not applicable	(Tributyltin-cation)	X
(31)	12002-48-1	234-413-4	Trichlorobenzenes	
(32)	67-66-3	200-663-8	Trichloromethane (chloroform)	
(33)	1582-09-8	216-428-8	Trifluralin	

(1) CAS: Chemical Abstracts Service.

(2) EU number: European Inventory of Existing Commercial Substances (Einecs) or European List of Notified Chemical Substances (Elincs).

(3) Where groups of substances have been selected, typical individual representatives are listed as indicative parameters (in brackets and without number). For these groups of substances, the indicative parameter must be defined through the analytical method.

(4) These groups of substances normally include a considerable number of individual compounds. At present, appropriate indicative parameters cannot be given.

(5) Only Pentabromobiphenylether (CAS-number 32534-81-9).

(6) Fluoranthene is on the list as an indicator of other, more dangerous polyaromatic hydrocarbons.”.

Dated 25th November, 2010.

P R CARUANA,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive 2008/105/EC of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC.