16th July 2009

Circular PD 7/09

Waste Water Discharge (Authorisation) Regulations SI No. 684 of 2007

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This circular sets out certain obligations on planning authorities under the Waste Water Discharge (Authorisation) Regulations 2007 (SI 684 of 2007) as well as the interrelationship between these requirements and investment plans under the Department’s Water Services Investment Programme. This circular is advisory, and not a legal interpretation of the Regulations.

Background

The Waste Water Discharge (Authorisation) Regulations 2007 were introduced to, among other things, provide for an authorisation/licensing regime for local authority waste water discharges. The Regulations were part of a range of measures implemented in response to an adverse judgment of the European Court of Justice, in Case C-282/02, concerning Ireland’s transposition and implementation of the Dangerous Substances Directive 76/464/EEC (June 2005).

Local authorities and An Bord Pleanála will be aware that Part VIII of the 2007 Regulations establishes a clear linkage between decisions that they make as planning authorities on individual planning applications/appeals, and parallel obligations on local authorities, as water services authorities, to comply with emission limits for the discharge of wastewaters to water bodies arising from the stricter of either or both the Urban Waste Water Regulations (S.I. No. 254 of 2001) and emission limits based on achieving the environmental quality standards for the receiving waters, defined as the “Combined Approach” under article 3 of the 2007 Regulations. The EPA is required under the Waste Water Regulations to apply the combined approach when issuing licences, ensuring that the licence issued and discharge limits set therein comply in full with the requirements of the EU Urban Waste Water Treatment Directive.

1 “combined approach”, in relation to a waste water works, means the control of discharges and emissions to waters whereby the emission limits for the discharge are established on the basis of the stricter of either or both, the limits and controls required under the Urban Waste Water Regulations, and the limits determined under statute or Directive for the purpose of achieving the environmental objectives established for surface waters, groundwater or protected areas for the water body into which the discharge is made.
The effect of the 2007 Regulations is such that planning authorities must assure themselves that in approving development that would give rise to additional discharges to a waste water works or from storm water overflows governed by EPA licences, such discharges, taken in conjunction with discharges from other existing and/or already approved development, are capable of being treated in a manner that is compliant with the stricter of the requirements of:

1. The Urban Waste Water Regulations; or
2. The requirements of an EPA licence (which should already incorporate the requirements at (1) above) and which may incorporate more demanding requirements than (1) above depending on the assimilative capacity and the environmental quality objectives that have been established for the receiving waters in question.

At the same time, a programme of investment in water services infrastructure across the country is being implemented under the Department’s Water Services Investment Programme to ensure that infrastructure is in place to both facilitate proper planning and sustainable development and to protect the environment, especially water quality, in compliance with national and EU requirements.

**Obligations on Planning Authorities and An Bord Pleanála**

Article 43 of the 2007 Regulations requires that where a planning authority or An Bord Pleanála is considering an application for permission, an appeal or an application for approval under Section 34, 37, 37E, 175 or 226 of the Planning and Development Act 2000 for development which involves the disposal of waste water to a waste water works or is considering such a development under Section 179 of the 2000 Act, the authority or the Board must consider whether the discharges of wastewater from the proposed development, taken in conjunction with existing and/or already approved discharges, would cause non-compliance with the Combined Approach referred to above.

Therefore, an assessment of the adequacy of wastewater collection and disposal facilities to cater for the development proposed is now an essential requirement and a material consideration in the evaluation by planning authorities and the Board of applications for permission, in determining appeals or applications for approval of the types mentioned above and documentary evidence of, or reference to such an assessment must be attached to the relevant file.

Article 43 of the 2007 Regulations also requires that where a planning authority or the Board forms an opinion that the discharge from a proposed development would result in non-compliance with, or a significant breach of the combined approach, the planning authority or the Board shall, as the case may be:

(a) refuse permission or approval for the development;
(b) impose conditions on any grant of permission or approval to ensure that the discharge will not cause non-compliance with, or a significant breach of, relevant limits; or
(c) decide not to proceed with the development (as in the case of local authority own development).
Article 44 of the 2007 Regulations provides that where a planning authority, including An Bord Pleanála, considers a proposed development is likely to have a significant impact on waste water discharges, it may request the EPA to provide observations in relation to the planning authority’s assessment of the likely impact of the proposed development on discharges. The EPA must comply with any such request and, in making its decision, the planning authority or the Board shall have regard to the Agency’s observations.

**Considerations in dealing with planning applications**

The EPA has indicated that in the ongoing programme of licensing of discharges from each municipal wastewater treatment plant, one or other of the following scenarios will arise -

1. there will be plants where discharges will be compliant with the terms of their waste water discharge license on the grant of the licence; and
2. there will be plants where discharges will not be immediately compliant with the terms of waste water discharge licences and where the licence includes a specified improvement programme and timeframe for the necessary remedial measures or works to be executed.

When considering proposed developments in locations where scenario 1 applies, planning authorities should monitor the cumulative effect of grants of permissions and approvals on available wastewater treatment capacity under the terms of the work’s licence. In cases subject to applications or appeals to An Bord Pleanála, the cumulative assessment referred to above must form part of the documentation submitted to the Board. It is then a matter for the planning authority or the Board to decide on particular applications in the normal manner, having regard to the effects of the extra loadings of the proposed development on available wastewater facilities, and any EPA observations.

In relation to proposed developments in locations where scenario 2 applies, planning authorities and the Board should assess the impact of any proposed development very carefully and should either:

(a) avoid approving development that would create significant additional loadings on existing wastewater treatment works or storm water overflows that are already evidently struggling to meet the current terms of the waste water discharge licence and where upgraded facilities will take considerable time to put in place; or

(b) consider granting permission where suitably upgraded facilities will be procured, within a reasonable timescale that would allow the development proposed to proceed, in accordance with the specified improvement programme timeframe for compliance with the emission limit values in the relevant EPA discharge licence and ensuring that the requirements of the “combined approach” will be met.

In addition, planning authorities should only consider granting permission under paragraph (b) above where the development proposed is otherwise in accordance with the implementation of -

- the National Spatial Strategy;
- any Regional Planning Guidelines in force;
- the provisions of the relevant development plan and any local area plan; and
will contribute towards the longer term proper planning and sustainable development of the area.
Interaction between planning authorities and water services authorities

It is crucially important, in situations where waste water treatment works receive discharges from more than one water services authority area, that regular and effective co-ordination takes place between planning authorities regarding (a) tracking the cumulative impact of ongoing grants of planning permission on remaining waste water treatment capacity and storm water overflow discharges, and (b) compliance with the combined approach referred to above and the terms of relevant EPA waste water discharge licences.

The EPA normally require, as a standard condition on waste water discharge licences, that water services authorities submit an Annual Environmental Report (AER) in respect of each discharge licence, detailing any increase in discharges and further planning consents that have accrued since the previous AER was submitted, taking account of the overall requirement to comply with the licence conditions.

Taking account of the above, the planning authorities that share the use of one or more wastewater treatment facilities must nominate one central co-ordinating planning authority to monitor the cumulative impact of the granting of planning permissions for future development on the remaining wastewater treatment capacity, and co-operate with that authority in submitting information on relevant planning decisions. Use of Geographical Information Systems and real time relay of information would be desirable in this type of co-ordination.

Investment in Water Services Infrastructure

Mindful of the implications of the 2007 Regulations in facilitating proper planning and sustainable development, the Department is focused on working pro-actively with water services authorities and investing in enhanced water services infrastructure in areas of greatest need from an environmental protection and economic development perspective.

The Department will engage with water services authorities in the near future in determining strategic water services investment requirements, taking account of the availability of public funding, and will be endeavouring to ensure that the appropriate infrastructural investment responses are in place in areas of greatest need to both meet the requirements of the 2007 Regulations and facilitate overall national and regional development priorities.

If you have any queries in relation to this circular please contact the undersigned.

Yours sincerely

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