Circular Letter PSSP 1/10

5 January 2010

To: Each County/City Manager
An Bord Pleanála

Re: Implementation of New EPA Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses

I have been asked by Mr. John Gormley T.D., Minister for the Environment, Heritage and Local Government, to advise all planning authorities of new and forthcoming arrangements with regard to their assessment of on-site wastewater disposal systems for single houses, and to note that the EPA have published a new Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses (October 2009), which replaces previous guidance issued by the Agency in 2000 and incorporates requirements of the new European standards, EPA research findings and feedback on previous EPA guidance and research reports.

Policy context
The quality of Ireland’s water resources is a key national asset. The planning system, in tandem with building standards, water quality and waste management codes, has a vital role to play in conserving and enhancing water quality, taking into account the wider principle of proper planning and sustainable development including the prevention or reduction of waste production and its harmfulness and the minimisation of energy use. In essence, the roles of these three systems are as follows:

1. The planning system assesses the suitability of specific sites for proposed developments in accordance with planning policies and standards;

2. The Building Regulations set standards for building products and construction methods; and

3. The Waste Management and Water Quality systems place obligations on holders of waste to properly manage those wastes and to recover or dispose of them without
endangering human health and without using processes or methods which could harm the environment.

The European Court of Justice has ruled against Ireland in relation to on-site wastewater treatment systems (ref. case C-188/08). The Court found that, by failing to adopt the necessary legislation to comply with Articles 4 and 8 of Council Directive 75/442/EEC, as amended, as regards domestic waste waters disposed of in the countryside through septic tanks and other individual waste water treatment systems, Ireland has failed to fulfill its obligations under that Directive.

The Department will be developing a comprehensive response to the judgment. It considers the implementation of the new EPA Code of Practice to be a key element of the response, ensuring that the planning system is suitably positioned to fully address the issue of protecting water quality in assessing development proposals for new housing in rural areas and in line with the Planning Guidelines on Sustainable Rural Housing issued in 2005.

Main provisions of new EPA Code of Practice
The new Code of Practice sets out comprehensive requirements in relation to new on-site waste water systems, including the methodology to be followed for the assessment of sites for single houses in unsewered areas, as well as procedures for the selection, installation and maintenance of wastewater treatment and disposal systems appropriate to conditions encountered on specific sites.

There are three key requirements of the Code of Practice that planning authorities must take on board in discharging their functions under planning legislation:

1. A thorough site assessment, in accordance with the Code of Practice, in the case of every relevant development proposal considered by planning authorities, taking account of not only conditions specific to the proposed site as reported by the applicant in a site suitability assessment but also the planning authority’s wider experience and knowledge of the area in relation to patterns of development, experience with existing on-site systems in the area and the provisions of the development plan;

2. The selection of an on-site wastewater disposal system that is suitable to local conditions in relation to disposal of treated wastewaters, pattern of occupation of the proposed development (whether continual or intermittent as in the case of a holiday home); and

3. The installation, commissioning and periodic maintenance of on-site systems by the developer and the occupants of permitted development in accordance with the Code of Practice and requirements of specific systems.

Assessment of Sites and Systems
In relation to the first two requirements above, planning authorities should ensure that both their development plan policies and development management procedures, documentation
and advice to prospective planning applicants make it explicitly clear that all sites for development in unsewered areas will be rigorously assessed in compliance with the EPA Code of Practice and taking account of the cumulative effects of multiple developments in such areas. More specific advice is detailed below.

Consistency of Approach in Development Plan Provisions
Over half of the country’s county councils have prepared groundwater protection schemes and have included such schemes in their development plans. To facilitate the implementation of the Code of Practice, other planning authorities that have not prepared such groundwater protection schemes must do so as soon as is practicable and bring such schemes within the scope of their development plan by way of a variation, where the plan has more than two years to run. Where a new draft development plan is being prepared, i.e. within two years of the existing plan’s expiry date, planning authorities should introduce appropriate reference to groundwater protection schemes and the Code of Practice into their draft plan.

The Minister considers that the measure above is essential to ensure that key aquifers and groundwater resources are identified and protected in the development plan: this measure will be required in any event to meet the requirements of Directive 2006/118/EC on the protection of groundwater against pollution, to achieve the environmental objectives for groundwater contained in the Water Framework Directive and to support the implementation of measures to be set out in River Basin Management Plans. In this regard, the attention of planning authorities is drawn to previous Circular Letter SP5-03, which advised that relevant information on the groundwater resources of the plan area and their vulnerability should be included in all relevant plans and their supporting maps to aid future site assessment by applicants, their agents and the planning authority.

In addition, planning authorities should ensure that their development plan policies make clear that it will be a requirement that all housing in un-serviced areas and any on-site wastewater disposal systems are designed, installed and maintained in accordance with the new Code of Practice, and should consider the need for any variation of their development plan, if the above is not the case.

Development Management
Planning authorities must also ensure that proper arrangements are in place to ensure that every individual dwelling that is granted planning permission in an unsewered area has first undergone site suitability assessment using the methodology set out in the Code of Practice and the site assessment has fully met the required standards, as overseen by a appropriately trained, qualified and accountable assessor and designer.

It is also of critical importance that, as required by the 2006 Planning Regulations [Article 22(2)(c)], details of such site suitability assessment and the design of the appropriate on-site wastewater treatment and disposal system which is in accordance with the Code of Practice or can otherwise be demonstrated by the applicant to meet the required standards are included as part of documents accompanying any planning application. Annex C of the
Code of Practice must be used in conducting trial hole assessments and the relevant documentation must be submitted with all applications.

The recommendations in relation to the selection, commissioning and installation of an appropriate system for the site are set out in Chapters 7, 8, 9 and 10 of the Code of Practice. *Part H – Drainage and Waste Water Disposal* of the Building Regulations and its associated Technical Guidance Document deal with these issues. The Department has commenced the process of revising Part H / TGD H to incorporate the advice given in the Code of Practice, thereby removing the previous references to SR6. Draft Part H / TGD H is currently out for public consultation until 8 March 2010.

For the purposes of clarity, where they have not already done so, **planning authorities should implement the Code of Practice in respect of all applications received on or after 8 January 2010**, and all applicants should be made aware of these new requirements – at pre-planning discussions and / or on planning authority websites.

Furthermore, planning authorities must **not, in any circumstances, approve development subject to conditions requiring compliance with the Code of Practice**, without first satisfying themselves that the provisions within the Code can be complied with and on the basis of expert and verifiable evidence including a positive site suitability assessment by a appropriately trained and qualified assessor.

In assessing relevant planning applications, notwithstanding the fact that a given site may be in a position to comply with the Code of Practice, it is also a matter for the planning authority to take into account in its assessment and decision-making as to whether or not to consider wider planning and water quality issues which have not been addressed adequately in the information submitted with the planning application.

Such wider planning issues may, *inter alia*, include the concentration of on-site wastewater treatment systems in an area, the availability or otherwise of public water supplies, reliance on wells, the likelihood of the area being serviced by municipal wastewater collection and treatment systems in the near future and the risk of the deterioration of surface and/or groundwater quality due to vulnerability of such waters.

Planning authorities should adopt a **precautionary approach** and not approve any development where concerns in relation to the matters above have not been adequately addressed.

**Ongoing Maintenance**

In relation to the third principal requirement outlined above, it is critically important that efforts to assess site conditions and install on-site wastewater treatment and disposal systems responsive to those conditions are matched by proper arrangements for periodic checks and maintenance, especially in relation to proprietary wastewater treatment systems that require specific scheduled maintenance. Compliance with the relevant waste management, water quality and technical requirements are especially important in this regard.
In relation to the latter category of system mentioned above, it has been the practice of planning authorities to require that details of ongoing maintenance contracts with suppliers and/or expert contractors are provided as part of the planning application documentation and that such contracts should be maintained by the applicants, developers and property owners as appropriate, as a condition of any planning permission or approval. Such practices should continue, until advised otherwise by this Department.

**Legislation in Relation to Maintenance and Monitoring**

In order to comply with the ECJ judgment referred to above, new legislation is anticipated to cover the maintenance and monitoring of on-site wastewater treatment systems. Until such legislation is published, planning authorities should inform applicants of the above developments in parallel to the issuing of any grants of planning permission.

**Enforcement**

Enforcement of existing and new planning permissions and conditions in relation to the installation, operation, inspection and maintenance of onsite wastewater treatment systems is likely to overlap with new legislation anticipated in response to the ECJ judgement. In the meantime, local authorities should ensure compliance with planning conditions involving onsite wastewater treatment systems.

Yours sincerely,

David Walsh
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