



The Water Bill Trickle Irrigation

The Water Bill was published on 20th February 2003. This briefing gives the Environment Agency's position on the removal of the current exemption relating to abstraction for the purpose of trickle irrigation. The clauses in the Bill that are particularly relevant to this briefing are in Part 1, Abstraction and Impounding and Part 4, Supplementary.

Key Issues

The Government intends to bring abstraction for all forms of irrigation under licensing control following the introduction of legislation to implement its review of the abstraction licensing system¹. Use of non-spray forms of irrigation – mainly trickle irrigation – is increasing and is currently exempt from licensing requirements as it comes within the definition of land drainage². The ending of this exemption is estimated to bring about 900 abstractions for trickle irrigation purposes into the licensing system. It will bring equity with other abstractors and in particular with spray irrigators. Abstraction for spray irrigation has been successfully controlled (in the majority of cases using time limited licences) since the licensing system was introduced.

The Agency's Position

The Agency welcomes the intention to bring trickle irrigation under control. It will enable us to manage water resources more effectively by ensuring that all significant activities influencing the availability of water are undertaken in a sustainable manner.

Why do these abstractions need to be controlled?

There are a number of reasons why the Agency supports the licensing of these abstractions:

- Trickle irrigation is currently seen (legitimately) as a means of developing water resources in areas where licences are no longer available because resources are fully or over exploited.
- Unregulated abstraction of water for trickle irrigation has the potential to impact the environment, particularly in drier parts of the

¹ *Taking Water Responsibly – Government decisions following consultation on changes to the water abstraction licensing system in England and Wales – DETR March 1999*

² *Water Resources Act 1991, section 29(5)*

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country. The impact of abstraction for trickle irrigation on available water resources in some areas has meant that licensed abstractors have been unable to take their entitlement. In one particular example this resulted in the bankruptcy of a licence holder.

- Its inclusion within the regulatory system will improve our overall ability to manage the water resources of a catchment. There will be greater knowledge and understanding of what is going on and decisions will be taken on a more informed and assured basis. This is particularly important with the implementation of the Catchment Abstraction Management Strategies (CAMS) programme and the need to meet the requirements of the Habitats Directive.
- We will be in a better position to manage our response to climate change and changing patterns of water use and environmental expectations, since the granting of the exemption under the 1963 Water Resources Act.
- The potential for environmental improvement and protection will be enhanced, by restricting damaging abstractions where appropriate, especially where water is abstracted in an inefficient or uncontrolled manner or is having a damaging impact on the environment.

The Agency's approach to the new regime

In *Taking Water Responsibly*³ the Government provided the framework for bringing existing abstractions for trickle irrigation under control. Under this framework, the Agency will:

- give at least two years for applicants to submit applications to the Agency to enable pre-application discussions to take place
- provide current trickle irrigation abstractions with protected right status during this period
- have up to three years to determine all applications, and attach priority to the most significant abstractions

- provide the maximum possible formal notice to applicants of any significant material alteration in abstraction regimes considered necessary in the interests of overall water resources management

Applicants dissatisfied with the Agency's response to their application will have a right of appeal to the Secretary of State and, if upheld, the opportunity to claim compensation for any losses resulting from curtailment of their abstraction rights.

The Agency recognises that these proposals will raise uncertainties amongst those currently carrying out this activity and we will develop transitional arrangements in consultation with representatives from the industry, which will:

- bring existing schemes into the new arrangements with recognition that they have proceeded entirely lawfully within the current legal arrangements. Financial and, in some cases, employment commitments will have been made on this basis.
- take account of the relevant history of schemes. Unless there are overriding environmental reasons the Agency will seek to ensure that the new arrangements will give applicants a licence comparable to that which would have been issued, had the licensing arrangements now proposed applied at the time that the scheme was initiated. The Water Bill itself will provide for the Agency to set aside some considerations that would otherwise preclude us from granting a licence, principally our duty not to cause derogation to existing protected rights.

Trickle irrigation abstractors will be treated as being similar to other licensed abstractors whose licences are being reviewed under the Habitats Directive or included in the Agency's Catchment Abstraction Management Strategies. Information on their schemes will be included in our assessments of catchment activities.

The Agency accepts the need to give reasonable periods of notice where abstraction curtailment is considered necessary. We note that *Taking Water Responsibly* identifies a minimum period of six

³ *Taking Water Responsibly* – Government decisions following consultation on changes to the water abstraction licensing system in England and Wales - DETR March 1999

years as appropriate notice of curtailment. The Bill provides for regulations to be made to allow compensation to be payable where abstraction is curtailed.

In exceptional cases of environmental concern and once the new powers are in force, we may give early notice of our intention to seek curtailment of an abstraction. This may be in advance of the submission of an application for the scheme.

Promoters wishing to commence new schemes will continue to be able to do so validly without a licence until the new arrangements are implemented. However the Government has signalled that, where such schemes are implemented against or without Agency advice and are subsequently curtailed by the Agency when the new licensing provisions are introduced, the settlement of any claims for compensation should reflect the effective notice of possible curtailment, first given by the publication of the Government's consultation proposals in June 1998⁴.

Future Liaison

When the final details of the new legislation are known we will discuss with representatives of the industry issues arising from their introduction. The transitional arrangements will need particular consideration.

In all cases, and in line with Government policy objectives, we will be seeking agreed solutions to environmental problems arising from the adverse effects of trickle irrigation abstractions. We will discuss with those who may be adversely affected how the new arrangements can be introduced so as to minimise disruption to business activity.

The Bill provides for payment of compensation where curtailment of existing abstraction regimes is necessary to meet statutory obligations. The Agency has published guidelines on our approach to the payment of such compensation.

Once licensed, trickle irrigation licences will become chargeable under the Agency's Scheme of Abstraction Charges. We will be consulting on a revised charging scheme in the autumn of 2003 and this consultation will include consideration of how trickle irrigation licences should be brought within the charging regime.

For further information, please contact:

Catherine Braun,
Environment Agency, Parliamentary &
Government Relations Team
Tel: 020 7863 8752
Email: catherine.braun@environment-agency.gov.uk

⁴ Review of the Abstraction Licensing System in England and Wales – DETR June 1998

CONTACTS:

THE ENVIRONMENT AGENCY HEAD OFFICE

Rio House, Waterside Drive, Aztec West, Almondsbury, Bristol BS32 4UD.
Tel: 01454 624 400 Fax: 01454 624 409

www.environment-agency.gov.uk
www.environment-agency.wales.gov.uk

ENVIRONMENT AGENCY REGIONAL OFFICES

ANGLIAN

Kingfisher House
Goldhay Way
Orton Goldhay
Peterborough PE2 5ZR
Tel: 01733 371 811
Fax: 01733 231 840

SOUTHERN

Guildbourne House
Chatsworth Road
Worthing
West Sussex BN11 1LD
Tel: 01903 832 000
Fax: 01903 821 832

MIDLANDS

Sapphire East
550 Streetsbrook Road
Solihull B91 1QT
Tel: 0121 711 2324
Fax: 0121 711 5824

SOUTH WEST

Manley House
Kestrel Way
Exeter EX2 7LQ
Tel: 01392 444 000
Fax: 01392 444 238

NORTH EAST

Rivers House
21 Park Square South
Leeds LS1 2QG
Tel: 0113 244 0191
Fax: 0113 246 1889

THAMES

Kings Meadow House
Kings Meadow Road
Reading RG1 8DQ
Tel: 0118 953 5000
Fax: 0118 950 0388

NORTH WEST

PO Box 12
Richard Fairclough House
Knutsford Road
Warrington WA4 1HG
Tel: 01925 653 999
Fax: 01925 415 961

WALES

Cambria House
29 Newport Road
Cardiff CF24 0TP
Tel: 029 2077 0088
Fax: 029 2079 8555



**ENVIRONMENT AGENCY
GENERAL ENQUIRY LINE**

0845 9 333 111

**ENVIRONMENT AGENCY
FLOODLINE**

0845 988 1188

**ENVIRONMENT AGENCY
EMERGENCY HOTLINE**

0800 80 70 60



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