

1999 No. 1006

WATER RESOURCES, ENGLAND AND WALES

The Anti-Pollution Works Regulations 1999

<i>Made</i> - - - -	<i>30th March 1999</i>
<i>Laid before Parliament</i>	<i>30th March 1999</i>
<i>Coming into force</i>	<i>29th April 1999</i>

The Secretary of State for the Environment, Transport and the Regions as respects England, and the Secretary of State for Wales as respects Wales, in exercise of their powers under sections 161A(5)(a), 161B(5) and (6), 161C(3) and (4) and 190(1) of the Water Resources Act 1991(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Anti-Pollution Works Regulations 1999 and shall come into force on 29th April 1999.

(2) In these Regulations “the Act” means the Water Resources Act 1991; and for the purposes of these Regulations the parties to an appeal are the appellant, the Agency and any person who is served with a copy of a notice of an appeal in accordance with regulation 3(4)(b).

Content of works notices

2. A works notice shall—

- (a) in the case of a potential pollution incident, describe the nature of the risk to controlled waters, identifying the controlled waters which may be affected and the place from which the matter in question is likely to enter those waters;
- (b) in the case of an actual pollution incident, describe the nature and extent of the pollution, identifying the controlled waters affected by it;
- (c) specify the works or operations required to be carried out by the person on whom the notice is served, stating his name and address;
- (d) give the Agency’s reasons for serving the notice on that person and for requiring those works or operations to be carried out;
- (e) inform the person on whom the notice is served of his right of appeal under section 161C of the Act (including the time for appealing) and of the requirements imposed by regulation 3 in relation to its exercise;
- (f) state that the Agency is entitled (unless the notice is quashed or withdrawn) to recover from the person on whom the notice is served its costs or expenses reasonably incurred in carrying out such investigations as are mentioned in section 161(1)(b) of the Act; and

(a) 1991 c. 57; sections 161A to 161D were inserted by paragraph 162 of Schedule 22 to the Environment Act 1995 (c. 25), and section 190 was amended by paragraph 169 of that Schedule. References to the National Rivers Authority are now references to the Environment Agency, by virtue of paragraph 128 of that Schedule.

(b) Amended by section 60(3) of, and paragraph 161 of Schedule 22 to, the Environment Act 1995.

- (g) set out the contents of section 161D(1) to (4) of the Act (consequences of not complying with a works notice).

Appeals against works notices

3.—(1) A person who wishes to appeal to the Secretary of State under section 161C of the Act (appeals against works notices) shall give the Secretary of State notice of the appeal.

(2) The notice of appeal shall state—

- (a) the name and address of the appellant and of all persons to be served with a copy of the notice of appeal;
- (b) the grounds on which the appeal is made; and
- (c) whether the appellant wishes the appeal to be determined on the basis of written representations or a hearing.

(3) The notice of appeal shall be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal.

(4) At the same time as the appellant gives notice of the appeal to the Secretary of State, the appellant shall send to—

- (a) the Agency, and
- (b) where a ground of appeal is that the notice might lawfully have been served on some other person, that person,

a copy of the notice of appeal, together with a list of the documents provided to the Secretary of State under paragraph (3).

(5) If the appellant wishes at any time to withdraw his appeal he shall do so by notice informing the Secretary of State and shall send a copy of the notice to the Agency and any other person on whom he is required to serve a copy of his notice of appeal.

Written representations

4.—(1) Where the appellant informs the Secretary of State that he wishes the appeal to be disposed of on the basis of written representations, the Agency, and any party to the appeal other than the appellant, shall submit any written representations to the Secretary of State not later than 14 days after receiving a copy of the notice of appeal.

(2) The appellant shall submit any further representations by way of reply not later than 14 days after receiving whichever is the latest of the representations referred to in paragraph (1).

(3) The Secretary of State may in any particular case—

- (a) set longer time limits than those mentioned in this regulation,
- (b) allow the parties to make representations in addition to those mentioned in paragraphs (1) and (2).

(4) Any representations made by a party to the appeal shall be dated with the date on which they are submitted to the Secretary of State.

(5) A party to the appeal who submits any representations to the Secretary of State shall at the same time send a copy to every other party.

Hearings

5.—(1) If a party to the appeal so requests or the Secretary of State so decides, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(2) The Secretary of State shall give the parties to the appeal at least 28 days' notice (unless they agree to a shorter period of notice) of the date, time and place fixed for the hearing.

(3) In the case of a hearing which is to be held wholly or partly in public, the Secretary of State shall, at least 21 days before the date fixed for the hearing, publish a copy of the notice given under paragraph (2) in a newspaper circulating in each locality which he considers may be affected by any matter which falls to be determined in relation to the appeal.

(4) The Secretary of State may vary the date fixed for the hearing and paragraphs (2) and (3) shall apply to the new date as they apply to the original date.

(5) The Secretary of State may also vary the time or place fixed for the hearing but shall give such notice of any such variation as appears to him to be reasonable.

(6) Each party to the appeal is entitled to be heard at a hearing.

(7) Nothing in paragraph (6) shall prevent the person appointed to hear the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

(8) After the conclusion of a hearing, the person appointed to hear the appeal shall, unless he was appointed under section 114(1)(a) of the Environment Act 1995 (power of Secretary of State to delegate his functions of determining appeals), make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

Notification of determination

6.—(1) The Secretary of State shall notify the appellant in writing of the determination of the appeal and shall provide him with a copy of any report mentioned in regulation 5(8).

(2) The Secretary of State shall at the same time send a copy of the documents mentioned in paragraph (1) to the Agency and to every other party to the appeal.

Compensation for grant of rights under section 161B

7. The Schedule to these Regulations shall have effect—

- (a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to section 161B(2) of the Act may apply for compensation for the grant of those rights;
- (b) for prescribing the manner in which, and the person to whom, such an application may be made; and
- (c) for prescribing the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

Pollution control registers: amendment

8.—(1) The Control of Pollution (Applications, Appeals and Registers) Regulations 1996(a) shall be amended as follows.

(2) At the end of regulation 15 (pollution control registers) insert—

- “(n) works notices under section 161A of the Act;
- (o) notices of appeal under section 161C of the Act, documents provided to the Secretary of State in connection with appeals under that section, written notifications of the determinations of such appeals and any report accompanying any such written notification; and
- (p) any conviction of any person for any offence under section 161D of the Act, including the name of the offender, the date of conviction, the penalty imposed, the costs, if any, awarded against the offender; and the name of the Court.”.

(3) In regulation 16 (entry of particulars on register, removal of certain particulars and indexing of registers)—

(a) after paragraph (1)(b) insert—

- “(ba) if they relate to a works notice under section 161A of the Act, not later than 7 days after the notice is served;
- (bb) if they relate to any matters mentioned in regulation 15(o), not later than 14 days after those particulars become available to the Agency;”.

(a) S.I. 1996/2971.

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

30th March 1999

Michael Meacher
Minister of State,
Department of the Environment,
Transport and the Regions

Signed by authority of the Secretary of State for Wales

29th March 1999

Jon Owen Jones
Parliamentary Under-Secretary of State,
Welsh Office

COMPENSATION FOR GRANT OF RIGHTS**Interpretation****1.** In this Schedule—

“the grantor” means the person who grants, or joins in granting, any right pursuant to section 161B(2) of the Act; and

“relevant interest” means an interest in land out of which a right has been granted or which is bound by a right granted.

Period for making an application

2. An application for compensation shall be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates—

- (a) 12 months after the date of the grant of those rights;
- (b) where there is an appeal against the works notice which imposed the requirements in relation to which those rights were granted, 12 months after the date on which the appeal is determined or withdrawn; or
- (c) six months after the date on which the rights were first exercised.

Manner of making an application

3.—(1) An application for compensation shall be made in writing and delivered at or sent by pre-paid post to the last known address for correspondence of the person to whom the right was granted.

(2) The application shall contain—

- (a) a copy of the grant of rights in respect of which the grantor is applying for compensation and of any plans attached to such grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4 and showing how the amount applied for under each sub-paragraph has been calculated.

Loss and damage for which compensation payable

4. Compensation shall be payable for loss and damage of the following descriptions—

- (a) any depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the right;
- (b) loss or damage, in relation to any relevant interest to which he is entitled, which—
 - (i) is attributable to the grant of the right or the exercise of it;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981(a), in pursuance of a notice to treat served on the date on which the grant of the right was made;
- (c) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest and which results from the grant of the right or from the exercise of it;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which he is entitled, which is attributable to the grant of the right or the exercise of it; and

(a) 1981 c. 67.

- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation.

Basis on which compensation assessed

5.—(1) The rules set out in section 5 of the Land Compensation Act 1961^(a) (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purpose of assessing any compensation under paragraph 4, as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which any compensation is to be assessed is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
- (b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (c) any compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

Determination of disputes

6.—(1) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(2) In relation to the determination of any such question of compensation the provisions of sections 2 and 4 of the Land Compensation Act 1961 (procedure on references to the Lands Tribunal and costs) shall apply as if—

- (a) the reference in section 2 of the Land Compensation Act 1961 to section 1 of that Act were a reference to sub-paragraph (1); and
- (b) references in section 4 of the Land Compensation Act 1961 to the acquiring authority were references to the person to whom the rights were granted.

^(a) 1961 c. 33.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the contents of anti-pollution works notices served under section 161A of the Water Resources Act 1991, the procedure to be followed in relation to appeals against such notices and the compensation for rights of entry in connection with anti-pollution works paid under section 161B of the Water Resources Act 1991. They also amend the Control of Pollution (Applications, Appeals and Registers) Regulations 1996 so as to prescribe the particulars of such matters which are required to be placed on the pollution control registers maintained by the Environment Agency.

A regulatory impact assessment of the effect that these Regulations would have on the cost of business may be obtained from:

- Water Quality Division, Department of the Environment, Transport and the Regions,
123 Victoria Street, London SW1E 6DE
- Environment Division, Welsh Office, Cathays Park, Cardiff CF1 3NQ

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