



## PRIVATE WATER SUPPLIES – CASE STUDY 2016/03

### **Private supplies in salad growing nurseries**

Case study 8, published in *Drinking water 2015*, described a number of Regulation 9 private water supplies that were being used for domestic purposes by migrant workers on a salad growing nursery site in southeast England. These supplies had been poorly managed and maintained over decades, leading to a multitude of hazards manifesting, which in some cases presented risks to human health. These risks had developed, in part, due to inadequate regulations prior to 2009, which did not require relevant persons to proactively put in place the necessary preventative control measures to mitigate risks, based on identified source to tap hazards, in the way that the current regulations require. Previously, by contrast, action was only taken when routine samples exceeded the regulatory standard and in most cases, where a satisfactory resample followed, the matter was closed. As part of the risk-based methodology now required under Regulation 5, local authorities are duty bound to serve a Regulation 18 Notice where there is a potential risk to human health.

In this case, the local authority duly served a total of 25 Regulation 18 Notices in relation to risks to human health throughout 2015 and 2016. In all cases, the relevant persons concerned were largely nursery owners who were surprised and disgruntled by what they felt was a sudden and unnecessarily heavy-handed approach by the local authority. In the absence of specific sample failures they felt there was no substantive evidence to justify the enforcement and lodged a formal complaint to the council via a local nursery growers' association. Unfortunately, they were unaware that, since 2010, local authorities had a mandatory obligation to enforce where risks to human health had been identified in a risk assessment. Nevertheless, in many cases the nursery owners sought to comply with the Notices by seeking a connection to the public supply from the relevant water undertaker. However, whilst this offered a long-term solution, the required measures to mitigate the risks were not carried out within the time period specified in the Notices due to delays that the growers felt were beyond their control. Furthermore, the local authority was concerned that the interim requirements to restrict the supplies and provide an alternative, as specified in the Notices, were not fully being met.

In this instance, the local authority took the decision not to initiate legal proceedings in the short term but to seek a more collaborative way forward that would not further antagonise what is a prominent and economically significant local industry. Consequently in early January 2017, chaired by the authority's senior executive officer, a meeting took place between a representative of some of the growers, the National Union of Farmers, the local authority enforcement officers and a representative of the local growers association. The Inspectorate attended to provide independent



verification of the current legislative requirements from central government, and in particular an explanation of risk-based regulation.

The meeting highlighted that the relevant persons did not fully understand the requirements of the Regulations, or the reasoning for the enforcement. In addition, there was a lack of understanding that a multi-barrier approach should be applied to provide the most effective protection to consumers, and that the installation of a simple UV unit is not necessarily the most appropriate or reliable mitigation of risk in all cases.

A number of actions were agreed at this meeting, notably that the local authority would share site specific risks with the growers and that appropriate steps to remedy the risks, both in the short to medium term and the long term would be drawn up in a co-operative manner. The local authority were reminded subsequently that the Notices should be updated to reflect the agreed remedial steps that growers committed to and that these must be appropriate and completed to timely deadlines that were driven by their own expectations.

This case study highlights that despite seven years of new regulation requiring risk assessment, the reactive basis of historic legislation remains in the mind-set of many relevant persons. It illustrates an example of a common, if not deep seated, assumption by relevant persons (and sometimes local authorities) that a supply presents a risk only by virtue of a sample failure, and remediation can only be enforced when sample evidence is available. This case study also shows that a lack of understanding in risk-based regulation can lead to unhelpful behaviour by relevant persons, which in turn can seriously hinder the progression of risk mitigation through a breakdown of communication and trust between the parties involved. The Inspectorate appreciates that the change to risk-based regulation will take time to embed and be accepted by relevant persons, but as this case study shows it is advantageous for the local authority to inform and update relevant persons of regulatory changes by all available means (e.g. through its website, as well as written and verbal communication) where possible. This includes the updates to the Regulations that were implemented in 2016.

This case study also shows that persons responsible for the provision of a wholesome supply can sometimes be unappreciative of the stringent measures required to protect consumers, due to a basic lack of understanding of what constitutes a safe and reliable system. As this case study demonstrates, this can lead to a misguided view of what is acceptable and bring them into conflict with the regulator where uncontrolled risks have been highlighted. Local authorities must use their powers of enforcement in accordance with Regulation 18 of the Private Water Supplies Regulations 2016, and apply a collaborative approach where possible. Notices can be updated and amended at the discretion of local authorities, but must bring about the mitigation of risks in a manner that is both timely and practicable by the most appropriate means, ensuring consumers are protected at all times whilst the Notice is in place.

