



PRIVATE WATER SUPPLIES – CASE STUDY 2018/02

Prosecution for non-compliance of Regulation 18 Notice

This case study concerns a supply to a salad growing nursery in the south east of England. This is one of a number of such nurseries, which formed the basis of previous case studies in the Chief Inspector's reports of 2015 and 2016, which detailed the wider issues and associated disputes between the parties concerned. As this case study illustrates, remedial work to mitigate the risks at these supplies remains ongoing and can be very protracted, although some are now on a public supply with consumers now enjoying wholesome water.

In this particular case the supply was deemed a potential danger to human health in September 2017 by virtue of the risk assessment and the repeat detection of faecal indicators. The risk assessment highlighted a number of very high-risk hazards including lack of segregation of irrigation water and domestic water as well as those related to poor asset quality. Resident migrant workers were subsequently compelled to boil the water before consumption to protect their health until further Notice. Two months later, in November, the council then served a Regulation 18 Notice on two relevant persons giving them four months to comply. The Notice set out two options; the owner must either provide a wholesome mains supply, or improve the existing private supply by completing a list of specified actions. The owner subsequently confirmed that, on exploring both options, the situation was that a mains connection was too expensive, so his preferred option was to improve the existing supply. This was accepted by the local authority who amended and extended the Notice by two months to accommodate these agreed changes. Improvement works on site commenced in May 2018, but progress by the contractor to complete the work was slow resulting in the nursery owners requesting a further extension to complete the work. This was not granted as six months had already been agreed in total. The deadline for completion of work as specified in the Notice was eventually exceeded and the council duly initiated proceedings to prosecute the relevant persons for non-compliance with the Notice and failing to provide a wholesome supply within a reasonable timescale. A court date was set and a summons was issued for the Magistrates' Court for September 2018.

In mid-July 2018 an email was received by the council which confirmed that new treatment facilities (UV, filters and a pressure vessel) were in place. These treatment options were not part of the agreed solutions specified by the council in the Notices, and no post treatment sample results were provided by the contractor to the council to verify the efficacy of the treatment stages. This

further raised the council's concerns about the adequacy of the work being undertaken.

Figure 18: Distribution pipework before major corrective work



The council instructed that further work on site ceased until they had undertaken their own site inspection to satisfy themselves that the remedial works were appropriate and progressing in accordance with the terms of the Notice. This inspection, which was carried out at the start of August, revealed a series of inadequacies related to the suitability of the above-ground pipework, the depth of the below-ground pipework, the protection of the borehole against ingress and the UV alarm mechanism. The contractor had inserted a pump to draw water from the brick lined well which the council had specified needed to be made water tight. The area had many other horticultural nurseries and private sewage systems within a small geographic area, which may in part have caused the original bacterial contamination.

Figure 19: Water storage facilities prior to improvements



In September an adjournment of one month was agreed between the defendant's solicitor and the council's legal executive to allow completion of works. In mid-September the contractor for the remedial work on site proposed a new schedule of work for the site in order to comply with the Notices. After a few amendments were agreed, including filling and sealing the well, it was approved by the council and mostly completed by early October. A site inspection was conducted by the council later that month, but they confirmed their intention to proceed with the planned prosecution as there was insufficient time to verify the efficacy of the solution through sampling prior to the now imminent court date. One day prior to the planned court date, the site owner's solicitor submitted a lengthy document as mitigation to the council and requested the prosecution be dropped. The request was declined due to the lack of time to review such a document.

Some months earlier, in August 2018, the council had received confirmation that the supply owners had submitted an appeal to the Court objecting to the original Regulation 18 Notice on the grounds that the conditions in the Notice were unreasonable. The council responded to the points in the appeal to the site owners' solicitor and also requested that the Court reject the appeal because it was well outside of 28 days in which the Notice specifies an appeal should be submitted.

The case was finally brought to court in October and one of the two relevant persons was found guilty and fined by the magistrate more than £500 and ordered to pay council fees and a victim surcharge, bringing the total to around £1,150, for supplying water that presented a danger to human health. It should be noted that the Magistrates themselves were unsure on the associated penalties for such an offence as they had never seen a case like it. The council agreed to withdraw the prosecution in relation to the second relevant person on the basis that among other factors, the first had pleaded guilty.

Unfortunately, samples of the final treated water taken in October and November 2018 showed that the water remained unwholesome by virtue of concentrations of nickel, iron and pesticides which exceeded the regulatory standard. Iron in excess of the standard was found at all locations throughout the site, however the nickel was only found from the tap in the staff canteen. Upon inspecting the cartridge particulate filters on site, the owners found a very heavy orange iron-based particulate that will likely require further filters or an automated iron removal system to be installed. Following advice from the Drinking Water Inspectorate the council was advised to serve a Section 80 Notice on the relevant persons, should the necessary work to mitigate these risks not be completed within 28 days, in accordance with Regulation 16 of the Private Water Supplies (England) Regulations 2016 (as amended). As the immediate health risks have been mitigated and microbiological contamination risk has been addressed, the Regulation 18 Notices were revoked.

In January 2019, the site owners confirmed to the council that they intended to urgently put in place measures to ensure that the water was wholesome and

compliant with the regulatory standards and submitted potential solutions for approval. Nickel was not found in the raw water or any other outlets, so the contractor theorised that the source was be slightly aggressive, stripping nickel from fittings. The owners have now changed pipework and fittings within the staff canteen as the pipework to this tap was original and may have contained solder or fittings which were a source of nickel. The pipework feeding the rest of the site is new MDPE pipe and so does not have solder or fittings that could be leaching nickel. It is hoped that changing pipework will be enough to reduce nickel without further treatment.

This case study provides an example of where local authorities have successfully applied their enforcement powers to compel a supply owner to mitigate risks to health to its workers on a failing and deficient supply. This serves to remind other supply owners, notably those of the same local industry, of the importance of complying with regulatory actions specifying appropriate measures to protect human health when required to do so by the regulator. Failure to do so will be acted upon and is likely to incur unwanted financial penalties.