

**EUROPEAN WATER ASSOCIATION POSITION PAPER CONCERNING
THE EUROPEAN COMMISSION PROPOSAL FOR A DIRECTIVE OF THE
EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE
QUALITY OF BATHING WATER (COM (2002) 581 final)**

1 SUMMARY

1 The European Water Association broadly welcomes the Commission's proposals for a revision to the existing Directive. Many aspects of the proposals will increase the protection afforded to bathers from the possible health risks associated with microbiological pollution, improve the provision of environmental information to the public and drive the more standardised application of the Directive across Member States. However, the anticipated requirements for more extensive bathing water management and data-reporting will inevitably lead to increases in the cost of administration of this Directive.

2 WELCOME ASPECTS

- The Association is pleased to see this revision to a revision of the current Directive. These reflect many of the points made at its Workshop in de Bilt in February 2002 . The combination of stricter standards and a more proactive approach can help to improve the protection of bathers' health. The new Directive must be feasible, workable and enforceable and its cost must not be disproportionate.
- Harmonisation of standards desirable, so that different bathing sites in Europe can be compared. .
- Clear and precise definitions will make the Directive easier to implement. It is also important that it is compatible with the definitions used in and obligations arising from other relevant EU legislation.
- A more explicit framework for the identification and de-identification of bathing waters but national subsidiarity must be recognised
- Provision for risk-based monitoring which will allow the greater scrutiny of problem waters.
- The modernisation and streamlining of bacteriological parameters (see also, areas of concern below).
- A more robust statistical methodology for the assessment of conformity with the revised Directive (see also, areas of concern below).
- The expanded provision of environmental information to the public.
- The acknowledgement by the European Commission in Article 1 of its proposal that the environmental and health objectives of a revised Bathing Water Directive should complement the measures set out in the Water Framework Directive (2000/60/EC)
- A better basis for comparison of bathing sites

3 SUMMARY OF AREAS OF REMAINING CONCERN

The Association advocates linking the Directive to the Water Framework Directive to ensure the implementation of European water policy is coordinated and to avoid duplication

- The Association is in favour of clear and precise definitions. The current definition of bathing water is too broad and offers too much scope for interpretation ('local customs and local rules, a large number of bathers'). The responsibility for designating bathing waters should lie with the competent authorities.
- Further thought needs to be given to the Scope of the Directive
- Further thought is needed on communication of relevant information to the public
- Current proposals for laboratory protocols to be employed for the enumeration of the new intestinal enterococci and *Escherichia coli* parameters.
- The stringency of quality standards associated with the aforementioned parameters and the cost implications which will stem from delivering the quality standards and any legal proceedings which may be associated with non-conformity with a revised Directive.
- The recommended use of a 95-percentile to assess compliance which disregards sampling error. Such an approach could result in sites being assessed wrongly to have failed the Directive. This could then give rise to misdirected investment in investigations and infrastructure improvements.
- The lack of consideration of the sustainable development implications of the Commission proposal. The delivery of environmental water quality improvements as a result of the revision of the Directive should be balanced against an associated increase in energy consumption by the water industry (for example, as a result of installing tertiary ultra-violet disinfection).

4 DETAILED ISSUES OF CONCERN

4.1 A broader context

In the interests of coordinated implementation of European water policy, the Association advocates that the new Bathing Water Directive is consistent with the system laid down in the Water Framework Directive. The time limits for reporting, establishing programmes of measures and achieving conformity with the Directive should be synchronous with those established by the Water Framework Directive.

4.2 Definitions

The Association is in favour of clear and precise definitions. The current definition of bathing water is too broad and offers too much scope for interpretation ('local customs and local rules, a large number of bathers'). It is an absolute precondition for the Netherlands that responsibility for designating bathing waters should lie with the competent authorities. The Association supports the Dutch proposal for the following definition of a bathing water:

'Bathing Water': all running and still inland surface waters, transitional waters and coastal waters (or parts thereof) which are officially designated by the competent authorities for the purpose of bathing.

4.3 Scope

Article 5 of the Commission proposal (COMM (2002) 581 final) provides a more explicit framework for the identification and de-identification of waters than the existing legislation. The Association supports this clause in anticipation that it will lead to a better inventory of bathing sites and the more efficient targeting of monitoring resources if accompanied by a acceptable definition of what constitutes a bathing water.

Responsibility for drawing up the list of bathing waters and removing bathing waters from this list should, however, lie with the member state. Considerations such as cost and potential conflicts with water uses whether regulated by other Directives or not should have a bearing on the compilation of the list. The Association supports the Dutch proposal for the following changes to article 5:

- 1. Within two years of the entry into force of this Directive, Member States shall establish a list of all bathing waters in their territory and the corresponding length of the bathing season.*
- 2. The list shall be reviewed and updated annually.*
- 3. A Member State may remove a bathing water from the list if this bathing water no longer complies with the definition in Article 3, if the quality standards for good bathing water for this bathing water cannot be guaranteed through reasonably feasible measures at reasonable costs or if there are conflicts with other directives.*

The Association takes the view that the classification of bathing waters should only relate to the list of bathing waters established by the member state, especially since it has a bearing on conformity with the directive.

In light of this, the association supports the Dutch proposals that article 4 should read as follows:

'Member States shall ensure that all bathing waters mentioned in the list as referred to in article 5, respect a 'Good Quality' status, based on values of microbiological parameters which are not less stringent than those set out for parameters 1 and 2 in column C of Annex I, and which are based on assessment and calculation by the method set out in Annex II.'

Furthermore, a better distinction should be drawn between sites with incidental problems and those with structural problems. The method for assessing water quality should be made more flexible to ensure that incidental transgressions of short duration at sites whose water quality is generally good do not result in the site failing to conform with the directive, provided appropriate action is taken once the transgression has been identified. The beach profile (art. 10 and annex III) is a useful instrument for performing a structured analysis of the factors that can have an adverse effect on bathing water quality (such as sewer overflows and extreme pressure from recreational activities).

4.4 Scope

Although those who practise water sports other than swimming should also be aware of the risks they face, the standards applicable to bathing water should not be extended to water that is not intended for bathing. The Association takes the view that 'other recreational activities' should not be included in the Directive in the context of bathing water classification and profiles (as is currently the case for the classification of bathing waters as being of 'excellent quality').

4.5 Communication

With regard to public participation (article 15), the Association supports the Dutch view that the system laid down in article 14 of the Water Framework Directive and the requirements of article 7 of the Aarhus Convention should be adhered to. It would seem appropriate to adopt the planning system of the Water Framework Directive in the interests of efficiency (avoiding duplication) and clarity. This principle should also be expressed in the text of article 15. In the light of article 7 of the Aarhus Convention, an assessment will need to be made of what additional elements should be included in this provision.

The Association supports the Dutch view that transparency and public information should be priorities, to ensure citizens can make well-informed decisions on where to bathe. The directive should include provisions on how information should be provided, on the prompt provision of information, on help from administrative authorities in obtaining information, and the fact that lists accessible to the general public may in principle be consulted free of charge. Information for the public at bathing sites should be clear and concise. More information can be given, for example, on the internet. Bathers should always be warned if water quality has deteriorated, even if this deterioration is only temporary. The Association supports the British view that question of the cost of public information under article 16 needs to be addressed.

4.6 Monitoring of identified waters

Some laboratories employ laboratory protocols which utilise membrane filtration techniques. The Association supports the British view that ISO standards associated with both membrane filtration and microtitre techniques for the enumeration of intestinal enterococci and *Escherichia coli* should be included in the methods of analysis in a revised Directive.

The published Commission proposal (COMM (2002) 581 final) contained provisions in Article 7 for the establishment of a monitoring calendar to be published by Member States in advance of each bathing season. Provisions for risk-based monitoring activities were contained within Annex IV of the proposal whereby sampling frequency will be inversely proportional to the classification (excellent, good, poor) of each water. This is useful.

4.7 Management of identified waters

The Commission proposals advocate a general shift in philosophy away from purely monitoring the status of identified waters, toward actively managing them throughout the season. The Association welcomes this move toward the adoption of a more proactive regulatory stance. However, the application of management actions in the proposal are restricted to intervening only to protect public health during pollution

incidents caused by floods, accidents, infrastructure breakdowns or extreme weather. There is a perceived need on the part of the Regulators to increase these limited provisions for management actions, and at the same time to make them more flexible and pragmatic. One of the recognised shortcomings of the current Directive is that, due to the time required for laboratory testing of indicator bacteria, it is difficult to effectively protect the public during a short-duration pollution event. There should therefore be expanded scope within a revised Directive for the deployment of management actions in advance of predicted pollution events in order to better protect bathers. Such actions, if successfully undertaken, should be held to represent conformity with the health protection provisions of a revised Directive, particularly when taken to mitigate against intractable problems caused by diffuse pollution.

The Commission proposal will however, still give rise to a number of organisational challenges. The management of identified waters will require the profiling and classification of all waters, a process which will be routinely reviewed and will require considerable additional resource. Clear roles and responsibilities to fulfil this requirement will also have to be established. There is a significant role for local authorities taking action to manage the bathing water based on information from the Environmental Regulator where these are separate bodies .

There are several questions which should therefore be considered in relation to the management of identified waters:

(i) By what mechanism would the technical assessment of a bathing water be translated into actions taken to protect the public?

During the bathing season, an exceedence of the proposed microbiological standards causing an adverse impact on bathing water quality under the terms of Article 12(1) would trigger reactive management actions designed to protect the public. There is currently uncertainty relating to how such decisions would be taken. For example,

- should management decisions be undertaken solely by the competent authority, or by an inter-disciplinary committee?
- on what geographical scale should a decision-making body operate?
- would the decision-making body make executive decisions, or dispense advice to bathers, or be empowered to do both?

It can be anticipated that management decisions which are taken will in certain cases come under a significant degree of pressure from Local Authorities and affected businesses, and possibly legal challenge. It is therefore essential that future decision-making bodies are sufficiently legally empowered to execute their duties.

There will be technical challenges in delivering surveillance and early-warning systems which will allow the identification of imminent risks to public health, as described under Article 12(2) of the Commission proposal. Unforecasted and unattributed pollution events will always occur, and will

often do so under fair weather conditions. It is also important to emphasise that not all sources of pollution will necessarily be controllable (for example, microbiological pollution caused by large resident or migratory bird populations).

The Commission proposal can be anticipated to lead to an increase in the public perception of the potential risk to their health when bathing at an identified water. The expanded provision of information, in the vicinity of the bathing water itself and on the internet, will enhance awareness of the location of sources of pollution and the conditions which may give rise to a pollution event. It is important that the public are advised of relative risk factors in order to mitigate against unnecessary public concern.

(ii) To what extent would extra capacity be required by Regulators?

The proposals for revision of the current Directive will increase the level of monitoring, assessment and reporting conducted by Regulators at identified waters.

Whilst provisions for risk-based monitoring may reduce the overall number of samples taken in the course of a bathing season, sampling costs may increase as a result of increased inefficiencies. There will be increased complexity of sampling programmes and provision will have to be made to respond to pollution incidents.

The Commission proposal, under the terms of Article 12 and Article 16, would require the Regulators to develop the capacity to intervene during pollution events. It is likely that additional resources will be required to support the decision making, management and notification activities.

Reporting requirements will be increased under a revised Directive. In addition to making information available in the vicinity of the bathing water itself, a revised Directive will require the enhanced use of media and technologies to disseminate information proactively to the public. Basic information will include profiles for each bathing water; a record of the classification of the bathing water and environmental data relating to all monitored parameters. In addition, full descriptions of management measures undertaken over the previous three years in order to preserve or improve bathing water quality, protect waters against deterioration, or reduce the risk of human exposure will be required under the terms of Article 16. The Regulators will probably need increased resources to expand its existing bathing water internet pages and to develop new information delivery systems in order to provide these augmented reporting requirements.

4.8 Assessment of conformity with a revised Directive

The Commission has adopted an essentially two-tiered approach towards bacteriological quality standards within its proposal. Recent studies equate the attainment of “good” status as approximately equivalent to current ‘guideline’ status under 76/160/EEC. In the proposals, the “good” quality standard carries with it a projected 1 in 20 risk of contracting gastro-intestinal illness to the bathing public

(Section 4.6, Explanatory Memorandum). Such a level of risk might be reasonably expected to result in a large number of incidents of gastro-intestinal illness per annum in the United Kingdom, although this does not appear to be reflected at present in terms of reported cases. These reservations are supported by the UK DEFRA partial Regulatory Impact Assessment which states that, "...UK public health surveillance systems and a detailed study of infectious intestinal disease in England do not detect bathing-related illness and public health professionals regard the issue to be a low public health priority...".

The Association welcomes the proposed use of more robust statistical approaches, which use multiple seasons of data, to assess compliance against bacteriological standards. However, the Commission proposal for the revised Directive refers to a method for assessing compliance with the 95-percentile standard that is vulnerable to the effects of sampling error. The Association supports the British view believes that it would be better to use a method that manages the risk that statistical sampling error may lead to the wrong declaration that a compliant water has failed – or that good waters are wrongly declared poor. This risk is up to 50 per cent. The Association also supports the recommendation for the use of a proper statistical test of compliance based on the 95 per cent confidence limit on the estimate of the 95-percentile. This reduces to a maximum of 5 per cent, the risk that serious action is wasted on sites placed wrongly in the poor category because of sampling error. This, in turn, will ensure that when money is being spent, it is delivering a genuine environmental improvement.

To achieve conformity with the requirements of the proposed revised Directive, a bathing water must achieve a minimum of "good" status. A bathing water classified as "poor" will nevertheless be adjudged to be in conformity with the requirements of the proposed Directive for a period of only 3 years if appropriate management actions have been taken to protect the public in the intervening period. The terms of Article 13 provide a framework for the effective management of unsatisfactory bathing waters which is an improvement over the current "pass/fail" perspective of the current Directive. As such it is welcomed by the Association, although there remains a recognised need for the introduction of sufficient flexibility into the management system which would allow it to deal with forms of bacterial pollution which may not be easily mitigated against, or may require more realistic timescales to be set. For example, that from agriculture and wildlife.

5 CONCLUSIONS

The Bathing Water Directive (76/160/EEC) is one of the earliest examples of environmental water quality legislation to be pioneered by the European Commission. In the intervening quarter of a century since its publication, the text of its Articles have been overtaken by developments in microbiology, an increased sophistication in the use of statistics as a regulatory tool and changes in the public perception of what constitutes an acceptable level of environmental quality. The Association is supportive of Commission attempts to update this Directive. Any proposals must be able to be justified on cost-benefit criteria. The Commission proposal represents a significant step forward in the monitoring and assessment of identified bathing waters.

European Water Association



The European Water Association (EWA) is an independent non-governmental and non-profit making organisation dealing with the management and improvement of the water environment. It was founded on 22 June 1981 as the European Water Pollution Control Association. The scope of the Association was enlarged in 1999 with the change of name to the European Water Association.

It is one of the major professional associations in Europe that covers the whole water sector, wastewater as well as drinking water and water related waste. With member associations from nearly all European Countries EWA includes most of the current European Union Member States, Norway, Switzerland and the majority of the future EU members from Central and Eastern Europe.

The aim of EWA is to provide a forum for the discussion of key technical and policy issues affecting the growing European region. This is done through conferences, workshops, meetings and special working groups of experts all organised on an international basis together with regular publications.

EWA informs its members on the development of EU legislation and standardisation and seeks to influence the drafting when appropriate. It has close contacts with the European Commission (DG Environment), the European Committee for Standardization (CEN), the European Environment Agency (EEA) and the European Parliament.

Through this exchange of knowledge the objective of EWA is to contribute to sustainable water management, a safe water supply and the protection of the water environment.

Today, EWA consists today of about 25 European national associations each representing professionals and technicians for wastewater and water utilities, academics, consultants and contractors as well as a growing number of corporate member firms and enterprises. EWA thus represents about 55,000 professional individuals working in the broad field of water management.

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