



SEPTIC TANK CHARGES – A PRACTICAL APPLICATION OF THE “POLLUTER PAYS” PRINCIPLE

In the wake of controversy surrounding the introduction of septic tank charges, Heather Murphy examines the requirement to monitor septic tanks and the legality of charging individual households with septic tanks

Regulating Septic Tanks

Ireland has a high percentage of households that are not connected to public wastewater treatment schemes. Some 440,000 Irish households have septic tanks, versus only 300,000 in all of England and Wales. In 2009 the European Court of Justice (ECJ) ruled that Ireland was in breach of the Waste Directive 75/442 as, with the exception of County Cavan, there were no regulations or administrative provisions in place which ensured that wastewater from septic tanks and other individual wastewater treatment systems was disposed of without harming the environment or human health. In its judgement the ECJ ruled that Irish water pollution legislation and the planning code did not provide an adequate system for monitoring septic tanks. The judgment required Ireland to adopt new legislation to ensure regular monitoring and inspection of individual wastewater treatment systems. Ireland has not yet enacted the required legislation and may be fined a lump-sum of €2.7 million and a daily penalty of €26,173 for each day that it continues to breach the ECJ's ruling.

Minister for the Environment Phil Hogan is planning to introduce legislation requiring the registration and monitoring of septic tanks this autumn, with monitoring and inspection of individual tanks to commence in 2013.

At present there is no comprehensive register of septic tanks in Ireland. This means that septic tanks could be located close to drinking water abstraction points and could pose a threat to human health and the environment if not inspected regularly to ensure that they are functioning correctly. Under the Planning and Development Regulations, applicants for planning permission are required to provide certain information in respect of septic tanks, but this requirement only relates to the construction of septic tanks built after 31 March 2007. Therefore it will be necessary to establish a new register in order to identify all dwellings with septic tanks, irrespective of when they were constructed. Under the proposed legislation individual homeowners will be required to pay an initial fee to register their septic tank with their Local Authority, and a national register will be maintained by the Environmental Protection Agency. Following initial registration, households will be required to re-register every five or so years; the Minister has recently indicated that a fee of no more than €50 is envisaged. Scotland and Wales have similar requirements to register septic tanks. Registration is free in Wales, whereas in Scotland registration costs either £77 (online applications) or £104 (written applications). Plans to introduce a system of registration in England are currently under review.

Under water pollution legislation, responsibility for protecting water against pollution lies, in the first instance, with any person who carries out an activity which poses a threat to water quality. In most cases where septic tanks are properly managed these systems do not pose a threat, but if they are poorly designed, installed or managed, the discharges can damage the environment and pose a threat to human health.

It is a criminal offence, under water pollution legislation to cause any 'polluting matter' to enter water. In particular, Section 70 of the Water Services Act 2007 requires home owners to ensure that wastewater treatment systems are properly maintained so as to ensure they do not cause, or are likely to cause, a risk to human health and the environment or creates a nuisance through odour. The *EPA Code of Practice on Wastewater Treatment and Disposal Systems Serving Single Households 2009*, recommends that records of maintenance should be kept so the home owner can demonstrate that they have complied with this requirement.

Under the proposed legislation, the Environmental Protection Agency will be responsible for developing a national septic tank inspection plan, and Local Authorities will be responsible for managing the roll out of inspections. The cost of the inspection scheme is to be funded by the registration fees. Inspections will be carried out on a risk based approach, with higher rates of inspection in those areas identified as having a higher risk to the environment and public health. The Minister has indicated that households may be required to upgrade or remediate their system on foot of an inspection. The costs of such remedial works could be significant for the household involved. . Consideration would need to be given to whether inspection by a Local Authority would be necessary where the home owner has already had the septic tank inspected by another competent person.

Charging—Is it Fair?

The introduction of a registration fee for septic tanks has caused considerable controversy over recent months, with some arguing that it unfairly targets rural households. It is true that households with septic tanks are, for the most part, located in rural areas, but there is a strong legal basis for charging households with septic tanks—the polluter pays principle, one of the core principles of environmental law. Urban households will be required to pay their share for wastewater services too. Water charges, when introduced, must be based on 'water in-water out'. This means that the charge to be paid by households will reflect the cost, not only of providing drinking water, but also the cost of treating the wastewater generated by the household.

In order to be equitable, the registration fee paid by households with septic tanks will need to be reflected in the water charges to be paid by that household, which should be reduced accordingly. If households with septic tanks were charged the same rate for water services as those households connected to public wastewater treatment systems this could infringe the 'cost recovery' principle in Article 9 of the Water Framework Directive.

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