

Training module under project “Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018” on

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU WATER LAW

05 – 07 April 2017, Warsaw (Poland)

URBAN WASTE WATER TREATMENT DIRECTIVE - WORKSHOP CASES

CASE 1

Facts of the case

An investor applied for a building permit, regarding construction of four single family houses in a location which is administratively a part of a town of 2.800 inhabitants, but in reality lies more than 100 m away from the nearest house. In its direct vicinity there are a river and a milk processing plant with equivalent load of 5.000 p.e., discharging its waste water to the river in full compliance with environmental standards. After passing the relevant location, the river flows through the town and into a lake which is a popular bathing site, although not officially recognised.

The nearest possible connection point to the urban waste water collecting system is at the nearest house, more than 100 m away from the relevant location and on the same level. Therefore, a septic tank is planned for disposal of waste water.

Dispute

The relevant authority rejected the application, claiming inadequate disposal of waste water. It demanded connection to the town's waste water collecting system, basing this demand on the following findings:

- administratively, the location is a part of the town
- vicinity of the milk processing plant
- vicinity of the river, which discharges into a sensitive area and may get polluted because of the septic tank's overflow due to unlikely, but “not impossible” heavy rains

The investor claims illegality of the rejection, because:

- physically, the location is not a part of the town
- vicinity of the milk processing plant is irrelevant
- the cost of connection to the town's waste water collecting system would be excessive
- septic tank offers same or better level of environmental protection
- even in case of pollution, the contribution would be negligible compared to the town's
- there is no officially identified sensitive area

Legal Context

The national regulation, which is the legal instrument, transposing the Urban Waste Water Treatment Directive, is little more than a translation of the Directive. Therefore, it is possible to use the text of the Directive.

The national building code requires “connection to adequate waste water collecting system”, but exceptionally allows use of “other adequate waste water disposal systems corresponding to the best technical knowledge” if connection to a waste water collecting system would be “excessively difficult or expensive”.

Your Task

1. Evaluate each of the claims in light of the Directive
2. Decide on legality of the rejection of the application

CASE 2

Facts of the Case

A small suburban settlement is being legally incorporated into a neighbouring town. For waste water disposal, the settlement has recently built a small processing plant, which is efficient enough for a nearby creek to keep meeting all relevant standards. However, it does not fit the description of processing “more stringent than secondary”. The town is extending its waste water collecting system to the settlement, asking the house owners in the settlement to connect to it and partially refund the investment, as required by the law. The house owners refuse to pay.

The Member State has identified all of its waters as sensitive area.

Dispute

The house owners claim that no provision of the relevant national regulation (see “Legal Context”) precludes further use of the small processing plant, which can be considered as an “other appropriate system” (Article 3(3) of the Directive), delivering satisfactory results. As their investment into this plant is quite recent, they consider any further payment to constitute “excessive cost”.

The town claims that the settlement is now a part of an agglomeration not only administratively, but also through availability of the collection system. Therefore, the settlement has to connect to this system (and partially refund the costs), lest the town be responsible for breach of the relevant regulation. Moreover, as all of the waters have been identified as sensitive area, the existing processing plant should ensure processing “more stringent than secondary”, which it does not.

Legal Context

Same as above

Your Task

Identify main issues stemming from the implementation of the Directive and suggest a solution.

Some possible points for consideration

- Delineation of agglomeration
- Justification of “individual or other appropriate system”
- Cumulative effect of an industrial plant and settlement or more settlements
- Appropriate capacity of the system / storm water overflows
- Performance standards of processing plants
- Identification of sensitive areas
- Indirect discharge into sensitive areas
- Relation to water quality stipulated by other directives