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To  
 AFQ Inspectors  
 SG Specialist Inspectors (Occ Hyg)  
 SG Medical and Occupational Health Inspectors  
 Railway Inspectors  
 HID Inspectors  
 TD6 inspectors

**THE CONTROL OF *LEGIONELLA*: WATER TREATMENT COMPANIES**

**CODE OF CONDUCT AND HSE INTELLIGENCE**

This OC describes the national code of conduct for companies which provide services to assist with the control of *legionella*, and HSE's stance in relation to it. It also explains how HSE will improve its intelligence to help deal with poor compliance in this industry sector.

**Introduction**

1 Water treatment companies, consultants and other service providers play a crucial role in helping occupiers to control the risk from *legionella* in water systems, particularly systems incorporating cooling towers and evaporative condensers (wet cooling systems). This also helps them comply with their duties under L8 *Legionnaire's disease: the control of legionella bacteria in water systems: ACoP and guidance* (file 255). The services provided by these companies usually consist of supplying and applying water treatment chemicals, and carrying out cleaning and disinfection, but also include those undertaking risk assessments, microbiological monitoring and other maintenance. In some cases they may carry out a complete programme management of a system.

2 In recent years, inspectors have come across frequent examples of poor standards practised by some of these companies and have prosecuted those failing to comply with their legal duties in the worst cases. In addition to enforcement action, HSE has also been working with the professional and industry associations for companies and consultants in the water treatment sector, the Water Management Society (WMS) and the British Association for Chemical Specialities (BACS) to raise standards voluntarily.

3 As a result, WMS and BACS, have jointly established a national code of conduct (CoC) for those involved in supplying services in relation to the control of *legionella*, with the objective of setting minimum standards for the industry. It was launched in 1999 with HSE support and is referred to in the third edition of the ACoP.

**The nature of the water treatment industry**

4 Those companies directly involved in the practical aspects of control, particularly water treatment, and cleaning and disinfection are of the main concern to HSE. There are many

companies in the water treatment sector and not all are concerned with treatment with regards to the control of *legionella*. Examples of companies which aren't include those who treat drinking water, and those who provide purified water for specialist purposes. Of those which are, most will be involved with treating wet cooling systems, a smaller number with hot and cold water systems and some with both. Some also provide treatments for other water systems from which there is a risk from *legionella*, eg spa baths.

5 For those involved with wet cooling systems, the market is dominated (perhaps by up to 80%) by a small number of large companies, either national or international in nature. The remainder comprises a large number of smaller companies, often operating on a limited geographical basis. Historically, many companies originated as suppliers of chemicals for purposes such as water softening, corrosion resistance etc, before *legionella* was even recognised as a pathogenic organism and for this reason some may still have an association with the chemical industry. Within this general picture, the industry appears to be subject to constant change arising from frequent mergers amongst the larger companies, new entrants to the field and smaller companies ceasing to trade.

6 With the development of new technologies in controlling *legionella* in hot and cold water systems, eg ionisation, chlorine dioxide, there has been recent growth in the number of companies offering services here. Some of these technologies are also being applied to wet cooling systems but to date this is not extensive.

### **The industry and the law**

7 While all service providers have had legal obligations for their services with respect to health and safety since HSW Act came into force, those legal obligations only became clear and explicit after the first version of the *Legionella* ACoP took effect in 1992. Following an increase in outbreaks associated with wet cooling systems in the mid-1990s, HSE inspectors then began to take more notice of the poor standards delivered by some companies. In 1997 the first successful prosecution of such a company took place following an outbreak in the Midlands, with another in 1998, in south Wales. Further cases have been initiated since, but, to date, none have been taken where there has not been an outbreak.

8 Problems encountered have been due to low levels of competence, poor training, ignorance of duties under the law and simple negligence. In relation to training, it is not uncommon for inspectors to find that while head office staff can demonstrate a wide knowledge of both technical and legal aspects, field operatives can be significantly lacking here. It has also frequently been found that operators of cooling systems are unclear on the precise terms of their contracts with their service provider. Some are only contracted to provide chemical treatment of the water, but occupiers have been under the impression that they have also contracted out management, care and maintenance of the entire system to the service provider. As a consequence some important duties have not been performed by either. Prior to the third edition of the ACoP, it was the occupier's responsibility to recognise and remedy this problem, but now the ACoP also places obligations on the service provider, stipulating (para 71(d)) that suppliers of products and services should:

'ensure that any deficiencies or limitations which they identify in occupier's systems or written scheme to control the risk.....are made known to the person upon whom the statutory duty falls or the persons appointed to take managerial responsibility;'

### **Code of conduct**

9 To address the above problems, HSE organised (in 1998) national seminars for representatives of the water treatment industry and others with an interest. From these came the proposal to develop a code of conduct, and both WMS and BACS committed themselves to taking this forward. This was then launched in summer 1999 with HSE support and, as such, is referred to in the ACoP (paras 51 and 77). The CoC addresses the issues of contractual responsibility, training, levels of competence and communication between service provider and client. It also makes it a condition of compliance that every member company supplies each of their clients with a copy of the CoC and their own registration document. Membership is open to all providers of products and services associated with the control of *legionella* which includes not only those which provide direct, practical measures of control but also consultants who only provide risk assessments and/or advise on control schemes etc. The text of the CoC is reproduced in the [appendix](#).

10 Adherence to the CoC is voluntary and does not have any legal status, despite the reference to it in the ACoP. It is also not a formal accreditation scheme. It does however demonstrate both at the industry level and at the level of the individual company a commitment to improving and maintaining a minimum level of service. The condition referred to in para 9 gives it a degree of self-policing and the administering organisation, the Code of Conduct Association (CCA), carries out a programme of auditing. Measures for dealing with non-compliance have yet to be properly developed although in the worst cases it can be expected that their membership will be suspended or revoked.

11 Presently over 100 companies have signed up to the CoC and are using it as an aid to promote sales of their services. This might, in theory, have the long-term effect of squeezing out companies not signing up to it, which will include some of the poor performers. However, it remains to be seen if this happens in practice.

### **Intelligence gathering by HSE**

12 Enforcement responsibility for companies in the water treatment sector is split between FOD and HID, in the latter case for those companies which are associated with chemical manufacture or supply. For those which are the responsibility of FOD, the relevant SIC has been largely allocated to the Food and Entertainments Sector. It is also possible that responsibility for some lies with local authorities (LAs) but this would only apply to the health and safety of employees within the company's offices or base premises, not to those working on site at HSE-enforced premises where this would fall to HSE, including their HSW Act s.3 responsibilities. The practicalities of enforcement are further complicated because their site activities are peripatetic, transient and can be geographically remote from head offices. This means that they are rarely, if ever, subject to preventive inspections.

13 Even if they were, while there is a range of health and safety issues for their own employees, it is the effectiveness of their services in relation to their HSW Act s.3 responsibilities which are the major concern in this context. This would not be readily apparent even with an inspector present to witness their operations and would only become so from an inspection of a treated water system, along with the records of treatment, monitoring and maintenance, plus any other evidence provided by the occupier regarding the quality of their service.

14 Because of all these factors, HSE needs to improve its intelligence on the activities and capabilities of these companies. This requires the accumulation of information nationally over a period of time such that isolated incidents and occurrences can help build a broader picture which might justify HSE interventions at head office level. The role has been given to FOD SG occupational hygiene specialist inspectors who will receive and

compile such intelligence and, where appropriate, help co-ordinate enforcement action.

15 This will operate as a quasi-nominated inspector scheme, but for the medium term will not be developed as such. This is because *legionella* as an inspection topic does not feature in current (2001-04) HSC strategic plan, meaning that few resources can be devoted to it. For the interim therefore, the focus will be on intelligence gathering with no plans for any proactive work, except where there are serious concerns particularly those arising during outbreaks. Once the strategic plan reaches its conclusion the situation will be reviewed.

### **Action by inspectors**

All inspectors

16 Inspectors should be supportive of the CoC by recommending the use of a contractor subscribing to it where:

- (1) an occupier wishes to employ a contractor, but currently does not have one; or
- (2) an occupier currently does have a contract with a non-subscribing company, but is dissatisfied with its standard of service.

To find out details of relevant companies, inspectors should refer occupiers to the CCA Secretariat, Mill House, Tolson's Mill, Fazeley, Tamworth, Staffs, B78 3QB (Tel: 01827 269063).

17 An inspector who wishes to know if a company operating at a site subscribes to the CoC, should ask the occupier whether the service provider has presented a registration certificate to the occupier (see [para 9](#)). If there is doubt, or the occupier cannot find the certificate, inspectors can contact the CCA Secretariat (see para 16) and ask to check the company against the latest membership records, making themselves known as an HSE inspector. If it does subscribe to the CoC, where a client record exists on FOCUS or one is created following the site visit, inspectors should annotate the client clue accordingly.

18 Where poor performance by a service provider has been identified at a particular site inspectors should:

- (1) for any company
  - (a) pass details of concerns to their SG occupational hygiene PSI,
  - (b) enter details in the FOCUS contact report using the initials 'WTC' (water treatment company\*) in the text, for use as a keyword to facilitate future searches on the topic;
- (2) for those subscribing to the CoC - all the above plus encourage the occupier to report the offending company to the CCA Secretariat .

In serious cases of both, it would also be helpful to copy information to the FOD Health Unit (HU) and TD6, Dangerous Pathogens Section.

\* While not all service providers will be water treatment companies, most problems encountered are expected to relate to control measures provided by such companies even

if they do not specifically relate to water treatment itself. 'WTC' therefore acts as a convenient shorthand.

### Occupational hygiene specialist inspectors

19 Occupational hygiene specialists should record information passed to them as indicated above. Where this relates to a service provider with its head office outside the area covered by their own division, they should copy this to their counterpart in the appropriate division, and for those for which HID has enforcement responsibility also to HID Central Division. They should periodically review such information and arrange to pool it with colleagues nationally to help identify patterns. Recording on FOCUS in the suggested manner should help this. If serious concerns arise they should consider initiating a head office visit, coordinating with the FOD/HID inspection group or LA as may be appropriate. If formal enforcement is considered they may need to involve TD6, Dangerous Pathogens Section.

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**THE CONTROL OF *LEGIONELLA*: WATER TREATMENT COMPANIES  
CODE OF CONDUCT AND HSE INTELLIGENCE**

**APPENDIX  
(para 9)**

TEXT REPRODUCED WITH THE PERMISSION OF THE WMS AND THE BACS

**THE CONTROL OF LEGIONELLOSIS**

**A RECOMMENDED CODE OF CONDUCT  
FOR SERVICE PROVIDERS**

Legislative requirements for the control of legionellosis put the responsibility for compliance clearly with the owner/operator of water systems. Under the Health and Safety at Work etc Act 1974, the Control of Substances Hazardous to Health Regulations as regards risks from legionellosis, all owner and operators of such systems have a responsibility to ensure that the risk is controlled and kept to an acceptable level. The HSC's Approved Code of Practice and Guidance (L8) stresses that whilst the tasks required to be undertaken to control the risk may be contracted to an external specialist, the owner/operator must take all reasonable care to ensure the competence of the service provider to carry out the work on his behalf.

This Code of Conduct is intended to give guidance alone, on the standard of service that a Client should expect from those Service Providers who agree to abide by the Code. The responsibility for the prevention and control of legionellosis lies with the Client and the Service Provider.

The guidelines outlined in this document have been designed to help owner/operators select a competent service provider by highlighting seven critical areas and detailing the commitment that the owner/operator should expect from prospective service providers when making the competence assessment.

**Conditions of Compliance**

- 1 There should be a clearly defined written agreement between the service provider\* and the client\* setting out the individual responsibilities of both parties to ensure compliance with current legislation.
- 2 Service providers should demonstrate and document a satisfactory level of competence of their staff\* in order to achieve the objectives of this document.
- 3 The recommendations made by the service provider should be equal to, or better than, the relevant Codes of Practice and guidance documents pertaining to the system in question.
- 4 Lines of communication and reporting between client and service provider should be defined as well as the management plan in the event of remedial or corrective action being required, including matters of evident concern outside contracted obligations.
- 5 Adequate and up to date monitoring and treatment records should be kept. These

should be readily available.

6 The performance of the control measures should be reviewed jointly by the service provider and the client at least annually and the necessary remedial action plan agreed.

7 Service providers should establish a formal internal auditing procedure for compliance with this document.

### **Definitions \***

#### **SERVICE PROVIDER**

Companies or individuals or their sub-contractors who are involved with providing:- advice, consultancy, operating, maintenance and management services or the supply of equipment or chemicals to the Client.

#### **CLIENT**

The owner or occupier of the premises, or his appointed representative, or other person nominated to be the "Responsible person" as defined in HSC document 'Legionnaires disease - the control of legionella bacteria in water systems, Approved Code of Practice and Guidance (L8)', [para 44].

#### **STAFF**

Any person directly or indirectly employed in meeting the requirements of this document.

### **Service Provider Commitments**

#### 1 Allocation of responsibilities

The service provider will:

- explain in detail the client's obligations under the legionellosis legislation.
- identify those services covered by the contract and those which should be provided by the client to meet all current obligations.
- formalise a written agreement detailing the respective responsibilities for each requirement.

#### 2 Training and competence of personnel

The service provider will:

- arrange formal training programmes for service provider personnel associated with the control of legionella bacteria (See current CCA training matrix as a guide).
- have a system for assessing the competence of service provider staff, establishing their training needs and ensuring they are kept up to date with current best practice procedures.

- assist the client to assess training needs of staff and then where requested advise as to how these can be met.

### 3 Control measures

The service provider will:

- have a management system to assess the requirements and ensure an appropriate programme of control measures is designed, implemented, monitored and maintained.
- have a system for verifying that corrective and preventive actions are implemented.

### 4 Communications and management

The service provider will:

- have management procedures to respond appropriately should the system operating conditions deviate from control criteria.
- agree with the client how the service provider would communicate with the client's nominated personnel in the event of any necessary actions
- bring to the client's attention any significant matters affecting the control of legionellosis of which he has become aware, beyond the responsibilities of the contract.

### 5 Record keeping

The service provider will:

- indicate which records should be kept by both parties and where they will be kept.
- establish with the client who will be responsible for the maintenance of these records.

### 6 Reviews

The service provider will:

- establish a programme that will allow both parties to review formally, at least annually, all aspects of the agreement covering system management and the control of legionellosis.

### 7 Internal Auditing

The service provider will:

- have a management system to ensure that Service Provider compliance with each of these Commitments is self-audited at least once a year and that a formal record is kept.
- establish a corrective action programme so that any non-compliance identified is corrected in a timely manner.

## 8 Distribution of the Code

The service provider will:

- have a management system to ensure all clients to whom services are provided, associated with the control of legionella bacteria, are supplied with a copy of the Code of Conduct and certificate of Registration.

***In the event that the client believes that a service provider has not complied with the Code of Conduct, he may write, with full details, to: Code of Conduct Secretariat, Mill House, Tolson's Mill, Fazeley, Tamworth, Staffs, B78 3QB.***

**It is a condition of compliance with this Code of Conduct that the service provider supplies a copy of the Code to every client, together with a copy of the Registration Certificate.**

**Produced jointly by the  
British Association for Chemical Specialities  
and the  
Water Management Society**

