

Date: 3 July 2008
Our Ref: 080703 AS Aquavitae revocation
Your Ref:

For the attention of Geoffrey Rowley and Nicholas O'Reilly

Aquavitae (UK) Limited (in administration)
Vantis
66 Wigmore Street
London
W1A 3RT

Dear Sirs

Aquavitae (UK) Limited (in administration) — proposal to revoke licences

Yesterday the Commission agreed that it was minded to revoke the water services licence and the sewerage services licence (“the licences”) that it granted to Aquavitae (UK) Limited (“Aquavitae”) on 15 October 2007. We are writing to you, as administrators of Aquavitae, to set out the grounds for that decision, the process for revocation and your opportunity to respond.

Process for revocation

The Commission’s power to revoke a licence is set out in paragraph 10 of Schedule 2 to the Water Services etc. (Scotland) Act 2005 (“the 2005 Act”). This requires the Commission to issue a notice of revocation to the licensed provider, after which the licensed provider may appeal to the sheriff against the notice.

Reasonableness of revocation (sub-paragraph 10(6))

Before revoking a licence, the Commission must satisfy itself that the revocation would be reasonable, having regard to:

- The terms and conditions of the licence;

Water Industry Commission for Scotland
Ochil House
Springkerse Business Park
Stirling FK7 7XE

Chairman Sir Ian Byatt

Telephone 01786 430 200
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Web www.watercommission.co.uk

- The licensed provider's responsibilities to its customers; and
- Any other matters the Commission considers to be relevant.

Your opportunity to respond

The Commission wants to ensure that you have had ample opportunity to respond to the Commission's proposal before a revocation notice is issued. We therefore invite you to make representations on the Commission's proposal to revoke the licences. We will consider any representations that reach this office by 4 August 2008.

If, after considering any such representations and any other relevant circumstances, the Commission considered it would be reasonable to revoke the licences, we would issue you with a notice of revocation. The effective date of the notice of revocation would be 15 days after it had been issued. You may appeal against the revocation decision under sub-paragraph 10(8) of Schedule 2 to the 2005 Act and a successful appeal would clearly allow Aquavitae to retain its licences.

If you wish to make representations to the Commission on its proposal, please send them to:

Katherine Russell
Director of Corporate Affairs and Customer Service
Water Industry Commission for Scotland
Ochil House
Springkerse Business Park
Stirling FK7 7XE
or licensing.representation@watercommission.co.uk

Grounds for revocation

The Commission will not revoke your licences unless it is satisfied that it is reasonable to do so. Subject to any material representations on your part we consider it would be reasonable to revoke the licences because Aquavitae appears to be in breach of the terms and conditions of the licences and does not appear to be in a position to discharge its licence obligations. The remainder of this letter sets out the basis for the Commission's view in more detail.

The Commission considers that it would be reasonable to commence the process of revoking the licences under paragraph 10 of Schedule 2 to the Water Services etc. (Scotland) Act 2005 ("the 2005 Act") under either or both of the following two grounds:

- The Commission considers that Aquavitae no longer has the ability to perform adequately the activities authorised by the licences, having special regard to the factors mentioned in subsection 7(2) of the 2005 Act (sub-paragraph 10(4));¹ and

¹ The factors mentioned in subsection 7(2) are the licensed provider's (a) knowledge, expertise and experience; and (b) financial acumen and business viability.

- It appears that Aquavitae has contravened a condition of the licences and the Commission considers that Aquavitae would fail to comply with the terms of an enforcement notice pertaining to that contravention (sub-paragraph 10(3)).

Inability to perform licensed activities (sub-paragraph 10(4))

The Commission bases its view, that Aquavitae no longer has the ability to perform adequately the activities authorised by the licences, on the following conclusions.

First, we understand that Aquavitae has dismissed its staff and has lost the knowledge, expertise and experience relevant to its licensed activities. Further, Aquavitae is in administration and the letter we received (dated 12 June 2008) from Hammonds LLP — who we understand to be acting on your behalf — suggests that you have little knowledge of the licences and no inclination to carry on the licensed business. In any event, the fact of administration is itself sufficient to cast doubt over Aquavitae's financial acumen and business viability.

In our reply to Hammonds LLP (dated 16 June 2008) we invited you to contact us if you wished to carry on trading or otherwise realise value from the licensed business. Although Hammonds LLP acknowledged receipt of our letter, we have received no substantive response to date. This leads us to consider that it is reasonable to commence the process of licence revocation. However, the revocation process itself presents a further opportunity for you to make representations to us (as set out above).

Contravention of licence (sub-paragraph 10(3))

It also appears to the Commission that Aquavitae has contravened its licences, and would fail to comply with the terms of an enforcement notice pertaining to that contravention, for the following reasons:

- Scottish Water has informed the Commission that Aquavitae has failed to pay its wholesale charges, in contravention of its wholesale services agreement (Annex A). This, in turn, contravenes standard licence condition A7 (Wholesale services agreement).
- As administrators, you have, so far, given no indication that you wish the licensed business to continue trading. Therefore the Commission doubts whether Aquavitae would pay (or would be able to pay) its outstanding wholesale charges in response to an enforcement notice pertaining to its breach of standard licence condition A7. It is also relevant to note that neither you nor the directors of Aquavitae (in the period before administration) appear to have responded to notices issued by Scottish Water under the wholesale services agreement to demand payment.

The Commission considers that it would be reasonable to revoke the licences having regard to these matters. In particular, as noted above, Aquavitae appears to be in breach of the terms and conditions of its licences and does not appear to be in a position to discharge its licence obligations. We also understand from the Central Market Agency that Aquavitae's remaining supply points were reallocated to other licensed providers on 21 June 2008 under the terms of the Market Code. Bearing in mind that you do not appear to wish to continue

trading, Aquavitae would therefore appear to have no customers (nor any prospect of acquiring customers) whose interests might be affected by revocation. However, if you have any objections, or other observations to make in relation, to the revocation, you will have the opportunity to outline these in your representations on the Commission's decision.

I shall publish this letter on the Commission's website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan D A Sutherland', written in a cursive style.

Alan D A Sutherland
Chief Executive

cc Hammonds LLP
7 Devonshire Square
London EC2M 4YH