BACKGROUND INFORMATION IN RESPECT OF THE REPORTED BAN ON THE USE OF COPPER AS A BIOCIDE FOR LEGIONELLA CONTROL FROM 1ST FEB 2013.

This short article is an attempt to explain, using plain English, the context of the recent changes in EU Biocides Regulations. It is not intended to be a legally precise text.

In 1992 the European Commission decided that all biocides sold in the EU should be confirmed as safe for intended use using common standards across all Member States. This decision started a process of review and approval for ALL products marketed for ALL biocidal uses. This huge task started in earnest in 1998 (note the preparation for this process alone took six years) and should (but won't) be completed by 2015.

The process starts with one or more companies notifying Brussels that they wish to place a particular biocide on the market. The applicant(s) submit technical data in respect of the safety of the biocide to a review process that takes about three years. If the Member State Competent Authority (MSCA) reviewing the data is satisfied that it is indeed safe, and a majority of the other MSCAs agree, then the biocide is entered into a list of Approved Active Substances in an Annexe to the EU Biocide Regulations.

In the early days, the rules recognised that there had to be some transitional arrangements. They stated that any product that was already being marketed as a biocide could stay on the market during its review period, provided that the product had been notified and a dossier produced by the relevant dates given in EU legislation, ending in February 2011.

The theory was simple enough. The Commission had estimated that there had been enough time for all parties involved in the marketing of biocides to select those that were most worthy of review, so they passed a supplementary regulation that stated that any biocide that was NOT in a review programme by the specified dates would be "non-included" in the list of approved products under the transitional arrangements. After that date, a new set of arrangements would be put into place.

Under these new arrangements, any application to support a new Active Substance as a biocide could still be lodged; but with one major difference. Biocides subject to these new applications may not be marketed until the technical review is complete, whereas under the transitional arrangements, marketing may continue during the period of the review.

For the copper used in copper silver ionisation systems to be covered by the transitional arrangements, it should have been registered for its review before the end of February 2011.

Any one of the approximately 35 companies that sell copper silver ionisation systems within the EU had the opportunity to commence this review process, either alone or in a consortium with any of the others. But the industry was, and remains, highly fragmented and is characterised by lots of small, typically owner managed, companies supplying systems to their domestic markets. Of all of these suppliers, only one actually formally started the review process to comply with the legislation, and that was Tarn-Pure, in October 2008. Unfortunately, the cost of the process was simply too high for Tarn-Pure to bear alone and it pulled out of the review process in September 2009. The Commission advertised the fact that the review for copper as an ionising biocide was being discontinued but no other supplier stepped into the breach and the application lapsed.

Consequently copper fell out of the transitional arrangements, the "non-inclusion" decision was published and the post-transitional Biocides regulations ban the use of copper from 1st February 2013 until its use has been reviewed and approved.