

Centre City Tower, 7 Hill Street, Birmingham B5 4UA
21 Bloomsbury Street, London WC1B 3HF

By email to Water & Sewerage Company CEOs

18 November 2021

Dear Chief Executive

Company compliance with environmental permits

On 18 June 2021 I wrote to you about the growing concern on the use of storm overflows and the importance of the sector responding to this challenge. We welcome the new storm overflow provisions in the Environment Act 2021 including the new duty on companies to progressively reduce harm from storm overflows. In my letter, I made clear that I expected you and your board to have a strong understanding and oversight of your storm overflow assets and performance, and a timely strategy for addressing any shortcomings in performance.

In response to ongoing analysis by the Environment Agency of flow data from wastewater treatment works in England, and information which companies themselves have collated, which has recently been shared with Ofwat, we have significant concerns about the possible scale and extent of companies' non-compliance with the Flow to Full Treatment (**FFT**) conditions set out in the environmental permits for their wastewater treatment works in England. This could potentially be leading to significant numbers of unpermitted storm overflow spills, potentially resulting in environmental harm to local watercourses and communities. If so, this is wholly unacceptable. It could indicate that there are companies that are not meeting their general duty under section 94 of the Water Industry Act 1991 (**WIA91**) to provide a sewerage system to the requisite standard.

I am also concerned that this emerging picture may, for some companies, suggest a failure of the processes and internal controls they should have in place to effectively manage this part of their Regulated Activities. These should be ensuring full compliance with the legal requirements of environmental permits, and are key to a company board satisfying itself that the company is fulfilling its obligations.

Further, our PR19 policy is clear that other company decisions, including on dividends and performance-related executive pay, should take into account the delivery of the company's obligations and commitments to customers. If the company has been materially out of compliance with its legal obligations, I expect you to explain how this was taken into account in the payment of dividends or executive bonuses at any point since our PR19 determination.

David Black, Interim CEO

All companies have been allowed funding to comply with their legal obligations and each year your board certifies to Ofwat that your company has sufficient financial resources, management resources and systems of planning and internal control to carry out its Regulated Activities, which includes compliance with section 94 and related licence conditions. To support this at PR19, amongst other funding, Ofwat allowed all of the enhancement schemes requested by companies to enable delivery of the Water Industry National Environment Programme (**WINEP**) set by the Environment Agency in England and the National Environmental Programme (**NEP**) set by Natural Resources Wales in Wales.

WINEP and NEP included £530 million specifically for schemes to increase FFT at treatment works; £440 million for storage schemes at treatment works; and £43 million to install new monitors on storm overflows. Companies are fully responsible for meeting their legal obligations, including taking prompt action where any shortcomings or significant risks are identified. If a company is aware of any circumstances that may materially affect its ability to carry out its Regulated Activities, it is a licence requirement that it inform Ofwat as soon as possible. To date no company has done this.

It is for the Environment Agency and Natural Resources Wales to consider how they enforce compliance with individual environmental permits, including in relation to FFT and storm overflow conditions. Ofwat will be keeping abreast of that and any new information that becomes available, to inform the next steps we may need to take using our own regulatory tools. That includes but is not limited to enforcement action.

If we find that use of our enforcement tools is necessary, we will apply the principles set out in our published [approach to enforcement](#), including taking appropriate action to secure compliance, and being proportionate and targeted in focusing our intervention on areas of greatest detriment. We expect companies to come forward if they consider a breach of their obligation(s) is occurring and to take action to remedy the damage that breach has caused. Failure to do so would be considered in our approach to any enforcement.

Alongside further information and steps that may come from the Environment Agency and Natural Resources Wales in due course, I want to hear urgently and directly from companies on this issue. Your response will inform what we do next. Therefore, I expect you to respond to the requests for information set out in Annex 1 and 2 of this letter as soon as possible, and in particular:

- Provide your response to Question 1 and an initial summary of your response to Question 6 by no later than 3pm on 30 November 2021.
- Provide your full response to all questions, including further detail on Question 6, by no later than 12 noon on 22 December 2021.

Send your responses to the following address: enforcement@ofwat.gov.uk. If you have any questions regarding this request, please direct them to that mailbox in the first instance.

Yours sincerely

David Black
Interim Chief Executive

Annex 1: Request for Information

1. For the year 2020, provide details of the extent of any potential non-compliance with FFT permit conditions your company is aware of and the potential impact of this on unpermitted storm overflow spills. This should include information on: the number of sites affected in total and by size; an estimate of the number of unpermitted spill incidents that occurred from these works as a result of potential non-compliance; and an estimate of the total duration of these spills. Provide this information in the format of the table provided at Annex 2, with supporting commentary as appropriate.
2. Set out the key root causes of potential non-compliance with FFT permit conditions that your company is experiencing.
3. Provide details of your company's strategy for monitoring and maintaining the continued resilience of your assets and systems, to prevent non-compliance with FFT permit conditions and unpermitted spill incidents.
4. Provide details of if and how your executive and board manage and scrutinise your company's compliance with its environmental permits, including the identification and resolution of any non-compliance with FFT permit conditions.
5. Provide details of if and how your company's performance on FFT and/or wider environmental permit compliance informs your current executive pay and dividend policies and decisions.
6. Provide details of your company's plan and timescales for:
 - a. Addressing the potential non-compliance and root causes identified at Questions 1 and 2 above, securing compliance with all FFT permit conditions at your treatment works on an on-going basis. Your plan should specify the timescale for remedying any non-compliance, including plans to address within next 12 months and any non-compliance that will be addressed over a longer period.
 - b. Ensuring appropriate management and scrutiny of FFT compliance on an on-going basis.
 - c. Communicating with and rebuilding customer and stakeholder confidence on this issue.
 - d. How your company plans to put things right for its customers.

**Annex 2: Table to complete for Question 1 response
Wastewater treatment works for 2020 calendar year**

	Total	Breakdown of Total column by WWTW size – Population Equivalent (PE)			
		< 2,000	2,000 – 10,000	10,001 – 100,000	> 100,000
Number of WWTWs the company has					
Number of WWTWs the company has with FFT permit requirements					
Number of WWTWs potentially non-compliant with their FFT permit requirements					
Number of unpermitted spill incidents occurring as a result of this potential non-compliance with FFT permit requirements					
Duration of spill incidents occurring as a result of this potential non-compliance with FFT requirements					