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By email to Water and Water & Sewerage Company Regulatory Directors, Environmental NGOs and Outcomes Working Group contacts

21 October 2022

Dear Stakeholder,

Serious pollution incidents and discharge permit compliance common performance commitments

We sought views in the PR24 Draft Methodology on whether the serious pollution incidents performance commitment should be extended to include water only companies (WoCs). This is because our proposed performance commitment definition uses the definitions used by environmental regulators in their Environmental Performance Assessments (EPA). The EPAs include pollution incidents associated with water activities as well as wastewater activities for the water and sewerage companies (WaSCs). Respondents have generally suggested that if a new performance commitment is to be introduced it should be for water only companies as well.

In light of responses, we now wish to seek view on whether the discharge permit compliance performance commitment should also be extended to include WoCs. In line with our approach within the PR24 Draft Methodology, we propose that there would be no deadbands. Like serious pollution incidents the performance commitment currently incorporates failures to meet discharge permit compliance in relation to water activities for WaSCs in the EPA.

We recognise that there can be serious pollution incidents associated with water activities, as well as a failure to comply with discharge permits in relation to water assets. Information supplied by the Environment Agency indicates that there were a number of discharge compliance permit fails for WoCs in 2021. Compliance was slightly poorer than that for water assets for WaSCs, indicating that there may be some best practice principles that could be shared. Although there have not been any serious pollution incidents related to WoCs in the last two years, there have previously been occurrences.

However, due to the low number of water treatment works that WoCs have, a single failure can mean a reduction in compliance of between 2% and 25%, depending on the company. As such, there would be a degree of volatility around a discharge permit compliance measure for WoCs, given the low number of permits. This may need to be considered when looking at the overall balance of risk and return for all companies at the PR24 determination phase.

Some stakeholders have expressed a concern that underperformance payments result in 'double jeopardy' for companies, fearing that there will be a duplication in enforcement measures. This is not the case, as our underperformance incentive payments return money to customers for services paid for but not received, whereas when environmental regulators take enforcement action, this concerns the nature and severity of environmental harm.

Proposal

We propose that both the serious pollution incidents and discharge permit compliance performance commitments are extended to cover the activities of both the water only companies and the water and sewerage companies.

For WoCs, we propose that commitment levels for these performance commitments are set at 100% compliance, as they are for WaSCs, with incentive payments applying where performance falls below this level. We would like to hear your views on whether:

- the performance commitments on serious pollution incidents and discharge permit compliance should apply to both WoCs and WaSCs?
- if we choose to introduce these performance commitment for WoCs and WaSCs, should we implement separate performance commitments for the water and wastewater components?

We should be grateful for responses to this consultation by 11 November 2022. Electronic responses should be emailed to pr24@ofwat.gov.uk .

Yours sincerely,

Juliet Young
Director, PR24 and beyond