

## **Consultation response: Updating the storm overflows performance commitment definition for the 2024 Price Review (PR24)**

### **Q1: Do you agree with our proposals to set a performance commitment based on average spills, with financial consequences for companies that do not meet their targets?**

We recognise that EDM provides readily available data on the number and duration of spills (and accept the methodology of the EA within this). However, we are concerned that this process was not designed to set performance commitments with financial consequences. We are concerned that giving equal weighting to overflows regardless of spill volume will lead to water companies prioritising those which discharge small volumes in improvements, despite them having a smaller environmental impact. To prevent this, we recommend that storm overflows are banded relative to the population size of the wastewater treatment.

For instance, when looking at EDM data, there was 2508 which recorded zero spills. However, looking at the operational time:

- 310 weren't operational (i.e., functioning correctly) at all during 2022.
- 1398 were only operational up to 1% of the time.
- 17 were operational 1-10% of the time.
- 53 were operational 10-50% of the time.
- 363 were operational 50-99% of the time.
- 367 were operational 100% of the time.

Reasons given for not being operational include:

- access issue
- comms failure
- set-up issue
- power failure
- sensor failure
- archiving failure

While bands based on population size are an imperfect approximation, it would be reasonable to ensure that water companies are improving a range of different sized CSOs. The unintended consequence of not doing this would be those CSOs which are cheap to improve (likely to be smaller in size and therefore presume smaller environmental impact) and those larger ones will then be cited as too expensive to improve, whereas the investment would otherwise have been spread out over time. To address this, we strongly

recommend that EDM are upgraded to include volume (in Scotland, almost half of the available EDM data include a measurement for volume where spills have occurred) over the next PR24 cycle.

We also suggest that the performance commitment should include a distinction between the cause of spills, enabling incentives appropriate to each category to be set. This would ensure that spills in the most problematic categories are not being ignored by the performance commitment.

Furthermore, the target prioritises designated bathing waters and protected sites. However, overflows can affect ecology regardless of a site's designation or protection status. What's more, in practice, recreational activities are not limited to bathing waters. As such, the performance commitment should be expanded beyond target sites.

The Environment Agency and Ofwat are currently investigating "potential widespread non-compliance by water and sewerage companies at sewage treatment works." Any baseline data should not include those which are found in breach of permit conditions or where there has been underinvestment has not been made in line with agreed Ofwat expenditure.

## **Q2: Do you agree with our proposed approach to unmonitored storm overflows?**

We disagree with the assumption of 50 spills. This assumption may incentivise that poor-performing sites remain unmonitored (either through lack of installation or maintenance of the monitor). This is supported by the data presented within the consultation that 1 in 6 overflows spill more than 50 items. Under this system, it would be beneficial for the water companies to not install or have work EDMs at one in six sites.

We believe that, given the time that water companies have had to fit monitors on their system, their failure to comply with this indicates a lack of punitive measures for them to comply with this requirement. The Environment Agency released requirements for EDM in 2018 ([webpage](#) last updated September 2018). Despite this, water companies are failing to comply with this guidance over four years later clearly indicating unless severe punitive financial penalties are put in place, insufficient action will be undertaken.

We recommend that for broken monitored sites, a surrogate should be applied, encompassing worst performance of their own data plus 20%. This should incentivise repair of the monitor quickly. If the performance data utilised is less than the worst performing—it could set up the perverse incentive not to fixing (or potentially maintain) storm overflow monitoring which have high spill data. Having EDM is important to provide live real-time protection for bathers. Punitive penalties should therefore be implemented if monitors are not fixed within a given timeframe—for example, 72 hours. Water companies can, like bathing waters, apply for exemption where abnormal situations apply (in bathing waters this is defined as once in 4 years). Monitors could be permitted to take, for example, 10 working days during abnormal circumstances. This would allow for extreme weather events where monitors may be damaged/access limited. A separate matrix for

how quickly monitors are fixed should be set with corresponding data. This would allow the best and worst performers to be evident and can be used in Ofwat reviews.

For sites that remain unmonitored as monitors have not been installed, no dividends or bonuses should be paid until this is resolved. The water companies have had until this is rectified as they have not met a basic requirement. This cost should under no circumstances be passed onto the consumer.

### **Q3: Do you agree with our proposed approach to mid-period changes?**

Ask blueprint for water opinion on this. Maybe say that water companies must inform Ofwat of closed assets (am not sure if water companies gain by closing of them- puts spills all into one location?)

Given public and political concern about the efficacy of water companies self-monitoring, we are concerned that this approach requires water companies to report on their own activity. Under Ofwat's proposed approach to mid-period changes, it is imperative that regulation integrates measures to address inaccuracies in self-reporting. Enforcement powers must be applied against water companies repeatedly demonstrating inaccurate self-reporting.

### **Q4: Do you agree with our proposed approach to emergency overflows?**

EO should be kept separate from stormwater overflows as the mechanism for the spill should be different and the notifications conditions are considered differently within guidance. Companies should be required to report all EO discharges (not just on request as currently required by EA) and regardless of whether they consider it have 'detect a pumping station failure that is likely to cause [significant pollution](#)' since it is unclear what the definition of 'significant pollution' is.

The Marine Conservation Society requested via Freedom of Information request data on Emergency Overflows on 30<sup>th</sup> March 2023 from the Environment Agency. We had still not received the data by the 4<sup>th</sup> of May 2023. On querying this, we were told that "the dataset is not yet complete and that the data returns are still undergoing quality assurance checks. We are likely to be in a position to respond to your request with the full dataset by close of business on 19 May 2023."

We finally received the FOI at the end of the 26<sup>th</sup> of May. We find it concerning that the FOI was not completed within the statutory required time frame of 20 days, nor was it completed during the Environment Agency's own deadline which fell beyond the statutory time frame. Furthermore, given that we requested EO data for 2021 and 2022, it is very concerning that the data was still undergoing quality assurance checks. We wrote a response expressing these concerns and asked for whatever data was currently available to be sent i.e., for the request to be completed in tranches. The lack of transparency on this data is concerning and that it should be publicly available in line with the EDM requirements.

When we received the FOI, we were shocked by how frequently Emergency Overflows are being used. Most notably:

- 10% of Emergency Overflows are monitored (686 of 7,016)
- 34% of monitored Emergency Overflows spilled during 2022 (233 of 686)
- 60% of Emergency Overflows which spilled during 2022 did so more than once (144 of 233)
- 86 Emergency Overflows discharged into Shellfish Waters a total of 491 times

These statistics demonstrate that the preventative measures in place to prevent Emergency Overflows from spilling are either inadequate, or water companies are wilfully misusing their permits. Either of these instances should warrant a thorough investigation and penalties applied to water companies misusing their Emergency Overflow permits.

We would propose that in order to gauge the scale of Emergency Overflow use, water companies should be compelled to monitor 100% of their Emergency Overflows by 2026. This monitoring should be available to the public in real-time in order to increase transparency, and for regulators to understand the scale of Emergency Overflow use. In addition, there should be punitive measures for excessive use of Emergency Overflows, with increased penalties for those EOs spilling more than once per year. If penalties are monetary, this cost should not be passed onto water company customers under any circumstances.

Emergency Overflows should be used very rarely, and at present, it's clear that isn't happening. For bathing water regulations, abnormal situations would not be expected to occur more than [once every 4 years](#). The frequency of EO spills, if not specified within the original design, should be agreed as part of the permit with the regulators, and should be reported against. This data should be made publicly available in real time (and should include design specification/permit spill data). Currently, we are unaware of any disincentive for rerouting CSO into EOs. This issue may be particularly acute where EO and CSOs are combined.

**Q5: Do you have any further comments on this performance commitment?**

Any penalties or performance related monetary impacts should not negatively impact customer bills and should be taken from company dividends. Where companies are not meeting the legal minimum performance required, no dividends should be paid and no company bonuses. All targets of improvements should have yearly improvements required to prevent companies saying cost is prohibitive at the end of investment cycle.