



Response to Ofwat consultation on “Updating the storm overflows performance commitment definition for the 2024 price review (PR24) from Windrush Against Sewage Pollution (WASP)”

WASP welcomes Ofwat’s initiative to engage with a wider range of stakeholders and to seek to address public concerns about the pollution of rivers in England from sewage. We agree with the objectives of the proposals and the recognition they reflect of the need to ensure both reduced spills and comprehensive monitoring of spills. However, we have significant reservations about some of the proposals.

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

We appreciate the response to public concern reflected in the proposal for this target and the intention to ensure that spills reduce over time. However, we have several concerns about the proposal:

1. The target as set does not distinguish between legal and illegal spills. We consider that rigorous enforcement of legal and permit requirements should be the foundation of regulation for the sector. Setting a target that does not recognise the distinction between legal and illegal spills therefore risks distracting attention from the repeated failure of water and sewage companies (WaSCs) to abide by their legal and permit requirements.¹ Any target of this form should therefore apply only to spills that are in principle permitted. The regulators must ensure that they are effectively enforcing legal and permit requirements and that WaSCs who breach them are subject to sanction, including for spills that breach permits but currently attract only cautions or warnings, if any response at all. Sanctions to be considered should include additional levies or fines for those illegal events that fall outside Environment Agency (EA) guidelines, and escalated fines for serial offenders and consequences for the Directors of WaSCs.
2. Under the 12/24 method, multiple discharges within the first 12-hour period are counted as one spill, and any discharges in the next and subsequent 24-hour blocks are counted as one additional spill per block. The spill measure pays no attention to the volume of spillage, which we consider should be the basis of targeting for potentially legal spills. Regulatory attention should therefore focus on accurate measurement and targeting of spill volumes, rather than spill counts, for potentially legal spills, while ensuring enforcement and effective sanctions for illegal spills (with greater sanctions for greater volumes of spill).
3. As noted in the recent EA report² on spills in 2022 fluctuations in rainfall are likely to be the main determinant of changes in year to year performance in the average number of spills (reflecting past failures to maintain networks and prevent infiltration) so that it will be difficult to determine the extent to which measured performance reflects actions by WaSCs in the short-term. In addition, spill numbers are subject to manipulation via a range of known tactics including tankering to other sites already spilling, and overloading treatment sites well in excess of Flow to Full Treatment (FFT) limits.

¹ For instance, analysis by WASP suggests that for Thames Water in 2020 and 2021 about 13% of spills took place in dry weather conditions – which is a lower limit on the total number of spills breaching licensing conditions, since these could also include early spilling that can only be identified through analysis of treatment flow data.

² [Environment Agency publishes Event Duration Monitoring data for 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/environment-agency-publishes-event-duration-monitoring-data-for-2022)



4. While the target proposed implies a lower spill count than has happened in the recent past for most WaSCs (at least as reflected in the available data), the target figure is not based on a coherent policy framework or on accurate and genuinely independent assessment of the costs and benefits of investment and other actions to reduce spills. There is an urgent need for an improved policy framework and for a stronger base of independent evidence to inform policy.

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

Ofwat is correct to pay attention to the issue of failure to monitor storm overflows, both through the likely failure of some WaSCs to meet the requirement to have EDMs installed at all storm overflows by the end of 2023, and through monitor failure.³

We disagree with the proposal to introduce an arbitrary unmonitored overflows adjustment which will further complicate the interpretation of performance data. Instead, there should be effective enforcement action involving punitive fining of companies that do not meet their obligations to have EDMs installed and properly functioning (noting that the EA already makes excessively generous allowances for acceptable levels of monitor failure in respect of flow which is an essential component when EDM data is contested). The proposal states that this approach was considered but rejected. We would welcome further information about the reasons for this. We do not consider that seeking to reduce the number of separate performance commitments on WaSCs would be a sufficient reason.

The proposal that (p.13) “the company will provide external third-party assurance, on an annual basis, that the company implements appropriate processes to identify event duration monitors that do not accurately report spills” is a welcome recognition of the well-evidenced (including through WASP’s research⁴) failure of Operator Self-Monitoring (OSM). However, we are sceptical, on the basis of the past behaviour of the WaSCs, that genuinely independent external third-party assurance can be provided if it is contracted by the companies. We therefore consider that the regulators should take direct responsibility for monitoring compliance even if the costs of this should be met by the WaSCs.

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

The need for such an adjustment in part reflects the point made in our response to Q1 that setting a target on the basis of average spills of all types deflects attention from the need to eliminate illegal spills and creates possible opportunities for targets to be gamed – something which regulators need to be constantly aware about and actively monitoring.

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

We agree that in principle emergency overflows should not be included within a performance target of this kind, and with the proposal to introduce a new reporting requirement on the number of spills from emergency overflows. However, we note that WASP has evidence of examples where spills from “emergency” overflows have been taking place regularly over long periods of time (or would have done but for tankering operations sometimes lasting years), and where WaSCs have failed to

³ WASP’s analysis suggests that in 2022, for some WaSCs, more than 20% of EDMs were failing.

⁴ See Peter Hammond, “The failure of Operator Self Monitoring of Sewage Treatment”, WASP, February 2023. <https://drive.google.com/file/d/1Xsr67YGjw9tr4IalBzq8GNe2q3kT2PcT/view>



take prompt action to carry out repairs or to invest to prevent electrical power failures taking place. While only incomplete data is available, some emergency overflows have repeated spills as shown for instance in 2020 and 2021 EDM returns for Southern Water. Controlling emergency overflows due to equipment failure or under capacity can involve very long-term tankering operations that impact heavily on communities.⁵ There are examples where this has gone on for up to 11 years at one site.

Again, proactive monitoring and enforcement is required to ensure that emergency outflows are appropriately defined, are indeed only used in well-defined and exceptional circumstances, and that their use does not reflect WaSC failures to properly invest and maintain facilities.

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

While we welcome the objective of reducing sewage pollution through storm overflow spills that is reflected in the proposal, we remain concerned that regulators are paying insufficient attention to ensuring WaSCs operate legally and within the terms of their permits through appropriate monitoring and enforcement of their obligations along with punitive sanctions for non-compliance.

More broadly, we consider that the regulatory approach continues to have an excessive focus on the use of performance targets that are not clearly anchored in an appropriate policy framework, whose interpretation and link to WaSC behaviour can be uncertain, that are based on recording events rather than measuring volumes of spills, and that may be subject to manipulation by WaSCs.

We therefore consider that strict enforcement (with automatic fining and consequences for WaSC directors responsible) of a permitting regime that truly protects the environment, including in relation to storm and emergency overflows, should be the basis for regulation. There is no doubt that the cumbersome and ineffective investigatory capabilities of the EA need to be radically overhauled in order for this to be achieved. The aim must be to end the situation where WaSCs can choose not to meet their legal requirements so that it is profitable for them to pollute.

⁵ See for example this currently unresolved example from Meysey Hampton in Gloucestershire: <https://www.wiltsglosstandard.co.uk/news/23525690.disgruntled-villagers-demand-action-nine-months-disruption/>