

Consultation on updating the storm overflows performance commitment definition for the 2024 price review

Blueprint for Water Response – May 2023

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This response is supported by the following Link members:

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Blueprint for Water welcomes this opportunity to respond to the Storm Overflows Performance Commitment Definition for the 2024 price review.

We welcome a performance commitment for storm overflows in the 2024 price review. However, we have concerns with several elements of the proposed commitment. Water company efforts to tackle pollution from storm overflows should first prioritise those causing the greatest environmental harm. Yet the proposed performance commitment is based on average spills, which will not adequately reflect environmental harm, and could drive water company action to instead tackle ‘low hanging fruit’. The performance commitment should also take a stronger precautionary approach when faced with

uncertainty – for example, regarding unmonitored storm overflows. We discuss these points further in our response.

Blueprint for Water previously shared thoughts on the proposed approach to performance commitments in PR24 in our response to the PR24 draft methodology.¹ We summarise these points again in relation to the proposed storm overflows performance commitment, in particular our concern that this will not encourage water companies to reduce spills specifically through using sustainable drainage and other nature-based solutions. We would welcome the opportunity to work with Ofwat on this ahead of the next Price Review.

We would be pleased to discuss any of the points in our response further.

Consultation questions

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 agree that there should be a performance commitment for storm overflows (SOs) in the 2024 price review, and that there should be financial consequences for companies who do not meet their targets. The PC is intended to incentivise actions above and beyond those required by the existing permitted baseline and the effects of new enhancement expenditure as determined by the SO targets. Therefore, we feel that the PC should be used to address the limitations of the targets and direct action towards problematic SOs, and spills, that would not otherwise be prioritised by existing permits or the new targets.

On that basis, we do not agree that this performance commitment should be based on the average number of spills. Water company efforts to tackle pollution from storm overflows must first prioritise those causing the greatest environmental harm, but the number of spills alone will not adequately reflect the environmental harm caused. For example, a large overflow that spills less frequently may cause greater harm than a smaller overflow that spills more frequently, as indeed may an overflow that spills less frequently but for a longer duration. The targets prioritise protected sites and designated bathing waters. We know in practice that recreational users enjoy waterways that are not formally designated, and that problem SOs can affect ecology in unprotected sites too. We suggest that the PC requires companies to assess ecological harm and recreational pressures beyond the target sites and focus action on those rather than seeking to reduce average spills across the network. The EA's definition of unsatisfactory overflows is a useful starting point, as are data on recreational hotspots.

The perverse incentive to deal with lowest cost interventions also means the PC should also introduce some distinctions between the causes of SO spills, as well as the prevailing meteorological conditions at the time of a spill (and hydrological flows/dilution assessment), and set incentives appropriate to each category. Given the variability between companies in types, causes and conditions of spills, an average reduction would over-reward those with "lower hanging fruit". Companies seeking to address hard-to-address issues should be given flexibility to set stretching PCLs and ODIs appropriate to the issue at hand. Though dry weather spills should generally be avoided, without these distinctions a stock PC will

¹ Blueprint for Water. (2022) [WCL PR24 and Beyond Appendix Response 16_09_2022.pdf](#)

likely incentive action only on the lowest cost interventions, regardless of whether the SOs and spills are in the most problematic categories. Breaking the PC down into specific drivers will enable companies to set PCLs and ODIs that address the issues their customers want action on and better address the reputational impact of the SO scandal. We therefore consider any divergence between companies' approaches and levels of ambition to be wholly appropriate in this instance, even though sector-wide benchmarking is made more difficult.

We acknowledge that the proposed calculation for number of spills does partially reflect duration; however, something that more explicitly recognises harm must also be included in the performance commitment. In the absence of volume information or water quality data, we suggest that an additional adjustment should also be applied for spills from overflows discharging into High Priority sites as defined in Annex 1 of the Storm Overflows Discharge Reduction Plan. Notwithstanding that we see shortcomings with that definition (for example, the exclusion of marine designations) we suggest that the inclusion of an adjustment that recognises likely environmental harm will chime well with water quality campaigners, and will speak to the improvements that companies will be required to make for such overflows under the plan by 2045, therefore encouraging them to achieve this target more quickly.

We acknowledge Ofwat's position that setting an incentive package requires particular data that is currently only available for number and duration of spills, and that as water companies install more sophisticated monitoring over 2025-2030 it will then become possible to consider a performance commitment based on additional factors. However, to merely 'consider' is not ambitious enough. As a minimum, Ofwat should set out its clear intention to include a performance commitment for the 2029 price review based on the monitoring that will be undertaken under s82 of the Environment Act (which concerns the monitoring of water quality impacts), and should be actively encouraging and enabling companies to install the necessary monitoring as soon as possible. Ofwat should also consider the role that this monitoring data can play in assessing compliance as it comes on stream.

The baseline for any reductions must be the permitted levels, rather than merely observed levels. We also want further clarity on the assurance process that will enable Ofwat to judge that proposed actions undertaken in pursuance of the PC are genuinely above the permitted and funded baseline. We note from the PCDs in the Accelerated Investment programme that Ofwat is requiring certification to that effect as a condition of the PCD. We suggest that a random audit of (for example) 10% of proposed SO actions should be introduced to ensure that no new money is being provided to pay for actions and/or maintenance already funded through base expenditure.

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

We agree with Ofwat's proposed approach to unmonitored storm overflows, which would require companies to assume a level of spills for any storm overflows that do not have monitors installed or are only partially monitored during the year. However, we question whether an assumption of 50 spills is appropriate.

According to Ofwat data from 2022 referenced in the consultation document, 1 in 6 monitored storm overflows spilled more than 50 times a year. 2021 data showed that a small number of overflows even spilled more than 100 times (4%) and 200 times (0.4%) per year. This could effectively incentivise a company to not install monitoring at any overflows which it suspects will spill highly. The assumed level of spills from unmonitored SOs should be calculated per water company, and should adopt a stronger

precautionary approach than currently proposed. We propose using the 90th percentile of monitored spills for that company, or 50 spills, whichever is greater. This would be a stronger incentive for companies to install monitoring across all SO assets, as soon as possible.

As above, we argue that Ofwat should be actively encouraging and enabling water companies to install water quality monitoring across all storm overflows, as required under the Environment Act 2021, as soon as possible. Monitoring should be installed for High Priority sites as a priority within this process. This would not only provide early information to inform the tackling of harmful SOs under the forthcoming AMP, but would also enable an improved storm overflows performance commitment for PR29. For PR19, we asked water companies to aim for 100% monitoring of SOs², and in our 2021 Blueprint for Water 'Environmental Manifesto for PR24' called for this to include load information as well as volume.³ The lack of monitoring coverage for water industry assets is a long-standing problem that should be addressed during this Price Review. Robust, comprehensive data on storm overflows is essential to ensure that actions to tackle this pollution and improve the state of the water environment are as effective and efficient as possible, and to ensure that the water industry is held to account for both environmental and societal obligations.

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

We agree with Ofwat's proposed approach to mid-period changes. However, we do share the concerns raised by other stakeholders regarding the onus this approach places on companies to 'proactively and accurately identify and report their storm overflows'. There is already significant public and political concern regarding the reliance placed on water companies to self-monitor performance, for example in relation to discharges from wastewater treatment works. In 2022, it was reported that self-monitoring by water companies was a hundred times less likely to detect breaches than testing by the Environment Agency.⁴ The ongoing investigation into all water companies in England and Wales exemplifies the risk that this reliance on self-monitoring and self-reporting poses.

Ofwat should be working more collaboratively with the Environment Agency to effectively regulate the water industry. If Ofwat's proposed approach to mid-period changes proceeds, this regulation must include a strong approach to assessing and addressing any inaccuracies in companies' self-reporting, making full use of enforcement powers as necessary.

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

We agree with the proposed approach to keep emergency overflows separate from the storm overflows performance commitment, (since both the causes and impacts of emergency overflow operation are likely to differ from those for Storm Overflows), and that emergency overflow spill incidents will instead

² Blueprint for Water. (2017).

[https://www.wcl.org.uk/assets/uploads/img/assets/uploads/Blueprint for PR19 Environmental Manifesto April 2017.pdf](https://www.wcl.org.uk/assets/uploads/img/assets/uploads/Blueprint%20for%20PR19%20Environmental%20Manifesto%20April%202017.pdf)

³ Blueprint for Water. (2021)

[https://www.wcl.org.uk/docs/assets/uploads/WCL Blueprint for Water PR24 Environmental Manifesto September 2021.pdf](https://www.wcl.org.uk/docs/assets/uploads/WCL%20Blueprint%20for%20Water%20PR24%20Environmental%20Manifesto%20September%202021.pdf)

⁴ Engineering and Technology. (2022). 'MPs demand action as data calls into question water company self-monitoring'. <https://eandt.theiet.org/content/articles/2022/09/mps-demand-action-as-data-calls-into-question-water-company-self-monitoring/>

be captured by the serious or total pollution incidents performance commitments at PR24. We welcome the proposal to introduce a new reporting requirement for annual reports from 2023-2024 on the number of spills from emergency overflows. As with all storm overflows, we need to see 100% monitoring of all emergency overflows as soon as possible.

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

Blueprint for Water previously shared our thoughts on the proposed approach to performance commitments in PR24 in our response to the PR24 draft methodology.⁵ We believe that PCs can play a key role in incentivising companies to do more of the things that matter to customers and society, but that incentives must be carefully formed to ensure that they are delivering the best outcomes. We summarise these points again here.

- PCs should not deliver rewards for simply meeting legislative requirements - it is key to achieving better value for customers that the penalty and incentive regime imposes penalties for underperformance and rewards for outperformance, but does not reward companies simply for 'performance'.
- For PCs to be impactful, the financial (and reputational) pain of not delivering against them must be greater than the cost of meeting them. If there is a least cost route which does not see the commitment reached or exceeded, then the penalty set was clearly not large enough.
- If the bulk of environmental investment is being delivered through the WINEP, and PCs are 'pushing at the margins' to secure better outcomes, this leaves a potential gap for emerging issues and innovative approaches – for example, nature-based solutions to tackling sewage and wastewater pollution. As a case in point, the proposed SO PC does nothing to encourage companies to reduce spills specifically by using sustainable drainage and other nature-based solutions. We would welcome the opportunity to work with Ofwat on this ahead of the next Price Review.

⁵ Blueprint for Water. (2022) [WCL PR24 and Beyond Appendix Response 16 09 2022.pdf](#)