

WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE ENVIRONMENT AGENCY CHARGES CONSULTATION: WATER INDUSTRY ENFORCEMENT LEVY

MAY 2025

PROLOGUE

1 The Worshipful Company of Water Conservators ('WCWC') is a City of London Livery Company focussed on the long-term health of our water resources and the broader environment. Our members include senior professionals from water, environmental and related industries and regulators, along with others who share our concern for water and the environment. Our experience and knowledge ranges from the complexities of environmental sciences, through the application of engineering to deliver the goals identified by those sciences, and the subsequent management of the assets created. The WCWC's purpose is *promoting a diverse and sustainable environment*.

2 As part of that purpose, the WCWC has been responding to relevant consultations particularly on matters relating to water conservation. These are archived on its website over the last three years.

<https://waterconservators.org/policies-and-practices/>

What the EA is consulting on

3 Following the introduction of the Water (Special Measures) Act 2025 for water discharges, the Environment Agency, EA, proposes introducing a new levy that covers the cost of its enforcement activities. *The proposed levy will help to fund an improved approach to regulating the quality of water in the natural environment by resourcing its enforcement activity of the water industry.*

*4. The annual water industry enforcement levy will be payable **in addition** to annual permit charges which are applied to individual consents to discharge. Permit charges cover the costs of regulating a permitted activity. For example, carrying out checks to make sure water companies are complying with the conditions in their permit. This work includes activities such as site inspections and audits, assessing data returns, providing advice and guidance, issuing warnings and serving compliance and information notices.*

5 The regulatory activities of the EA stem from the statutory legal obligations placed on it and from policy objectives set by government. To date these duties have been funded through a combination of government funding and annual permit charges. Extra resources were provided to the EA in 2024 to cover the costs of inspection of discharges in parallel to the formal statutory monitoring by water companies.

6. The new water industry enforcement levy will generate a sustainable income to fund an improved approach to quality regulation for the water industry. This will address current and future challenges around water regulation.

7 The EA states that in addition to enforcing permit non-compliances, it also carries out enforcement work relating to unauthorised discharge activities from parts of the sewerage network that do not require permits, for example burst sewers or broken rising mains. It states that historically it has not had the legal powers to charge water companies for the costs of enforcement, so it has been funded by government.

8 It also states that following the introduction of the Water (Special Measures) Act 2025 for water discharges, it proposes introducing a new levy that covers the cost of its enforcement activities. The proposed levy will help to fund an improved approach to regulation by resourcing its enforcement activity of the water industry. By implication it cannot recover similar costs from other activities which do not have the benefit of the 2025 Act and the WCWC suggests that this needs addressing.

9 The EA acknowledges that an approach whereby operators are directly charged the costs of enforcement after the event (“reactively”) closely aligns with the “polluter pays” principle. Specific charges and fines will still be borne by any offender. But its levy proposal facilitates upfront funding to put in place a trained and skilled workforce to assess the scale of offending and address the public’s demand for an improved water environment. Income received from the levy will be used to fund a “consistent, intelligence-led and outcome-focused enforcement service “to address both sector wide and company specific issues. The EA states that it has only included essential activity in the relevant costs to ensure the levy remains proportionate.

[Environment Agency external corporate report template](#)

SUMMARY

10 The WCWC agrees in principle, that the EA needs to be adequately funded to carry out its duties of permitting and enforcement for the Water Industry.

11 But the proposals are discriminatory against the water sector, partial in application and unnecessarily complicated. There is no practical reason to create a parallel set of rules for the collection of a separate levy. Provisions already exist for additional income to be generated by an amended Annual Charges Scheme. The proposals complicate matters with a number of exceptions and commentary on matters, such as Company gearing, when there is an established framework.

12 The WCWC suggests that these proposals are recast as amendments to the existing scheme.

13 The proposals show no sign of an overall strategy for EA funding to deliver compliance with the requirements of the Water Framework Directive Regulations or whatever succeeds them. There is no hint of other mechanisms, within a proper business case, about how other users and polluters will contribute too EA resources. **Could there be a Highway Drainage Levy? The WCWC suggests that Defra should start work on a more structured approach to the funding of resources by users and polluters, including government itself.**

THE WCWC RESPONSE

14 The WCWC understands the principles set out about the recovery of costs, but in the simplest of terms, this appears to be about Defra having to cut back its budgets and thus having to cut Grant in Aid to the EA which will have to find ways of increasing self-funding.

[Managing public money - GOV.UK](#)

15 The WCWC feels uncomfortable that once more this is a silo approach. The levy will only apply to the water industry, and it will not apply to other sectors which also require enforcement activity at this time. It is discriminatory to classes of discharger. Does this help to overcome the deficit of public trust which is a major problem? It implies that the Water Industry is the major problem behind water quality in the natural environment and that all companies and by implication their customers must pay a levy to cover relevant and general costs of enforcement.

16 At a time when the call is for regulation to be less complicated, a new levy, which is partial in terms of the circumstances where it applies and discriminatory in terms of the class of discharge, does the opposite which has resulted in proposals which have gaps, inconsistencies and even paradoxes. It has pursued an available tactical route in the water legislation and even the terminology used feels like 'virtue signalling' rather than proper resources planning. It is far more complicated than it needs to be, and it may be subject to legal challenge.

17 The starting point must be what the EA can charge for now. In consulting on increased annual charges in early 2024, the EA stated that additional funding will be essential to achieve ambitions to deliver more regulatory inspections, smarter regulation and hit targets to improve water quality. It sought to increase charges from the water industry to:

- increase the amount of front-line regulation which includes:
 - carrying out more evidence and intelligence led site-based audits and inspections of permitted water company assets and management systems
 - collecting, assessing, and analysing monitoring data from water companies
 - preparing for, responding to, and recovering from water company pollution incidents that have minor or minimal impact on the environment
 - for more serious water pollution incidents costs will continue to be recovered directly through time and material mechanisms (either using section 161ZC of the [Water Resource Act 1991](#) or as an [unplanned event](#) under this charging scheme).
- transform water industry regulation through using enhanced intelligence-led approaches to regulation and embedding best practice within industry.
- integrate and develop better water quality environmental planning on a catchment basis.

- develop the regulatory relationships with water companies to develop long-term compliance plans.
- improve digital capacity and to enhance the ability to regulate the water industry in a modern and effective way.
- accelerate the permitting process, modernise the permit stock and support innovation in catchment-based permitting.
- increase our assurance and scrutiny of the water industry's investment programme.

At first sight these ought to be enough to provide for the functions set out for this proposed levy. Evidently not.

18 The Independent Commission Call for evidence pointed out (para 436) that 98% of WINEP are statutory requirements and (para 193) that this reduces opportunities for optioneering and carrying out functions in line with the above last point (para 193). Therefore, Defra should link work on the more structured broader approach needed for funding EA activities (along the lines of the 2024 consultation) with a coherent new approach to water management and policy following the findings of the Cunliffe Commission – based on sound integrated catchment-based assessment and economic appraisal as WCWC has advocated in its submission to the Water Commission. S11 of the Water (Special Measures) Act 2025 provides for an extension of section 41 of the Environment Act 1995 (powers of environmental regulators to make charging schemes) by inserting **“as a means of recovering costs incurred by it in performing water industry enforcement functions, the Agency or the Natural Resources Body for Wales may require the payment to it by water companies of such charges as may from time to time be prescribed.”**

What is enforcement?

19 The 2025 Act states that “water industry enforcement functions” *means functions performed for the purpose of assessing or securing compliance by water companies (within the above meaning), or responding to failures on their part to comply, with any provision made by —*

- *sections 205A and 205B of the Water Industry Act 1991 (pollution incident reduction plans and implementation reports),*
- *Chapter 2 of Part 2 of the Water Resources Act 1991 (water abstraction and impounding),*
- *Chapter 3 of that Part (drought orders and drought permits), or*
- *the Environmental Permitting (England and Wales) Regulations 2016 (regulation of certain facilities and activities),*

But, in relation to water supply licensees and sewerage licensees, includes those functions only so far as performed in respect of the activities to which their licences relate.”

20 The Consultation gives a more detailed definition in relation to the sewerage functions but does not refer to enforcement under the Water Resources Act. It states *that in some cases, its follow-up to non-compliances identified through inspections is classed as enforcement work, which is not covered by charges income as described earlier. In addition to enforcing permit non-compliances, it also carries out enforcement work relating to unauthorised discharge activities from parts of the sewerage network that do not require permits, for example burst sewers or broken rising mains.*

21 The Consultation states that the enforcement effort includes:

- prosecutions, civil sanctions, and revocation of permits
- investigations and bringing enforcement proceedings, including those that result in no action or are unsuccessful
- cross cutting functions such as the provision of digital tools where they relate to water company enforcement

22 The proposal recognises that water industry enforcement effort is complex. It acknowledges that an approach whereby operators are directly charged the costs of enforcement after the event (“reactively”) closely aligns with the “polluter pays” principle. However, its levy proposal facilitates upfront funding to put in place a trained and skilled workforce to assess the scale of offending and address the public’s demand for an improved water environment. Income it receives from the levy will be used to fund a “consistent, intelligence-led and outcome-focused enforcement service “to address both sector wide and company specific issues. It states that it has only included essential activity in relevant costs to ensure the levy remains proportionate.

23 The Consultation also states that where the EA can recover costs for formal enforcement action, it may continue to do so (for example, by seeking additional costs through the courts where the required effort is above and beyond that embedded in the levy). It will only ever charge once for any costs it incurs. So, to be clear, the levy is not connected to performance per se, rather how it could cover the specific costs of abortive legal action. The WCWC suggests the costs for prosecutions in specific cases be ring fenced outside of the levy concept with the performance of the EA in taking prosecutions being part of its metrics. AS an aside that WCWC agrees that. And the WCWC agrees that any costs awarded against Water Companies must be paid for out of Water Company dividends and not customer charges.

24 The WCWC notes that the 2025 Act does not require a special Enforcement Levy, while providing for the EA to charge for enforcement. However, having the powers to charge for enforcement it is an entirely different to introducing a levy which is discriminatory. **The WCWC is strongly of the view that a much simpler consistent approach will be to add much better-defined enforcement activities to the those provided for in the Annual Charge with its established framework and to consult on the increase in charges that will bring.**

The WCWC suggests that these proposals are recast as amendments to the existing scheme.

25 When the charges are determined for each year, the amount of effort required for enforcement will reduce as time goes by. Resources, which must still be resilient enough to cope with things which will always go wrong in life.

26 Given that the levy, or even a modified charging scheme, is about increasing the EA's resources, shifting away from Grant in Aid is a simple matter of an extra cost for regulated water company activities and will qualify for 'cost pass through.' The part of the Consultation about the gearing of water companies is a needless distraction and should be omitted.

A Broader Context

27 The WCWC understands the focus on water companies at present and the legal powers given to the EA to increase charges to them. The WCWC suggests that a more integrated strategic approach to identifying the resources needed and how they are going to be funded is needed. This calls for a proper business case, not just one which takes an easy opportunity.

28 The overall goal needs to be identified. For example, is it compliance with the requirements of the WFD regulations, or whatever emerges from the current reviews?

29 The resources necessary to deliver that must be identified more specifically. This is at the heart of the current debate because it has been recognised that the EA has been under-resourced for some time.

<https://www.theguardian.com/environment/article/2024/jun/13/dirty-waters-how-the-environment-agency-lost-its-way#:~:text=Meanwhile%2C%20funding%20for%20environmental%20protection,plans%20where%20sewage%20is%20treated.>

30 Companies have sought to deliver these functions efficiently with demonstrable efficiency savings and streamlining operations – as the WCWC submission to the Water Commission advocated. This was also in response to the EA increasing the resources available for water regulation by increasing Annual Charges for sewerage discharges (as referred to in the Consultation).

31 As the WCWC noted earlier, increases in resources are going to have to come from other sources than Grant in Aid as much as possible.

32 The WCWC points out that it is important to recognize that water management is an integrated activity, whilst team members may be individually focused on activities like farm inspections or storm overflows, they must not act in isolation. vertical focus and horizontal awareness.

33 The WCWC also points out that it is important to understand that pollution arises from point and diffuse sources. It is easier to track down point source pollution

particularly when so much data will be contributed by the water companies own monitoring of rivers and discharge (a paradox is that the brouhaha about the compliance of water company discharges is based on data from the water companies own monitoring programme and there us more to come with the implementation of S82 monitoring of rivers at the point of discharge).

So, for unit for unit of pollution, diffuse pollution is likely to consume more resources than point sources, although admittedly this can be stopped more readily when identified and will not consume more repeat resources.

34 There needs to be a move away from just the simple notion of 'polluter pays' for discharges to rivers and focus more on 'user pays' to provide a more coherent justification for ongoing charges for good effluents. The EA and Defra must take the lead in getting everyone to understand that we are all users in this context and we need to pay for the right of our 'cleaned up' sewage to be discharged into rivers and to play our individual roles in helping that .Dumping of insoluble, untreatable stuff down a toilet is the real fly tipping in the waste- water system .

35 The WCWC suggests that there is a need to face up to the reality that water companies may be high profile polluters, but not the heaviest. The WCWC refers to a blog in 2024 by Helen Wakeham Director of Water at the Environment Agency (EA) in which she highlighted that the chief causes of Water Framework Directive (WFD) failure were:

Agricultural runoffs (slurry, fertilisers and pesticides)	40%
Sewage treatment plant discharges	29%
Urban sources (road run-off, etc)	18%
Combined sewer overflows	7%
Localised issues (e.g., abandoned mines)	3%

<https://environmentagency.blog.gov.uk/2024/09/22/world-rivers-day-what-are-the-biggest-causes-of-river-pollution-and-whats-being-done-about-them/>

<https://www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence/state-of-the-water-environment-indicator-b3-supporting-evidence>

36 It is worth picking out some of the statements in the blog to give an insight into the importance of land use. The blog reports that the EA

- *regulates the agriculture sector by checking compliance with the Farming Rules for Water*
- *it works alongside farmers to make sure they take reasonable precautions to minimise the risk of pollution from applications of nutrients to land and livestock management. And that since 2021 we've undertaken more than 10,000 farm inspections and issued over 800 warning letters and site warnings, and 17,467 improvement actions to farmers.*

37 However, given the large number of farms there will need to be de minimis exceptions from any cost recovery charges. EA's 2024 consultation reports that "around 5% of agricultural businesses will be impacted by proposed changes to charges for water quality permits" which makes sense. The game here is raising revenue and the costs and difficulties of collecting raised charges from many small farms would exceed or largely offset the revenues raised. So, need to focus on just the big specific readily identifiable polluters with permits (e.g. agro-industrial units such as big chicken operations) rather than a myriad of small farms.

38 The increased farm inspections have been funded by Grant in Aid.

<https://farming.co.uk/news/environment-agency-farm-inspections->

39 As the WCWC observed, the EA states that the levy will only impact the water industry, it will not impact other sectors at this time. If the resources needed by the EA are allocated fairly the sums being raised by charges imposed by the EA on water companies should only raise a minority leaving the majority to be still covered by Grant in Aid for many of the complex reasons raised above and other mechanisms of income generation be developed, such as a **Highway Drainage Levy**. **The WCWC suggests that Defra should be start work on a more structured approach to the funding of resources by users and polluters, including government itself.**

Some other issues

40 At the heart of any discussion about enforcement is the definition of what is compliance. And the WCWC has identified that as in need of urgent attention. Getting it wrong could lead to problems with prosecution and waste of investment. And the WCWC has made some suggestions on this to the Independent Water Commission with the BSI and support of CIWEM, particularly to the Independent Water Commission. There will also need to be a better consensus on mitigating circumstances particularly with sewer overflows.

<https://www.ciwem.org/the-environment/why-dry-weather-discharges-of-untreated-sewage-happen>

41 The WCWC is very pleased that, as it advocated in its repose to the Independent Water Commission, the Consultation uses a welcome return to the Cost to Customer as a guiding metric.

42 One final point. In all the debates about the relationship of Licenced Water Companies and parent equity holding companies, there is increasing confusion, and the WCWC has been advocating clarity around this topic. This Consultation refers to sewerage undertakers as defined by the 1991 Water Industry Act, yet then goes on to refer to the Group names rather than the Licence Holder names. Even though the WCWC considers the points about gearing to be unnecessary, it assumes that the figures quoted are for the Licenced Companies and covers all activities. The WCWC is not sure why all of the is included and wonders if the drafters of the Consultation are completely aligned to the realities of these issues