

THE WORSHIPFUL COMPANY OF WATER CONSERVATORS

RESPONSE TO THE DEFRA CONSULTATION ON NEW PENALTIES FOR WATER COMPANY OFFENCES

NOVEMBER 2025

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/>

PROLOGUE

3 The WCWC recognises this response to the public concerns about environmental water quality and the impact of sewage discharges. This Consultation focuses on the penalties incurred when permits are breached. The WCWC does not offer any comments on the political optics or the size of the penalties or the exact legalities of what is proposed and restricts its contribution to the broader context and the technical implications of these proposed changes. To aid the readership of a wider audience the WCWC sets out some background information already well known to Defra.

<https://www.gov.uk/government/consultations/new-penalties-for-water-company-offences>

[Consultation on strengthening penalties for water company offences - Defra - Citizen Space](#)

4 The Water Special Measures Act 2025 addressed concerns by introducing:

- powers for the EA to impose penalties (VMPs and FMPs) to the civil standard of proof ('on the balance of probabilities'): this means the EA will be able to impose penalties when satisfied that it is more likely than not that an offence has been committed. This will enable minor to moderate offences to be enforced more quickly, cost effectively and proportionately.
- automatic penalties, where the EA must impose FMPs in specific circumstances: this will streamline the penalty process for offences that can be identified and evidenced quickly.

<https://www.legislation.gov.uk/ukpga/2025/5/contents>

5 The Consultation makes proposals to make it easier for the Environment Agency (EA) to take action for breaches of permits. The proposed changes are:

- allowing the EA to impose variable monetary penalties to the civil standard of proof for a range of permit and licence breaches, as well as other permitting, abstraction, impounding and drought offences
- setting a cap for variable monetary penalties (VMPs) imposed to the civil standard
- introducing new automatic penalties that are designed to streamline enforcement for offences that can be identified and evidenced quickly
- setting a value for the new automatic penalty

6 To do so it is proposed in the Consultation that the EA should be able to impose civil standard VMPs for the following offences.

Environmental Permitting Regulations 2016 offences:

- Regulation 38(1)(a) and (b) – Operating without or other than in accordance with a permit.
- Regulation 38(2) – Failure to comply with or contravening a permit condition.
- Regulation 38(3) – Failure to comply with the requirements of a notice.
- Regulation 38(4)(a) – Failure to comply with a notice (under regulation 61(1)) requiring the provision of information, without reasonable excuse.
- Regulation 38(5)(a) – Failure to keep required records and make them available to the EA on request. Water Resources Act 1991 offences.
- Sections 24(4) and 25(2) – Unlicensed abstraction or impounding or failure to comply with condition of an abstraction or impounding licence.
- Section 25C(1) – Failure to comply with an abstraction or impounding enforcement notice served under Section 25A.
- Section 80 – Contravention of a drought order or permit.
- Section 201(3) – Failure to comply with the requirements of a Section 201 notice.

7 So focussing on S38 of the EPR 2016 as a general prescription

(1) It is an offence for a person to—

(a) contravene regulation 12(1), or

(b) knowingly cause or knowingly permit the contravention of regulation 12(1)(a).

(2) It is an offence for a person to fail to comply with or to contravene an environmental permit condition.

<https://www.legislation.gov.uk/uksi/2016/1154/regulation/38>

Regulation 38(2) makes it an offence for a person to fail to comply with or to contravene an environmental permit condition. This means that permit holders must adhere to all the

conditions outlined in their permit, such as operating within authorized limits, carrying out required monitoring, and submitting correct documentation, or they risk legal proceedings.

- **Failure to comply:** It is an offence to not follow the rules of an environmental permit.
- **Contravening a condition:** It is also an offence to do something that is against the rules in the permit.
- **Examples:** This can include exceeding permitted emission levels, failing to maintain equipment as required, or not submitting reports on time, according to [GOV.UK](https://www.gov.uk) and [Legislation.gov.uk](https://www.legislation.gov.uk).
- **Responsibility:** The legal holder of the permit is responsible for any breaches and may face legal action for non-compliance, as explained by Hackney Council.

8 But there is an issue around the processes for right of appeal, which are explored later in this response.

SUMMARY

9 The WCWC does not offer any comments on the 'political optics' or the size of the penalties, or the exact legalities of what is proposed, and restricts its contribution to the broader context and the technical implications of the proposed changes. To aid the readership of a wider audience, the WCWC sets out some background information already well known to Defra.

10 It does understand the drive for greater accountability of water companies for non-compliance with permit conditions, and the need to streamline the process for the Environment Agency. Once more the WCWC notes the silo approach to regulatory change and advocates a more holistic approach. To use a colloquial expression ..'we are where we are'. And these proposals set out the consequences of the special measures in the Act of February 2025

11 The WCWC is concerned about practicalities. There are many aspects of these proposals which need a great deal of attention before new Permitting Regulations can be drafted. And the WCWC has highlighted several points.

- The Consultation focusses on Storm and Emergency Overflow, but the amendment to the relevant current Regulations to allow new penalties appears to be generic. So, what will be the consequences for other permitted water company activities?
- The WCWC suggests strongly that a more symmetrical approach to permitting, recognition be given to regulating the external causes of discharge failure and that Defra itself can contribute, examples being to bring in Regulations for Mandatory Sustainable Drainage Systems, further revisions of Building Regulations and further restrictions on the sale and disposal of sanitary and hygiene products .Whilst the WCWC has heard the arguments about the 'nanny state' and regulation' it does suggest that if the drive is to hold the water companies to even more accountability, that statutory responsibility must be extended elsewhere
- In not understanding the broader nature of permitting, it does not make any reference to the difference of Standard Rules and Bespoke Permits

- The WCWC is concerned that there is no hint of a similar approach being used for other kinds of discharge
- The submission gives examples of reasons for non-compliance, the distinction of trivial, minor and major non-compliance and how these are reflected in the regulatory regime and asks how much needs to go into permits per se, and how much goes into accompanying statutory guidance. Such legal matters are rarely 'black and white' It suggests that it could be appropriate to have a Code of Practice somewhat similar to that used in waste management.
- And determination of action by the EA will require expert skills sets on the operational issues of sewerage and sewage treatment assets and not rely on desk algorithmic evaluation of data sets
- In particular ,the WCWC is concerned about future liabilities for past underinvestment determined by Ofwat
- The WCWC is also concerned about the proposals for Appeal processes which need to be clarified.
- An urgent need to be much clearer about the definition of a dry weather discharge and how it is monitored
- And all this must be taken into account in the proposed amendments to the EA Regulatory Enforcement and Sanctions Policy
- And there are significant implications for the skill sets of EA staff ..

12 It also takes advantage to repeat its suggestion for a new integrated discharge quality assurance system, which would embrace the issues of operator self-monitoring and reporting, which could be included in permits.

13 It also takes the opportunity of suggesting again that a new revised integrated Water Regulatory Position Statement is needed into which this set of proposals could be fitted (when eventually formulated into Regulations).

14 The WCWC recognises that in the context of the political and media focus on water quality and these concepts, particularly concerning triviality, will require careful messaging by all parties concerned.

15 The WCWC stands ready to assist the development of the suggestions it is making.

WHAT IS THE REGULATORY SITUATION NOW?

The legal toolkit available to the EA

16 The Consultation reports that *the EA brings criminal prosecutions for the most serious cases. For criminal proceedings the EA is required to prove that offences have been committed 'beyond a reasonable doubt' – the criminal standard of proof. If a prosecution results in a conviction, a court will follow the Sentencing Council's guideline for the sentencing of environmental offences, including for setting a suitable fine.*

17 *The EA also has the option to use civil sanctions, which are enforcement measures imposed by the regulator rather than the courts. These provide a more flexible, reactive and*

proportionate alternative for less serious offences. Civil sanctions are underpinned by the Macrory principles, which set out how civil sanctions should drive improved compliance. Civil sanctions should:

- change the behaviour of the offender*
- eliminate any financial gain or benefit from non-compliance.*
- be responsive and consider what is appropriate for the particular offender and regulatory issue*
- be proportionate to the nature of the offence and the harm caused*
- restore the harm caused by regulatory non-compliance*
- deter future non-compliance*

18 A range of civil sanctions have been introduced across sectors via the Regulatory Enforcement and Sanctions (RES) Act 2008. The EA was granted powers to use these civil sanctions for the water sector through the Environmental Civil Sanctions (England) Order 2010 (the 2010 Order) and the Environmental Permitting (England and Wales) Regulations (EPR) 2016. And have become an important part of the EA's enforcement toolkit. Civil sanctions available to the EA and have become an important part of the EA's enforcement toolkit. Civil sanctions available to the EA include:

- **Compliance notice:** requires the recipient to take specific steps to come back into compliance within the period specified by the regulator, enforceable by a non-compliance penalty.*
- **Restoration notice:** requires the recipient to restore harm caused by an offence within the period specified by the regulator, enforceable by a non-compliance penalty.*
- **Stop notice:** prohibits the recipient from continuing a specific activity or prevents an activity from starting or resuming until certain steps are taken to ensure compliance. Failure to comply is a criminal offence.*
- **Enforcement undertaking:** a voluntary offer made by the offender to put right the effects of their offending, its impact on third parties, and prevent reoccurrence. Where it is not possible to restore harm caused by the offence, then the offer must include some form of environmental benefit or improvement, or compensation for damage. Once accepted, the offer becomes a legally binding agreement.*
- **Fixed monetary penalty (FMP):** a financial penalty of a fixed amount set in legislation. Currently FMPs must be imposed to the criminal standard of proof.*
- **Variable monetary penalty (VMP):** a financial penalty of a discretionary amount set by the EA. Currently VMPs must be imposed to the criminal standard of proof. In 2023, regulations were amended to remove the cap on the maximum penalty that could be imposed, allowing the EA to impose unlimited criminal standard VMPs for offences committed on or after 1 December 2023, supporting their use as an alternative to prosecution for serious offences.*

The Water (Special Measures) Act (WSMA) 2025 introduced new powers for the Environment Agency (EA) to impose civil penalties against offences committed by water companies.

Pollution incidents and their reporting

19 But a lot of the high-profile angst has been about water pollution incidents, primarily pollution incidents arising from storm overflow and emergency overflow discharges. An *Environment Agency (EA) pollution incident is any unauthorized release of a substance into the air, land, or water that could harm people or the environment. The EA categorizes incidents based on their severity, with a major incident involving significant harm such as persistent effects on water quality, extensive fish kills, or impacts on important conservation sites. Examples include spills, leaks, contaminated runoff, or even smoke and dust, all of which require a response plan to mitigate damage.*

General definition

- *A pollution incident is the release of any substance into the air, land, or water that can harm people or the environment.*
- *It includes accidental spills, leaks, and other unauthorized discharges.*

Severity and classification

- *The EA uses a system to classify incidents based on their actual or potential impact.*
- **Major incidents** *are categorized by factors like persistent effects on water quality, extensive fish kills, or significant damage to conservation sites.*
- *Less severe incidents, though still requiring a response, are those that do not meet the criteria for a major incident.*

What to do

- **Have a plan:** *Businesses, especially those handling hazardous substances, must have a pollution incident response plan (PIRP).*
- **Report immediately:** *If a polluting substance has entered or could enter a watercourse or the ground, call the Environment Agency hotline immediately.*

20 The Environment Agency (EA) classifies pollution incidents into four categories: *Category 1 (Major), Category 2 (Significant), Category 3 (Minor), and Category 4 (No impact).* Incidents are assessed based on their impact on the environment, people, and property, considering factors like persistence, extent, and seriousness of effects. *Category 1 incidents have a serious, extensive, or persistent impact, while Category 3 has a minor or minimal impact.*

EA pollution incident categories

- **Category 1 (Major):** *Incidents with a serious, extensive, or persistent impact on the environment, people, or property. Examples include a large number of fish deaths or potential harm to bathers.*
- **Category 2 (Significant):** *Incidents with a lesser, yet significant impact, such as visible pollution or littering with a reduction in amenity.*
- **Category 3 (Minor):** *Incidents with a minor or minimal impact on the environment, people, or property, with only a limited or localized effect on water quality.*

- **Category 4 (No impact):** *Incidents where there is no impact on the environment.*
 - *Note: The EA is proposing a change to this category, requiring proof that pollution was completely contained to classify an incident as Category 4. Otherwise, any pollution entering a waterbody will be recorded as at least a Category 3 incident.*

Assessment criteria

The severity of an incident is assessed based on:

- ***Persistence:*** *How long the effects last.*
- ***Extent:*** *The area that is affected.*
- ***Seriousness of effects:*** *The actual harm caused to the environment, people, or property.*

THE WCWC RESPONSE TO THE CONSULTATION

21 Once more the WCWC advocates that each piece of regulatory change must not only be considered in its own right, but how it fits together with other items of regulation. The Consultation focusses on storm overflows and emergency overflows without giving consideration to the fact that the change in law will be equally applicable to other kinds of water discharges, for example of treated sewage effluent. It refers to monitors, without understanding that equally, sampling devices must also be maintained to the same standard (for example), and of course the monitors installed under S82 of the Environment Act of 2021.

Standard Rules and Bespoke Permits

22 This leads on to another issue overlooked in the Consultation and that is the distinct differences in permits, in particular that between Standard Rules and Bespoke Permits. This was highlighted in parallel to this Consultation by another Consultation concerning the permitting of industrial emissions.

Response by the WCWC

<https://waterconservators.org/wp-content/uploads/filr/3976/OCT-25-REGULATION-Response-to-Defra-on-emission-permits-fin2.pdf>

23 A Standard Rules Permit is a predefined permit issued by the Environment Agency or Natural Resources Wales, covering common waste management activities with standardised conditions. These Permits are designed for operations that fall within certain parameters. *Making them typically faster and more cost-effective to obtain than bespoke permits. If your activities align with the criteria of a Standard Rules Permit, this option can streamline the permitting process. Allowing you to start or continue operations without unnecessary delays.* A detailed list is given in Appendix 1, and this includes a number of water company activities.

24 By definition, the Standard Rules are applied where the impact is likely to be less, but not necessarily so. In responding to the consultation on industrial discharges, the WCWC commented that the whole issue of standard rules needs refreshment and a complete revision of the Regulatory Position Statements. It used water conservation as a working example.

25 The approach to the 'non bespoke' permitting of water discharges is quite complicated. The 'standard approach' is split between 'Standard' non permitted General Binding Rules and permitted Standard Rules for prescribed small sewage discharges and these terms can get confused. In effect the General Binding Rules are in themselves a Standard Rule. And thereafter that, somewhat larger works must have a Standard Rules Permit and still larger works must have a Bespoke Permit. Defra is consulting on this.

Small sewage discharges in England: the general binding rules – GOV.UK
<https://www.gov.uk/guidance/general-binding-rules-small-sewage-discharge-to-the-ground>

LIT 8381 Standard rules SR2010No3 – discharge to surface water: secondary treated domestic sewage with a maximum daily volume between 5 and 20 cubic metres per day

Response by the WCWC

<https://waterconservators.org/wp-content/uploads/filr/3999/OCT-25-WATER-REGULATION-Response-to-Defra-on-permitting-of-small-sewage-discharges-fin.pdf>

26 It occurs to the WCWC that the permitting of Storm and Emergency Overflows follows the principles of Standard Rules without being so designated, and would, in many situations, be considered at high risk, as set out in the previous EA Guidance. This might be worthy of some attention.

27 Standard Rules Permits will be of a different nature to Bespoke Permits, and this might be reflected in the way in which the civil sanctions are formulated.

28 And if the EA successful in its current thinking, it is likely that other aspects of bioresources management are going to be added to the list of Standard Rules Permits.

WCWC Think piece

<https://waterconservators.org/wp-content/uploads/filr/3820/Sept-25-BIORESOURCES-Thinkpiece.pdf>

Pathway to offence and the consequences for Permits and Appeals for any conviction, particularly reference Q21 &22 and the discussion on Permits

29 The consultation is not worded clearly as it could have been, and the context is not broad enough. It is important to understand the pathway of an offence.

What are the practical issues to start with?

30 The circumstances of a permit must be defined .and that there may have been unplanned or unprovided for events which could not have been avoided outside of those circumstances. Some examples are given:

- a) **Trade effluents:** a trade effluent may exceed the consent conditions for which the discharge will be liable legally but there may be dire consequences for a water company. But that liability will be set by the speed of response to an incident.
- b) **Storm surges;** rainfall comes in more localised heavy showers and this may cause a surge of flow in an extended drainage system which may then overflow, maybe some time later, in a location deemed to be a dry weather discharge .This needs

some attention on the definition of a dry discharge as set out in the WCWC think piece on this topic.

WCWC Thinkpiece

<https://waterconservators.org/wp-content/uploads/filr/2742/July%2024%20%20DRY%20WEATHER%20FLOWS%20-Thinkpiece%20Personal%20perspective.pdf>

- c) **Sewer blockages:** There is a great deal of publicity about sewer blockages and the exhortation to only put pee, poo and paper down toilets. Yet the messaging of 'bag it and bin it' has been left to water companies; there is no national effort comparable to the Ofwat driven national campaign to reduce water consumption. In spite of repeated exhortations, successive governments have been reluctant to take national action. Only single use wet wipes have been banned and there are no restrictions on other sanitary and health care products. Disposal labelling for sanitary products is currently voluntary, though there are calls for it to become mandatory. See Appendix 2. Successive governments have not followed through with the general trend in thinking and have rejected the calls for mandatory labelling. Neither have they followed similar calls for Building Regulations to be amended to require that new bathrooms are 'bin the wipe compliant' So, to make regulatory change more symmetrical the WCWC suggests that these matters require equal attention.

WCWC Response Thinkpiece to Defra

<https://waterconservators.org/wp-content/uploads/filr/2838/Feb%2022%20SEWAGE%20LITTER%20&%20WET%20WIPE%20%20%20Thinkpiece%20on%20%20a%20holistic%20approach%20to%20the%20problems%20of%20sewage%20borne%20litter%20%20inc%20wet%20wipes.pdf>

WCWC Response to Defra

<https://waterconservators.org/wp-content/uploads/filr/2838/Feb%2022%20SEWAGE%20LITTER%20&%20WET%20WIPE%20%20%20Thinkpiece%20on%20%20a%20holistic%20approach%20to%20the%20problems%20of%20sewage%20borne%20litter%20%20inc%20wet%20wipes.pdf>

WCWC Response to Defra

<https://waterconservators.org/wp-content/uploads/filr/2746/Nov%2023%20WET%20WIPES%20Submission%20to%20Defra%20Consultation.pdf>

- d) **Unplanned sewer connections:** Water companies provide and maintain assets consistent with Drainage and Wastewater Management Plans and PR settlements. Any demands beyond these are variations, but in practical terms it may not be possible for sewer network upgrades to follow the speed of the housing programme. Water companies have no wish to be blamed for holding up the housing programme, although in some cases, it may well be that they object to a development, but are overruled and, hence, have to cope with the consequences. There is a need to ensure that the provision of sustainable drainage systems is made mandatory under the provision of the 2010 Flood and Water Act. Again, in spite of widespread calls for the implementation of the requirements of that Act, successive governments have not done so. Again, this would also require an amendment to Building Regulations.

WCWC Thinkpiece for New Towns Task Force

<https://waterconservators.org/wp-content/uploads/filr/3595/June-25-Thinkpiece-on-New-Towns-and-Water.pdf>

- e) **Emergency events:** For example, major power or systems failures (there have been some major internet failures recently), flooding etc. The focus must be the provision of resilient assets and responsive operations. Failure to provide these is most certainly an act liable for legal action. There may well be exceptional events beyond even these.

Are the assets provided and maintained as fit for purpose?

31 This iterates back to the previous points. And must include good operational practice with properly trained and supported staff. Failure to do must incur penalty. An essential point is that current and future company operations cannot be held legally liable for past under-investment determined by Ofwat, and the commitments of AMPs will be relevant to this.

Are the monitoring assets provided and maintained as fit for purpose?

32 The WCWC assumes that in the context of the wider implications of amendment of S38(2) of the EPA 1991 that monitoring will include sampling equipment. The WCWC agrees that failure to execute this responsibility for monitoring must be liable for regulatory action. But even this needs proper understanding and an agreed process for identifying false positive reading. Many of the sewer monitors are located in remote places and in spite of all good practices, insects and spiders may well get in to the monitors (for example) and activate them (anyone with burglar alarm at home will understand this problem).

WCWC Thinkpiece

<https://waterconservators.org/wp-content/uploads/filr/2742/July%2024%20%20DRY%20WEATHER%20FLOWS%20-Thinkpiece%20Personal%20perspective.pdf>

They must be managed independently of plant operations

WCWC Submission to Water Commission <https://waterconservators.org/wp-content/uploads/filr/3300/Feb-25-MONITORING-Submission-to-WATER-COMMISSION.pdf>.

This also applies to the points below

Are the data from those assets monitored properly?

33 Failure to do this is most certainly unacceptable and must be liable for regulatory action.

Is any exceedance, as defined, reported appropriately?

34 Failure to do this is most certainly unacceptable and must be liable for regulatory action.

Is any exceedance acted upon in accordance with agreed protocols?

35 Failure to follow due process is, again, unacceptable and liable for regulatory action. The current criteria for action need some attention for clarity.

Appeal processes

36 The EA updated its Enforcement and Sanctions Policy in October 2025

Environment Agency enforcement and sanctions policy - GOV.UK

The Consultation states that *These procedures must be consistent with the Regulatory Enforcement and Sanctions Act (RES) 2008 requirements and will include:*

- *the EA serving a notice of intent before imposing a penalty, including the grounds for imposing the penalty and the amount to be paid*
- *the right for a company to make representations and objections to the notice of intent for 28 days*
- *the EA serving a final notice, including the grounds for imposing the penalty, the amount to be paid and the recipient's right to appeal*
- *the right for a company to appeal against a final penalty notice to the First-tier Tribunal on the grounds that the decision was based on an error of fact; was wrong in law; the amount of the penalty is unreasonable, or the decision was unreasonable for any other reason*

37 Appendix 3 sets out more fine detail of complex legal processes of appeal. The background explanation to Question 22 is less clear than it could be, the assumption being that any Appeal based on the principles of natural justice will be used unscrupulously. This relates to the right of appeal against the decision of the EA not to impose automatic penalties, yet the text refers to mitigating circumstances for such automatic penalties and then refers to the process being used to delay payment of an automatic penalty.

38 In view of the complexity of these decisions the WCWC suggests that not including the right of appeal is counter to the principles of natural justice; but if the right is included and then exploited, the Regulations could be so amended by powers vested in the Minister.

39 Whatever emerges the decisions made by the EA must be based on expert understanding of the practical process which lead to breaches of permits rather than algorithmic desk top assessment of data. And this has implications for the skill sets of EA staff.

Implications for Permits

40 From these insights the WCWC has identified some key points.

41 There needs to be symmetrical regulatory change by Defra so the responsibility for achieving the aspirational goals of water quality is achieved. The WCWC asks, will a similar tough response be used for other dischargers? And some of the problems facing water companies lie outside their power to control. The WCWC has identified a number of instances where Defra could take action on other regulations to make life easier.

42 It is important that the compliance assessment criteria are identical to those of the permit. So, for example, it is not appropriate for continuous monitoring of related sewage effluent to be used for regulatory compliance of 'look up table' based permit conditions. Continuous monitoring may be used as an operational tool and for non-LUT conditions, yet it is but is not of universal value for assessing impact of discharges. To introduce it into permits would require a major rethink of the nature of discharge permits. The WCWC set this out in its submission to the Independent Water Commission.

WCWC Further Submissions to Water Commission

<https://waterconservators.org/wp-content/uploads/filr/3419/April-25-WATER-COMMISSION-Submission-of-key-points.pdf>

<https://waterconservators.org/wp-content/uploads/filr/3437/April-25-WATER-COMMISSION-Submission-of-key-points-supplement.pdf>

43 One aspect referred to is the exceedance of overflow permits on dry days. The whole topic of what constitutes a dry day in permits and how and where this measured, needs urgent attention

<https://waterconservators.org/wp-content/uploads/filr/2742/July%2024%20%20DRY%20WEATHER%20FLOWS%20-Thinkpiece%20Personal%20perspective.pdf>.

How much in Permits and how much in Statutory Guidance?

44 It is of interest that the Consultation did not ask the simple question; how much of what is proposed should be included in permits per se and how much should be included in statutory guidance accompanying the amended Regulations? It might be better to keep Permits as simple as possible. Amending details as time goes by would be easier via Statutory Guidance. The WCWC is aware of the deployment of Codes of Practice under various other Regulations.

45 A "code of practice" in environmental law is a set of guidelines that provides practical advice on how to comply with a specific legal duty, such as the duty of care for waste management or public authorities' obligations under the Environmental Information Regulations. While codes of practice themselves are often not legally binding, failure to follow them can be taken into account during legal proceedings. They help organizations and individuals understand their legal obligations and provide them with clear, actionable steps to follow to protect the environment.

46 How codes of practice are used in law

- Guidance and best practice: They offer practical advice and a framework for how to meet legal requirements.
- Admissible in court: Codes of Practice can be admissible as evidence in court. Courts can take them into account when determining if a person or organization has met their legal obligations.
- Enforceable principles: Some codes can be enforced. For example, the Information Commissioner can enforce the duty to provide advice and assistance under the EIR code.
- Demonstrating compliance: Following a code of practice helps a party demonstrate that they are taking reasonable steps to comply with the law.

47 Examples of Codes of Practice in environmental law are

Waste Duty of Care Code of Practice

<https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice/waste-duty-of-care-code-of-practice>

Provides guidance on the legal requirement for anyone dealing with waste to ensure it is managed and disposed of safely and responsibly.

Environmental Information Regulations (EIR) Code of Practice:

Offers recommendations to public authorities on how to meet their obligations under the EIR, including how to handle requests for environmental information.

48 The WCWC suggests that consideration be given to this approach for these proposals. The Consultation refers specifically about the need to update the EA Enforcement and Sanctions Policy and a Code of Practice could form part of this.

Quality assurance

49 The responsibilities of water companies for monitoring have been a hot topic highlighted in the final report of the Independent Commission on Water. The WCWC, alongside other bodies like CIWEM and the BSI has advocated revised discharge quality assurance system, and it might well be that the requirement for this could be vested as a standard clause in all permits or it could be included in the Statutory Guidance / Code of Practice.

WCWC Thinkpiece for Water Commission

<https://waterconservators.org/wp-content/uploads/filr/3300/Feb-25-MONITORING-Submission-to-WATER-COMMISSION.pdf>.

Trivial or not so trivial

50 Any Regulation must fit the criteria of 'smart regulation', it must be fair and proportionate and must distinguish between trivial, minor and non- minor offences. This will be a serious issue for the wider application of the new regulations. For example, for a large sewage treatment works the Look Up Table requires 365, 24- hour composite samples for the assessment of prescribed determinands, such as BOD of which up to 25 may exceed the permit criterion provided that none exceeds 150% of that criterion. So, for a typical criterion of 20mg/l BOD, if there are 26 samples exceeding 20 mg/l and only one at 31mg/l that is in theory a double offence, is it deemed trivial? How will it be dealt with?

51 These matters are never 'black and white .. as set out earlier and need expert interpretation. The concept of "triviality" is encapsulated in the legal maxim *de minimis non curat lex*, which is Latin for "the law does not concern itself with trifles" or insignificant matters. This principle allows courts to disregard inconsequential issues that do not impact the overall outcome of a case, promoting efficiency in the judicial system.

52 The WCWC understands that clarity is needed on non- compliance, otherwise there might be unsafe convictions, protracted legal arguments and misdirection of investment. On the other had discretionary flexibility is also needed and this could be addressed in the Code of Practice. This will certainly be an essential issue in the revised discharge quality assurance advocated for treated sewage effluents.

53 The Consultation itself recognises this point, it states that

We propose that automatic penalties are used in circumstances that are straightforward and easy to prove. This will ensure penalties can be quickly imposed and without

disproportionately lengthy investigations. Some changes to water company permits and/or licence conditions are needed to enable this. These include:

- introducing specific, clear-cut conditions which, if breached, would result in an automatic penalty*
- standardising conditions across relevant permits or licences in areas that relate to automatic penalties that support the EA in quickly identifying an offence*

These changes would be made by the secondary legislation (called 'deemed conditions'), rather than by reviewing individual permits and/or licences

54 The WCWC recognises that in the context of the political and media focus on water quality this concept will require careful messaging by all parties concerned.

Regulatory Position Statement

55 In responding to other recent Consultation on permitting the WCWC has advocated a review of Regulatory Position Statements and used water conservation as a working example. This set of proposals, when formulated eventually as regulations, would fit into a new integrated Water Regulatory Position Statement.

APPENDICES

Appendix 1: Standard Rules Permitting

1. Anaerobic digestion including use of the resultant gas and storing digestate
2. Car and vehicle dismantling
3. Car and vehicle dismantling - unavailable for new applications
4. Composting, sewage or sludge treatment, biogas
5. Composting, sewage or sludge treatment, biogas - unavailable for new applications
6. Deposit for recovery
7. Deposit for recovery - unavailable for new applications
8. Electrical insulating oil storage
9. Flood risk activities
10. Medium combustion plant and specified generators
11. Metal recycling, scrap metal and WEEE - not cars or vehicles
12. Metal recycling, scrap metal and WEEE - not cars or vehicles - unavailable for new applications
13. Mining, oil and gas
14. Mobile plant for land-spreading or treatment
15. Radioactive substances for non-nuclear sites
16. Research and development
17. Storage or treatment of waste - recycling, dredging, clinical, soil, tyre shred or wood treatment
18. Storage or treatment of waste - recycling, dredging, clinical, soil or wood treatment - unavailable for new applications
19. Waste transfer station or amenity site with or without treatment
20. Water discharges

Appendix 2: Disposal of used sanitary and health care products

The general guidance promoted by the water industry and government campaigns (like "Bin the Wipe") is that all sanitary items, whether pads or tampons, should be placed in a bin and **never flushed** down the toilet.

"Fine to Flush" Standard: A voluntary "Fine to Flush" certification standard was previously available for wet wipes that were proven to break down in the sewer system. However, this certification scheme was officially retired by Water UK in March 2024 to simplify consumer messaging to a single "Bin the Wipe" campaign and avoid confusion. This highlights a general shift towards discouraging *all* non-paper products from being flushed.

Legal Requirements for Businesses: The law requires businesses and public spaces to provide suitable and sufficient sanitary disposal facilities (bins) in female and unisex washrooms, in line with the Workplace (Health, Safety and Welfare) Regulations 1992.

Environmental Protection Act 1990 & Water Industries Act 1991: These acts prohibit flushing anything that could cause blockages or problems in the sewer system, which includes all sanitary products. Businesses have a duty of care to ensure proper disposal and typically use licensed waste carriers for sanitary waste.

Good Practice: The recommended disposal method for used sanitary products is to wrap them in a sanitary bag or toilet paper and place them in a general waste or a designated sanitary bin.

Industry bodies like the AHPMA (Absorbent Hygiene Product Manufacturers Association) have a voluntary Code of Practice that members adhere to, which includes providing consumer advice for use and safety, though specific disposal labelling remains non-mandatory across the board.

Appendix 3: Extract from the Consultation

Procedures and safeguards for civil standard FMPs and automatic penalties

Secondary legislation will set out the procedure the EA must follow to impose civil standard FMPs and automatic penalties, including a company's right to representations and appeals. These procedures will be consistent with RES Act 2008 requirements. 25 of 31

Issuing penalties

Before imposing a penalty, the EA will issue a notice of intent to the company. This serves as a formal notification that the EA intend to impose a penalty and will include matters such as:

- the grounds for proposing to impose the penalty
- the amounts to be paid
- to encourage prompt payments where a company accepts liability, we propose offering companies opportunity to make a payment to discharge liability following the initial notice (see proposed values in the 'Setting the value of civil standard FMPs and automatic penalties' *section*).
- the circumstances in which the EA may not impose the penalty
- the right to make representations and objections

Upon receiving the notice of intent, companies will have 28 days to:

- make representations (such as comments or additional information) to the EA. The EA will review the proposed penalty based on their evaluation of any representations they receive and may reassess the penalty as necessary
- make a payment to discharge liability

If the company does not discharge liability within 28 days and the EA proceeds to impose the penalty following representations, the EA will issue a final notice confirming the penalty and setting out appeal rights.

At this final notice stage, the penalty payable will be twice the amount that would have been payable to discharge liability at the initial notice stage.

Question 21: Do you support the procedure proposed above, including the ability to make a payment to discharge liability following the notice of intent? (required)

- Yes
- No
- Do not know

If you selected 'No', please explain.

Appeals

The grounds of appeal set out in the RES Act 2008 for the imposition of FMPs to a First-tier Tribunal will be maintained. These are that the decision of the regulator was based on an error of fact, was wrong in law or was unreasonable. There will be no removal of these appeal routes.

The EA may choose not to impose an automatic penalty if there are exceptional circumstances that mitigate the culpability (blame) of the company, or if alternative enforcement action is being considered or in progress. The WSMA allows companies to be prevented from appealing the EA's decision on if there are exceptional circumstances. We consider this is proportionate, to prevent this appeal route being used as a loophole to avoid or delay the payment of an automatic penalty.

Question 22: Do you support the proposal to prevent companies from appealing the regulator's decision on whether there are exceptional circumstances in place? (required)

- Yes
- No
- Do not know