

Briefing to the Climate Change, Infrastructure and Environment Committee: Water compliance and incident response

Thank you for the opportunity to discuss our regulatory approaches in relation to water with the committee. This briefing is intended to provide background information related to the discussion in advance of the committee meeting.

Our responsibilities for protecting the environment are the central pillar of our Corporate Plan.

While we acknowledge that there is still more to do, real progress has been made in improving the quality of our water, land and air across Wales over the last 30 years.

As the challenges of a growing population and the climate and nature emergencies intensify, so too does our commitment to protecting people and nature from the impacts of environmental incidents.

Our Regulatory Approach

We are further strengthening the way we regulate to drive better performance across the water sector. This includes employing more specialist officers on the ground, increasing compliance checks and using new data and intelligence tools to inform our work. We continue to seek additional powers to consider civil sanctions for a broader range of environmental offences.

When severe or deliberate damage is done to the environment, we do not shy away from taking the necessary and proportionate enforcement action. However, our priority will always be to prevent damage happening in the first place and to ensure operators return to compliance in a timely way. Enforcement action will always be considered when other methods to prevent harm have been exhausted or as a deterrent to further offending.

But like all public bodies, our resources are finite, and we have to make informed decisions about how and where to focus our efforts to protect lives, livelihoods and the environment. While we will continue to be astute and innovative in how we use the resources we have, we will need to prioritise those actions to ensure they have the best outcomes for people and for nature, and that they deliver the improvements to our environment that we all want to see.

Y Byd ar Bedwar

Concerns were raised in this programme around perceived bureaucracy and a failure to attend suspected pollution incidents, and it is important for us to respond to those concerns.

We continue to see an upward trend in water pollution incidents reported to us with just over 3300 in 2023 compared with just below 2500 incidents in 2019. This is disappointing at a time where so much is being invested in improving our rivers and water quality for nature and people.

We, also, continue to see a year-on-year increase in water industry related pollution incidents with just over 600 incidents reported in 2023 compared with around 430 incidents in 2019.

In general, we attend around 20% of incidents reported to us. We prioritise attendance based on the incidents that pose the highest risk to people and / or the environment. It is not always necessary to attend an incident as part of the investigation, as in many cases, the information received within the report is sufficient along with phone discussions and photos for us to decide on its cause and consequences.

Our Corporate Plan, [Nature and People Thriving Together](#), identifies three priority Wellbeing Objectives: 1. Nature is Recovering; 2. Communities are Resilient to Climate Change and 3. Pollution is Minimised.

In delivering our Wellbeing Objectives, we will adopt a more risk-based and targeted approach to incident response, and we will ensure we prioritise responding to the incidents that pose the most serious and significant risks to the environment and public health. Like other public sector organisations, NRW have been subject to significant funding pressures in recent years and as a result we have to operate within a tighter financial envelope. We, therefore, focus our resources on attending incidents where there is a greater environmental risk. It is not possible or even necessary to attend every incident reported to us.

In reviewing our response to incidents, we are improving efficiency by taking an intelligence led approach. We use the information gathered from reports to build a comprehensive picture of environmental threats, enabling us to focus our efforts on targeted prevention through effective engagement, regulation, and enforcement. As stated above, preventing an incident happening in the first place is always going to be more beneficial than responding to a pollution event.

As an accountable public body, we have established governance processes for incident response and enforcement to ensure we have the correct tools and guidance available for our staff and to ensure decisions are being made consistently and timely. We are bound by government guidance like the Regulators Code, Managing Welsh Public Money and civil service recruitment rules which ensure our processes and decisions are appropriate.

NRW regulatory approaches in managing DCWW and HD performance and driving improvements

In July 2024 we published our 2023 annual water company environmental performance reports for [Dŵr Cymru Welsh Water](#) (DCWW) and [Hafren Dyfrdwy](#) (HD).

HD performance has improved slightly in relation to pollution incidents performance since 2022, although there was a small increase in pollution incidents arising from water supply assets from 2 to 3. All three had a low environmental impact.

Despite increased pressure from ourselves as regulators, and from politicians and the public, DCWW have failed to make the kind of improvements we want and expect to see, in fact, their incidents, and particular their serious pollution went up. As a result, for 2023, DCWW performance remained at 2* status.

As we continue to progress through the Environmental Performance Assessment (EPA) reporting period (2021-25), we expect both DCWW and HD to make positive progress across all seven metrics. The EPA metrics will continue to tighten over this EPA reporting period (2021-25) ensuring targets are challenging for the company.

We use a variety of approaches across our regulatory cycle to drive improvements in water company performance.

Ofwat's Price Reviews (PR)

- NRW input to Ofwat's Price Reviews. We develop the National Environment Programme (NEP) for Wales. For Ofwat's PR24 which will be delivered in Asset Management Programme (AMP) period 8 from 2025 to 2030, we have an agreed NEP which directs the work of DCWW, HD and to a lesser extent Severn Trent, United Utilities and South Staffordshire Water to meet their environmental obligations in Wales.
- AMP8 covers 2025-2030 and the associated NEP will result in nearly £2billion investment in Wales's environment including drinking water resources and infrastructure, wastewater collection and treatment systems as well as wider obligations relating to biodiversity and ecosystem resilience, invasive non-native species and net zero targets. The majority of this investment relates to DCWW sites.
- The [consultation](#) on Ofwat's draft determination of the investment plans closed on 28 August 2024. The final determination of business plans by Ofwat is due in December 2024.

Permitting and permit reviews

- Water discharges are regulated under an Environmental Permit which sets conditions to protect the environment. NRW can review conditions to ensure operators are able to meet modern standards and to respond to changing environmental needs.
- NRW has recently completed the Review of Permits for DCWW water discharge permits in the nine river Special Areas of Conservation (SAC) catchments across Wales. This focussed on the larger water treatment works and resulted in a limit on phosphorus emissions being added to 162 permits across the SAC catchments.
- This is a significant measure in managing nutrient pollution into the SAC rivers which will deliver significant reductions in pollution and contribute towards maintaining and enhancing the ecosystems within our SAC rivers.
- We are also in the process of updating permits to require better monitoring and control of wastewater flows on sewage treatment plants which, alongside AMP8 investment, will lead to a significant reduction in sewer overflow spills through the network.

Regulatory Compliance activity

- We assess compliance of water discharge permit conditions by carrying out a range of regulatory activities, including site inspections and audits, sampling discharges and assessing data, such as water company operator self-monitoring data regulatory returns.
- Following a compliance assessment, we record our findings in a Compliance Assessment Report (CAR), identifying any breaches of permit condition and specifying actions to remedy and minimise the risk of recurrence. These are available on our Public Register.
- Since 2018, the number of water industry compliance assessments carried out by NRW has increased significantly from around 100 in 2019 to over 450 in 2023 and will be further increased in 2024.
- In the same time period, the percentage non-compliance against permit conditions identified at DCWW sites has steadily decreased from about 80% to just under 20%. This demonstrates that there has been a steady improvement in water industry compliance when all permit conditions are considered. The same trend of increasing inspections and decreasing percentage compliance has also been seen at HD sites.
- However, there is a continuing downward trend in the overall performance of DCWW as measured by the EPA. The EPA focusses on seven distinct metrics, which allows the performance of the ten largest water and sewerage companies to be monitored and assessed in a consistent way by the environmental regulators.
- The compliance metric focusses on performance against a series of numeric permit conditions and sampling requirements, i.e. a subset of conditions only, not including, for example, descriptive permit conditions.
- Despite a reduction in non-compliant activity, as mentioned above, we continue to see an increase in the number of serious water pollution incidents from DCWW sewerage and water supply facilities. DCWW have been asked to improve their root cause analysis of incidents to identify areas of intervention to secure improved overall performance.

Enforcement

The enforcement responses we take against the water industry are consistent with our Enforcement and Sanctions policy, and based on our Offence Response Options and incident classification scheme.

Of the 483 enforcement cases resulting from water industry incidents, since the beginning of 2018, 437 of these have been closed with around 80% resulting in Warning letters being issued, 5 Formal Cautions and 3 Prosecutions. The remainder resulted in either Advice and Guidance being given or a decision that no further action was required.

46 cases remain under investigation, with enforcement responses to follow. A number of these cases are significant and may result in prosecution.

There is an inevitable time lag between incident/permit breach and enforcement response while the cause of the incident is investigated. In addition, prosecutions require court time and delays continue within the Court system due to the impacts of Covid-19. This time lag is often years not months.

We currently have two cases listed in court in September and October.

Further activities supporting river quality improvement

Water Quality Taskforce

- NRW lead on the Water Quality Taskforce which has representation from key partners and stakeholders.
- The Taskforce continues to focus and respond to the evolving picture around storm overflows and the ongoing attention from stakeholders, public and politicians. The Taskforce has also begun to look at associated water quality issues that impact on the sewerage network.
- The PR24 final determination and water companies working through the new regulatory guidance will drive new actions which will be shared with wider stakeholders.
- Currently the Taskforce is reviewing the five action plans, with priority given to the “Public understanding and engagement” action plan in April. At the recent Senedd committee, a recommendation to develop greater communications with stakeholders was tabled. The taskforce is already looking at how we communicate the progress and direction we are taking in Wales.
- Of the 62 actions across the five plans, 31 have been completed; the remainder either have completion dates for the future linking with delivery, or are dependent upon confirmation of funding as part of PR24.
- Successes to date include production of NRW Regulatory Report for Event Duration Monitoring (annually), water company real time monitoring, and regulatory guidance for classification of storm overflows, including unpermitted assets.

- Over the coming twelve months, attention will also be given to developing a monitoring programme around storm overflows to help support the evidence piece and inform all stakeholders on their impact.

Reducing impact of Combined Sewer Outfalls

- On 26th October 2023, NRW issued 2 pieces of guidance to Water companies in Wales on classifying and assessing storm overflows and the process for unpermitted overflows (those currently without an EPR permit).
- In addition to implementing this guidance, as part of the Periodic Review (PR24) we have been working with the water companies, Welsh Government and Ofwat to develop the Environmental Improvement Programme that will deliver investment in water company assets in Wales over the next 5 years. Within draft business plans for DCWW, approximately £720m has been allocated to delivery of storm discharge improvement.
- We expect DCWW to have assessed all intermittent assets against our guidance by the end of the 2025-30 AMP period with a view to identifying those assets that require future investment to ensure they do not cause harm or deteriorate in performance.

Legislative change

- We are supportive of the proposals in the Water (Special Measures) Bill and in particular to have a penalty regime applicable to the water sector, to enable automatic penalties to be issued by NRW for a defined list of offences.
- We do not currently have the civil sanction powers to issue Variable Monetary Penalties (VMPs). Fixed Monetary Penalties (FMPs) and Fixed Penalty Notices (FPNs) for water company offences. So, in Wales, this proposal would have to be included in a bundle of changes needed to introduce civil sanctions for the Environmental Permitting Regulations (EPR) in Wales.
- It is important to note that the Environment Agency has had civil sanctions for EPR since 2016. The recent Climate Change, Environment and Infrastructure Committee's Report on performance of DCWW recommended that WG consider extending NRW's enforcement powers to enable the regulator to accept environmental undertakings for permit breaches under the Environmental Permitting Regulations (England and Wales) 2016. The Minister accepted in principle and since then, we have inputted to WG Officials recent considerations on Civil Sanctions

We trust the above helps with context and we look forward to discussing further with you in October.