19th April 2021

Rebecca Pow MP
Parliamentary Under Secretary of State
DEFRA
Seacole Building
2 Marsham Street
London SW1P 4DF

Dear Minister

Pollution of English rivers by sewage emanating from CSOs other than under circumstances of exceptional rainfall

Salmon & Trout Conservation is increasingly concerned at the incredibly slow progress in dealing with pollution of English rivers from sewage overflows that increasingly operate at times other than following exceptional rainfall.

This is an issue that has been 'live' at least since privatisation of the state-owned water authorities, over thirty years ago.

We note the announcement made on 29th March this year, made in response to Philip Dunne MP's Sewage (Inland Waters) Bill - which S&TC supported strongly - that "measures to reduce sewage discharges from storm overflows" are to be put into law as part of "an ambitious agenda to build back greener from the pandemic"

and these will include a duty on government to publish a plan by September 2022 to reduce sewage discharges from storm overflows, a duty on government to report to Parliament on progress on implementing the plan, and a duty on water companies to publish data on storm overflow operation on an annual basis.

We also note that the Government acknowledges what all parties patently accept, that CSO use “has increased in recent years as climate change has led to greater rainfall and water infrastructure has not kept pace with population growth”.

Firstly, in respect of the publication of data, as the *Fish Legal* case definitively confirmed, water companies are public authorities for the purposes of the Environmental Information Regulations 2004, and have been under a duty since 2004, per regulation 4 - *Dissemination of environmental information* – progressively to make environmental information they hold available to the public by electronic means which are easily accessible.

Therefore, if water companies hold data on storm overflow operation, as they do, they are already under a legal obligation to publish it, and not necessarily only in the envisaged form of an annual report, and are in breach of that duty by not publishing any such data they hold in accordance with the 2004 Regulations.

As the 2004 Regulations do not provide any mechanism to allow for this breach to be considered by the Information Commissioner, we would ask you to examine whether the water companies are complying with that duty.

In respect of the substantive issue – that sewerage infrastructure has not kept pace with population growth such that CSOs carry untreated sewage into English rivers at times other than those triggered by exceptional rainfall – we note the work underway by the Storm Overflows Taskforce “to accelerate progress in this area”.

However, section 94 of the Water Industry Act 1991 has required water companies, since privatisation, to ‘effectually drain sewers’ and ‘effectually deal with sewage’.

Unless any relevant parties to this issue – including all those copied into this letter - are prepared to argue that discharging sewage to rivers at times other than during or following exceptional rainfall constitutes ‘effectually dealing with sewage’, by the Government’s own admission, and by common understanding, the water companies have failed, and continue to fail to meet the duties placed on them under section 94 of the 1991 Act.

Of course, the water companies are not solely to blame for the situation we now find ourselves in.

The 1991 Act set up a statutory system for water companies, with OFWAT closely controlling water company investment in sewerage infrastructure, under the Secretary of State’s over-arching guidance and subject to his/her approval.

The question that has to be posed to the Secretary of State and to OFWAT is, why has this state of affairs, where infrastructure has not kept pace with population growth, been allowed to develop since 1991?

The answer is, of course, that the Asset Management Plans (AMPs), that have flowed from the five-yearly periodic review process set up under the 1991 Act, have neither sufficiently required, nor sufficiently enabled the water companies to ensure their infrastructure keeps pace with population growth.

In the absence of sufficient sewage treatment infrastructure and capacity, rivers have been asked to do that ‘treating’ instead.

Plainly, there is not much that can be done to remedy the mistakes of the previous seven AMP rounds – that polluted water has already passed under the bridge.

However, the next price review will occur in 2024 and the long lead-in times, to what is likely to be required in 2025-2030, involving many individual infrastructure projects being planned and delivered in that time window, means that now is the time to plan for the required investment.

The Government and OFWAT must ensure now that AMP8 addresses the unacceptable frequency and duration of all CSOs currently operating in times other than when exceptional rainfall requires releases.

For the avoidance of doubt, we do not consider that dealing with a few ‘pilot’ CSOs improvements will suffice.

Given that planning for AMP8 must start shortly, it would make sense for rapid guidance to go out to the water companies, by way of formal letters from OFWAT, to the effect that the CSO issue must be addressed in planning for AMP8.

We would also suggest that the Secretary of State considers making Regulations to that effect, under section 95 of the 1991 Act.

In respect of the proposed duty on government to publish a plan by September 2022 to reduce sewage discharges from storm overflows, we would note that merely ‘reducing’ such discharges may still not be sufficient for water companies to meet their section 94 duties.

However this is to be achieved, the water companies’ plans for 2025-2030 must be sufficient to allow water companies to meet their section 94 duties in relation to the use and operation of all CSOs.

In the event that those plans do not deal sufficiently with CSOs continuing to flow when they should not, those plans will be open to legal challenge.

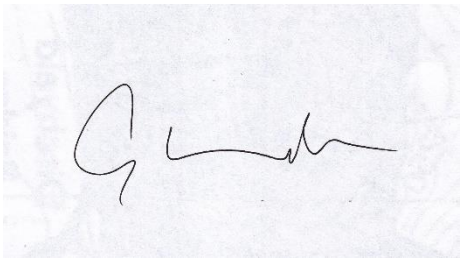
Further, if section 94 continues to be breached, we would expect enforcement proceedings to follow from the Secretary of State and /or the Director under section 18.

If no such proceedings occur, the remedy for those of us who wish to see the end of sewage pollution of rivers by CSOs operating when they should not, would be to review any relevant decisions by OFWAT or by the Secretary of State not to enforce

the section 94 duties on the water companies, as *Marcic*[1] indicates would be the appropriate remedy in such a scenario.

That is not an outcome we seek, but we do expect all parties to the next price review and AMP process to deliver what the 1991 Act requires of them and we hope by raising this issue now, that all parties will ensure that the next periodic review process delivers what the law requires.

Yours sincerely



Nick Measham
Chief Executive
nick@salmon-trout.org

Guy Linley-Adams
Solicitor to S&TC
guy@linley-adams.co.uk

cc:
Chief Executives, sewerage undertakers in England
David Black, Interim Chief Executive, OFWAT
Emma Howard-Boyd, Chair, Environment Agency
Sir James Bevan, Chief Executive of the Environment Agency

[1] Lord Nicholls in *Marcic v Thames Water* [2003] UKHL 66, at para 21.