



Date: 4.10.2024

OPEN LETTER

Mr Steve Reed, MP
Secretary of State for the Environment, Food and Rural Affairs,

By email only:

Dear Secretary of State

Making rapid progress with the water crisis

WildFish is an environmental charity dedicated to protecting wild fish and their habitats across the UK.

As you will know, we have been closely involved in recent legal cases¹ and investigations into the functioning of the water industry and its regulation by Ofwat, Defra and the Environment Agency.²

We were therefore pleased to see the Government's proposals to address the many negative impacts the water industry has on our rivers.

We note that you say the changes proposed to the Water Industry Act 1991 to be made by the Water (Special Measures) Bill "represent a significant increase in enforcement powers for the water regulators so regulators can take tougher and faster action to protect customers and the environment" and that changes would "ensure the Environment Agency has the resources, including staff, to take the enforcement action needed to hold polluters to account³.

We are broadly supportive of these proposals.

¹ R (oao WildFish) v SEFRA & EA [2023] EWHC 2285 (Admin)

² In 2022, WildFish made the first complaint to the new Office for Environmental Protection (OEP) - on the sewage pollution problem. We argued that the law was not being implemented and enforced properly. The OEP's conclusions are expected shortly but it has already identified possible failures to comply with environmental law by DEFRA, the EA and Ofwat ([click here for more](#)).

³ [Steve Reed speech on the Water \(Special Measures\) Bill - GOV.UK \(www.gov.uk\)](#)



We will be tabling some ‘technical’ amendments to the Bill shortly which we believe the Government could support to ‘tweak’ the existing law to make the progress we all want to see more rapid.

However, even before the Water (Special Measures) Bill becomes law, we believe there are some changes that would immediately - and without huge upheaval - add to the effective control of water company activities and start the process of recovery from the last 15 years.

While we can see that many NGOs and environmental charities are arguing for a total revision of the post-privatisation statutory framework, we believe that the fundamental problem with the water industry is not necessarily with the law, and that existing framework, but with the failures in implementation under that framework, and in enforcement by regulators of that existing law.

We believe that the diagnosis is really far more mundane.

See, for instance, our report, “Doing its Job”⁴ on the failures of the Environment Agency. It is poorly resourced and its existing resources are not properly directed to robust enforcement. As a consequence, the Agency does not properly investigate and enforce against water companies that are regularly in breach of environmental law. Specifically, the Agency fails in its duty to review and to impose enforceable conditions in environmental permits; issued under the Environmental Permitting Regulations 2016. All too often water company permits follow, but do not drive, the investment our rivers require.

The Agency’s Sanctions and Enforcement Policy is too weak. The Agency is hamstrung by the Regulators Code and the statutory growth duty. Even when it does take formal enforcement action, it prioritises the use of civil sanctions instead of prosecutions for serious offences. It is far too willing to accept cosy enforcement undertakings for repeat offences and repeat offending by water companies, a matter that WildFish has reported upon recently⁵.

⁴ <https://wildfish.org/wp-content/uploads/2022/07/Doing-its-job.pdf>

⁵ Buying a way out? The use of enforcement undertakings to deal with water pollution offences
https://wildfish.org/wp-content/uploads/2024/09/WildFish-Report-into-Enforcement-Undertakings_200324.pdf



Overall, under recent governments, there has been a complete lack of political support for the Agency taking a tough approach with the water companies and this is undoubtedly contributed to the awful sewage pollution which we now see in our rivers.

Ofwat's performance too has been woefully poor over many years, but underlying this is the unambitious and internally inconsistent Strategic Policy Statement (SPS) issued to the financial regulator by previous Secretaries of State.

When the most recent SPS was being drawn up, WildFish wrote and published a shadow SPS ([Time to fix the broken water sector – linked here](#)) to show how Ofwat could be given the direction it needs to put the water industry back on track. Your new Government can correct the SPS, right now, by using the powers it already has under section 2A of the Water Industry Act 1991.

That is why we are writing to you in this open letter to make some proposals which we believe are cost-effective easy-wins that can be achieved relatively quickly and without changes to the law – either in the forthcoming Water (Special Measures) Bill or any later Bill that may follow.

We propose that you, as quick solutions that can start to turn the ship around, should:

- direct the Agency (per section 40 Environment Act 1995) to end Operator Self-Monitoring of all effluent discharges to take monitoring back from the water companies and increase permit charges to pay for independent continuous volumetric monitoring of all discharges, with publication of real-time data (all achievable by revising permits issued under the Environmental Permitting Regulations 2016);
- direct the Agency to ensure that all licences for the water companies to abstract water for public water supply are reviewed, if they have not already done so in the last 2 years, to require those abstractions from rivers and groundwater for water supply to be monitored continuously, requiring that water companies publish that data in real time;
- issue a new, clear and unambiguous Strategic Policy Statement to Ofwat that points the way to a much tougher financial regulatory approach, but one that prioritises investment in the environment and is not internally inconsistent as so many previous SPSs have been;
- disapply the Regulators Code and statutory growth duty in respect of the Agency and Ofwat's regulation of the water companies;

WildFish.

- direct the Agency to review water company environmental permits (as they can under regulation 34 of the Environmental Permitting Regulations 2016) so that they drive, and do not merely follow investment, that they allow for compliance assessment as against modern continuous monitoring technologies, and that they ensure that all permits actually meet existing legal obligations (such as the 1994 Regulations on urban wastewater treatment);
- direct the Agency to stop using enforcement undertakings for water company offences and prosecute water companies aggressively under a new Sanctions and Enforcement Policy;
- above all, provide sufficient funding and a strong steer to both regulators to address water company offending as aggressively as they are able.

Our rivers and our fish do not have time for long reviews. While we will be tabling amendments to the Water (Special Measures) Bill - and there will be some common ground in measures that can be achieved now but sustained through statutory transcription – we consider that there are many actions you can take straight away, without legislation, to have a real and early impact on reducing pollution.

We would welcome an opportunity to discuss these matters with you and your advisers.

Yours sincerely,



Nick Measham
Chief Executive, WildFish