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for Environment
Food & Rural Affairs

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To: All MPs in England and Wales

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Dear colleague,

The Environment Agency/Ofwat investigation into sewage treatment works

As you know, the Environment Act became law on 9 November. This world-leading Act includes a raft of measures to deliver progressive reductions in the adverse impacts of sewage storm overflows on the environment and on public health (detailed in Annex 1). We have introduced clear new duties on water companies to monitor, plan and report on sewage discharges and earlier this month I wrote to you all to outline the effect these measures will have. I have been crystal clear that water companies must work towards a significant reduction in storm sewage discharges and this expectation is now law.

You will be aware that during the passage of the bill there was much concern that water companies were allegedly spilling sewage from storm overflows more frequently than they should be, even in dry weather, possibly illegally. I have repeatedly said that government and the regulators will not hesitate to take strong action in cases of suspected breaches.

I write to report that new information has just come to light, suggesting that some water companies in England may indeed not be complying with their permits, resulting in excess sewage spills into the environment, even in dry periods. On account of this, we are today announcing a major Environment Agency/Ofwat investigation.

This latest finding is shocking and wholly unacceptable. If proven, water companies will be in breach of their permits and failing to meet their legal duties. Government, along with the sector's regulators, will not hesitate to hold companies to account if this is the case.

Background

Sewage works must treat a certain amount of wastewater before it can be released into storm tanks during times of heavy rain. Only when that volume has been treated, can excess be discharged into the environment, but recent evidence suggests this may be happening more frequently than it should be, even in dry weather.

This evidence has been gathered as a result of the Environment Agency asking water companies to install new monitors at sewage treatment plants. This has prompted some companies to step forward and to report a lack of compliance with existing permits now, ahead of waiting for it to be unearthed by new monitors.

The Environment Agency investigation will focus on water and sewerage companies operating in England while Ofwat's investigation will also consider Wales as part of their regulatory scope. As environment policy is fully devolved, Ofwat will be liaising with Welsh Government and regulators on this issue in Wales.

Action

The Environment Agency/Ofwat investigation is based on the highest-risk sites, to understand the extent and potential impact of suspected non-compliance. Both organisations will take the strongest enforcement action that they can where they find illegal breaches, including prosecution through the courts if appropriate, as was the case with Southern Water in July. Southern were handed a record £90 million fine after pleading guilty to thousands of illegal discharges of sewage which polluted rivers and coastal waters in Kent, Hampshire and Sussex. Additionally, Ofwat imposed a £126 million penalty on Southern Water in 2019.

Regulators have assured me that they will not hesitate to pursue their full range of sanctions in relation to this case where breaches are found. This means that Ofwat can issue enforcement notices to direct specific actions, or fine companies up to 10% of their annual turnover – running to millions of pounds. For the Environment Agency, changes to sentencing guidelines in 2014 have allowed unlimited fines to be applied to sewerage companies in the event of serious pollution incidents, along with a wider range of enforcement and sanctions.

Compliance with permits is a basic licence condition for water companies, not a new requirement, and all water companies should be completely aware of their permit requirements. Water company boards certify every year that they have the funding, management systems and controls in place to fulfil their regulated activities, including their environmental obligations. They must notify Ofwat if they cannot fulfil those duties. No water company has done so.

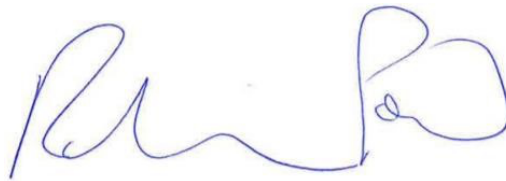
At this stage the reason behind non-compliance is not clear but we are being explicit that any water company not abiding by its permits will be expected to take immediate action to urgently address any non-compliance while these investigations are ongoing. Particular focus will also be paid to the directors of companies that are guilty of repeated, deliberate, or reckless breaches of environmental law.

We have been repeatedly clear in Parliament in recent weeks that we need to tighten up existing rules but also raise standards across the board when it comes to protecting our rivers. That means urgently addressing issues of non-compliance such as this, but also going much further to reduce the harm caused by the discharges that are allowed to happen periodically through permits allocated to enable use of storm sewage overflows in

exceptional circumstances, such as severe weather incidents. I want to see water companies spending far more on better infrastructure, and far less on payouts to shareholders.

My expectations of water companies in respect to their legal duties are unequivocal, they must take urgent and immediate steps to abide by their legal duties. I will be remaining in close contact with the regulators about any fines, prosecutions or other enforcement action that is deemed necessary.

Water quality is a high priority for this government, as our actions so far demonstrate, and I hope that this letter provides clarity on how seriously we take illegal activity by the water industry. If anyone would like to discuss this further, please contact my office:
ps.rebecca.pow@defra.gov.uk.

A handwritten signature in blue ink, appearing to read 'Rebecca Pow', with a stylized flourish at the end.

REBECCA POW MP

Annex 1: The Environment Act on Storm Overflows

The government is taking strong and decisive action through the Environment Act to help address the risks that storm overflows pose to the environment. The measures in the Act include:

- A duty for water companies to achieve a progressive reduction in the adverse impacts of discharges from Storm Overflows.
- A duty on the Government to publish a plan by September 2022 to reduce sewage discharges from storm overflows and to reduce their impact
- A duty on government to report to Parliament on progress on implementing the plan
- A duty on water companies and the Environment Agency to publish data on storm overflow operation on an annual basis
- A duty on government to produce a report setting out the actions that would be needed to eliminate storm overflow in England and the costs and benefits of those actions
- A duty on water companies to publish near real time information (within 1 hour) of the commencement of an overflow, its location and when it ceases
- A duty on water companies to monitor the water quality upstream and downstream of a storm overflow or a sewage disposal works

This significant suite of actions will deliver real reductions in the harm caused by storm overflows. There should be no doubt about the governments ambition and determination to significantly reduce storm sewage discharges.

Elsewhere, there are several other commitments government has taken in this space including:

- A statutory duty for water companies to produce Drainage and Wastewater Management Plans, addressing the capacity of their networks, environmental risks of their assets and long-term planning of their networks over a minimum of 25-years. The government will also have a power of direction over these plans, and we will not hesitate to use this if plans are not sufficient to address the harms caused by sewage discharges.
- Government has also committed to review the case for implementation of Schedule 3 of the Drainage and Wastewater Flood and Water Management Act 2010 – which would provide for mandatory Sustainable Drainage (SuDS) on new developments and the results of this will be available in Autumn 2022.

Additional Government Measures

We are increasing transparency of Storm Overflow operation. Currently 80% of storm overflows have Event Duration Monitors and all overflows will be monitored by the end of 2023, allowing water companies to report the frequency and duration of spills to the Environment Agency (EA) each year. However, we recognise that there is more to do with regards to the management of sewage pollution.

To this end, I established the Storm Overflows Taskforce in August 2020 bringing together key stakeholders from the water industry, regulators, and environmental NGOs, with a longterm goal to eliminate harm from storm overflows. The Taskforce has recently delivered research to gather evidence on the costs, benefits and feasibility of different options and the government and the taskforce will now consider its recommendations further.