APP/EPR/683
APPEAL BY THAMES WATER UTILITIES LTD
ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016
MAPLE LODGE SLUDGE TREATMENT CENTRE, MAPLE CROSS, RICKSMANSWORTH, WD3 9SQ

ENVIRONMENT AGENCY FINAL COMMENTS
DATE: 29 January 2025

Introduction

1. This document is not intended to reply to every paragraph in the Appellant's Statement of Case, particularly where the position of the Environment Agency has been set out in its own Statement of Case. The following paragraphs clarify, expand upon, and provide some balance to the statements made by the Appellant.

Funding

2. Paragraph 4 of the Appellant's Statement of Case states:

> *"The key issue for the Planning Inspector to determine is the impact of the lack of available funding for IED improvements at Maple Lodge STC on the permitting process and the extent to which it is unreasonable for the Environment Agency ("EA") to have singularly failed to take that into account in determining the relevant deadlines for compliance with ICs 12, 13, 14 and 15."*

3. Elsewhere the Statement of Case repeatedly returns to the question of funding; it is the golden thread that runs throughout the document. We have already addressed this issue within our own Statement of Case but wish to bring to the Inspector's attention some recent correspondence between the CEOs of the Appellant and the Environment Agency which again addresses the question of funding and of the Appellant's financial competence (Appendices FC01[1] and FC02[2]). We also wish correspondence between the two parties' legal advisors to be admitted as they also contain similar relevant information (FC03[3] and FC04[4]). Whilst technically made outside the appeals process, it will be seen that this correspondence is so relevant to the appeal itself that, in the interests of fairness, it is considered that the

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[1] Letter from Chris Weston to Philip Duffy dated 2 January 2025
[2] Letter from Philip Duffy to Chris Weston dated 17 January 2025
[3] Letter to Laura Milton dated 2 January 2025
[4] Letter from Laura Milton to Andy Fraiser dated 17 January 2025

Inspector ought to have sight of it when considering the arguments made by both sides on the issue.

4. It should be noted that Ofwat's final determination of the PR24 price review process published on 19 December 2024 confirms that the Appellant has received an allocation of some £280 million for IED related works.

5. Paragraph 6 of the Appellant's Statement of Case states:

> *"The case is also concerned with the practicalities of the mandated infrastructure improvements, the deadlines for which have been set by the EA without any apparent assessment of what might be reasonably practicable within the relevant timeframe"*

Paragraphs 8–10 also assert that the deadlines set in the permit are unreasonable, as does paragraph 63 (unrealistic and unreasonable), and paragraph 83 (arbitrary and unreasonable). Our following comments address all these paragraphs.

6. We would reiterate the point that all water companies, including the Appellant, were informed nearly 6 years ago of the need to meet BAT standards and were advised to begin working towards those standards immediately. The Appellant appears to have made significantly less progress than the other water companies. All have been given the same amount of time to achieve compliance. It would have been inequitable to have granted the Appellant more time than other water companies simply because it had failed to adequately plan or programme the required works.

7. Paragraph 7.10 of Defra's Environmental Permitting Core Guidance requires all permit conditions to be both necessary and enforceable. Writing improvement conditions into a permit without specifying compliance deadlines renders those conditions unenforceable, so it is necessary to set a deadline.

8. In paragraph 85 the appellant states that *"TWUL has repeatedly identified that the programme of delivery will need to be phased in order to ensure that existing AD tanks are always in continued operation"*. However, the Appellant has provided no evidence that it has a credible compliance plan, or when compliance might be achieved. Even if we had been minded to treat the Appellant differently to other water companies, there is no means of knowing what it considers a reasonably practicable timescale to be.

9. Paragraph 13 states that "a revised containment assessment report will be required for Maple Lodge" and that this "inevitably impacts upon the reasonable date for the provision of a secondary containment implementation plan".

Had such an assessment been provided at the time of application, as per normal practice, this improvement condition would not have been required. Despite having benefitted from an extensive lead in period, including the 6 month period between the issue of the permit and the appeal being lodged, the Appellant was still unable to provide an acceptable proposal. It is unclear how much longer the Appellant requires to provide what is a relatively standard proposal.

10. Paragraph 27 of the Appellant's Statement of Case states:

> *The precise application of IED requirements has been the subject of significant uncertainty, with relevant regulatory guidance only published in September 2022.*

11. This assertion that relevant regulatory guidance was only published in September 2022 is wholly wrong. Such a claim is disingenuous given the number of times this has already been corrected. The Waste Treatment BREF and BATc – the standards to which we actually regulate – have been available since 2018. We have consistently referred all water companies to the BREF and BATc as their primary source of information.

    Furthermore, the Appropriate Measures guidance published in September 2022 did not fill a vacuum, it updated and consolidated three separate pieces of guidance which had themselves been available since 2013, the year the IED came into effect in the UK, and these documents broadly reflected the requirements of the IED.

    This matter was dealt with in the TWUL Reading appeal, an appeal which in many respects is similar to the Maple Lodge appeal . In paragraph 32 of the appeal decision[5] (FC05)the Inspector states that *"The appellant has also argued that the obligations on water companies in respect of the IED remain unclear and unagreed, characterised by the disagreement that exists on secondary containment, and that guidance was only published in 2022. For the purposes of this appeal, I am satisfied that the EA has identified BAT and, for the reasons above, I have no persuasive evidence that the timescales for implementation at this site are unreasonable."*

    Respectfully, we would argue that this same logic should apply to the Maple Lodge appeal.

12. Paragraphs 29-30 of the Appellant's Statement of Case state:

[5] Appeal Decision APP/EPR/659 Reading Sludge Treatment Centre

The requirements of the IED were transposed into domestic legislation by way of amendments to the Environmental Permitting (England and Wales) Regulations 2010 ("EPR 2010"), coming into force on 27 February 2013.

Prior to this point, sewage treatment sites operated by sewerage undertakers treating indigenous sewage sludges separated from the main urban wastewater treatment stream at the site along with the importation of similar wastes were regulated under the Urban Waste Water Treatment Directive ("UWWTD") and EPR 2010/2016 as exempt waste management activities, although some works (for example biogas utilisation) were covered by the Environmental Permitting regime.

13. This is not the case, the UWWTD is irrelevant. Para 10 of the now revoked Waste Management Licensing Regulations 1994 provided an exemption from the need for a waste management licence for the treatment of sewage sludge and other sewage related wastes within the curtilage of a sewage treatment works. The exemption was carried over in Schedule 2 of the EPR 2016 (as amended) as waste exemption T21. Sludge treatment operations which did not fall within the terms of the T21 exemption required an environmental permit and a number of sludge treatment facilities in England were regulated in this way.

    Such an exemption would not have been required if the activity had been regulated under the UWWTD. The very existence of the exemption confirms that the activity was not regulated under the UWWTD.

14. The statement in paragraph 31 of the Appellant's statement of case that "Initially, the Regulator took the view that anaerobic digestion plants conducted at sewage treatment works would be excluded from the requirements of the IED" is also incorrect. The Environment Agency did not agree with the view expressed by Defra in its March 2012 consultation document, although we appreciate that the Appellant would not be aware of this.

15. Having summarised the IED implementation timeline, paragraph 38 of Appellant's Statement of Case states:

    It is self-evident that the Environment Agency was still in the process of evaluating and determining what steps should be taken by operators as late as 2022. It is unrealistic to suggest that the regulatory position was settled when the principal relevant guidance was subject to consultation and finalisation over a two-year period.

16. This statement is demonstrably untrue. The September 2022 guidance covers the whole of the biowaste treatment sector, not just the water company sludge anaerobic digestion facilities. It reflects the requirements of the BREF and BATc. At the time the guidance was published the majority of commercial anaerobic digesters already held permits, and furthermore those permits had been reviewed to ensure they met the requirements of the 2018 BREF and BATc requirements. This work, carried out to ensure the August 2022 BAT compliance deadline was met, could not have been completed if as alleged we were *"still in the process of evaluating and determining what steps should be taken by operators"*.

17. Paragraph 39 of the Appellant's Statement of Case refers to a letter written to Georgina Collins, Director of Regulated Industry at the Environment Agency on 29 June 2023. It selectively quotes from the letter.

18. This letter was in response to Georgina Collins' letter to all water company CEOs dated 7 June 2023 (Appendix FC06[6]) and the two letters should be taken together in order to appreciate the context of the correspondence. Georgina Collins' letter laid out the regulatory obligations of those companies in relation to the IED. This letter formally confirmed an extension to the original compliance deadline of 17 August 2022 to 31 December 2024, a generous extension of over 2 years.

    A letter from Thames Water cannot take precedence over a regulatory deadline. The funding issues raised in the Appellant's letter are not relevant, as has been explained elsewhere.

    The suggestion in the letter that the Appellant had to comply with all aspects of the Appropriate Measures guidance is misinformed (see also paragraph 10 above). At no point has the Environment Agency said that this was the case, indeed we have been careful to ensure that water companies understood it was the BREF and BATc that defined the basis for compliance. Most damning of all is the Appellant's failure, after nearly six years, to produce detailed proposals of how it intends to achieve BAT standards, even if these proposals were not immediately deliverable because of other factors. In this respect the Appellant is the outlier within the water industry.

The 2019 Price Review ("PR19")

19. In response to paragraphs 40-44 of the Appellant's Statement of Case, we maintain that the funding of water companies is entirely separate from the legislative requirements placed upon water companies. The price review process includes mechanisms for providing funding for additional obligations which fall within the 5 yearly cycle where the criteria are met. In addition the Appellant did not avail itself

[6] Letter from Georgina Collins dated 7 June 2023 to all water company CEOs

of the opportunity to appeal Ofwat's PR19 determination to the Competition and Markets Authority in order to secure enhanced funding. Finally, Ofwat has clearly stated its position that regardless of funding water companies must meet all their other legal obligations as we have already referred to in our Statement of Case.

The risk of enforcement action

20. In response to paragraphs 45-48 of the Appellant's Statement of Case, we do indeed reserve the right both to remind the Appellant of its legal obligations and of the potential for enforcement action to be taken if it does not meet them. We could have been equally criticised had we failed to point out this possibility.

21. Paragraph 52 of the Appellant's Statement of Case comments that in describing our approach as both "pragmatic" and "proportionate" we have failed to explain what we meant by the term "pragmatic".

22. Resorting to improvement conditions proved necessary because, despite being afforded ample time, the Appellant has failed to provide detailed proposals of how it will meet BAT. Our approach has been pragmatic and proportionate because it provides the Appellant with additional time to provide this information. The alternative would be to refuse the application and immediately place the appellant in the invidious position of conducting an illegal activity.

23. Paragraph 55 of the Appellant's Statement of Case repeats the claim that the Environment Agency has, after a distinct period of time and changing advice, withdrawn benchmark threshold limits stated in PAS110 for digestate stability.

24. Digestate stability is only mentioned in IC15 (enclosure of post-digestion tanks) so is not relevant to IC13 or 14. This IC was originally designed and written to help permit holders assess gas quality, and specifically whether it could be fed to the gas recovery system or could be abated by alternative means. Both scenarios require the tank to be enclosed and the gas to be directed to an abatement system. All tanks containing whole un-dewatered digestate must be covered because, in addition to methane, whole digestate is a known source of ammonia and other volatile emissions. We have never issued permits with conditions that allow tanks to remain unenclosed based of digestate stability. A straightforward reading of the ICs will confirm this is the case for Maple Lodge.

    Despite this we became aware that water companies were misrepresenting the original IC to mean there may be a threshold that allowed the tank to remain unenclosed. We explained this was not the case and have since amended the IC so that in later permits, stability and tank enclosure requirements are separate. This prevents the two requirements becoming conflated.

This change does not alter in any way the requirements placed upon the operator. They are still required to cover all tanks holding or treating sludge, and to collect and abate emissions. Assessment of digestate stability is required under a separate IC. This IC enables the EA to benchmark the effectiveness of the digestion process. This will be used to determine whether or not the sludge cake is likely to generate methane and therefore needs further treatment or to be covered.

We would bring the Inspector's attention to paragraphs 210-215 of the Environment Agency's Statement of Case which also deals with this issue. Comments made by the Appellant in paragraphs 56, 59, and 60 regarding the need for an industry benchmark are also addressed in paragraphs 210-215 of our Statement of Case.

Discussions on Tank Covers

25. In paragraphs 64-71 of the Appellant's Statement of Case the Appellant seeks to argue that the requirement to enclose open tanks has changed over time. This is not the case. In this section of the Statement of Case the Appellant selects various written and verbal statements made over a number of years in an attempt to show an inconsistency of approach which does not exist.

26. We have consistently said that emissions from tanks must be abated. BAT 14d requires operators to contain, collect and treat diffuse emissions. Clearly, if there are no emissions arising from the tanks then enclosure and abatement will not be necessary. However the operator must demonstrate the absence of emissions by collecting the evidence which can then be used to inform a risk assessment. We cannot deny the operator the opportunity to pursue this option. Despite ample opportunity the Appellant has failed to provide us with such evidence, so the default is to require enclosure and abatement.

27. The nature of the sludge is such that it will inevitably be a source of methane, ammonia, hydrogen sulphide, and odour emissions. It is therefore unsurprising that the Appellant has been unable to provide evidence to disprove this. Consequently, the permit requires that the tanks are enclosed and the emissions abated.

28. The Appellant seeks to show that we have variously indicated that risk assessment is possible and at other times insisted on enclosure. These differences arise directly as a result of the Appellant's failure over a prolonged period of time to provide a risk assessment that shows there are no emissions. We can only wait so long for the Appellant to provide a risk assessment, and since this has not been forthcoming – even now – our language has shifted to requiring enclosure.

29. Paragraph 66 of the Appellant's Statement of Case seeks to show that section 7.1 of the Appropriate Measures guidance makes enclosure an absolute requirement:

"6. You must cover all bulk storage tanks. Where possible you must contain and vent tanks and vessels through suitable abatement, or direct emission to a gas recovery system."

By referencing only section 7.1 of the guidance the Appellant fails to take into account the overarching provision in section 1.1 which states:

"Some measures may not be suitable for or relevant to your operation. Appropriate measures will depend on the:

- *complexity of the activities being carried out*
- *size and nature of the activities*
- *location of the site*

Where an operator wants to propose an alternative measure, this must achieve the same level of environmental protection. The operator must also provide evidence of why the alternative is equivalent to (or better than) what this guidance proposes."

Taking both sections 1.1 and 7.1 together, if the Appellant had provided evidence that enclosure of the tanks was not required, for instance, because the tanks were not a source of polluting emissions then that would have been sufficient.

30. In paragraph 69 of its Statement of Case the Appellant appears to focus solely on digestate stability, i.e. the potential to generate biogas, to prove that there will be no emissions from the digester. This ignores the inevitable emissions of ammonia, hydrogen sulphide, and odour from the sludge in the tanks.

31. In summary, the Appellant's assertion in paragraph 71 that our position is confused is totally without merit. As a matter of fairness we provided the Appellant with the opportunity to conduct and submit a risk assessment, it has predictably failed to do so, and so we have required enclosure of the tanks.

Ongoing discussions on the development of an appropriate benchmark

32. The purpose of paragraphs 72-79 and 84 of the Appellant's Statement of Case is unclear. The industry is generating data on residual biogas potential (RBP) of the sludge being produced at all permitted sludge AD facilities in order to establish a benchmark below which sludge cake can be stored without abatement. All other water companies are producing this information. We have already adopted a pragmatic position by delaying the need to cover and abate cake storage pending the outcome of this work. This has already saved the industry from some significant costs. It is in the interest of all water companies that this data is generated and

collated so that a threshold RBP value can be established below which there is no need to cover the cake and abate emissions.

33. If the Appellant genuinely wishes to oppose or unduly delay this requirement then we will have no alternative than to vary the permit to require sludge cake storage at Maple Lodge to be covered and abated. This will involve the Appellant incurring considerable additional costs.

Practicalities

34. Paragraph 85 of the Appellant's Statement of Case argues that the programme of works required is not deliverable within the timescale given. The Appellant was informed of the need to meet the required IED BAT standards in 2019. A responsible operator would have acted on this information but despite numerous reminders the Appellant has failed to prepare for regulation by drawing up adequate implementation plans, conducting risk assessments, or collecting essential data. It would be wholly inappropriate for the regulator to amend the compliance deadlines to accommodate the Appellant's lack of action.

35. Finally, paragraph 85 of the Appellant's Statement of Case comments that when the draft permit was issued on 28 February 2024 the covering email expressly stated that the EA were not asking for comments on the conditions that had been used. Whilst correct we would point out in the interest of balance that the email also states that *"If you've concerns about the conditions we've chosen please discuss this with me and I can explain why they've been included. These (sic) wording of these conditions is standard. We will only consider changes to the wording in very exceptional circumstances"*.