



Chris Weston
Chief Executive Officer
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Philip Duffy
Chief Executive
Environment Agency

SENT VIA EMAIL

2 January 2025

Dear Philip,

Industrial Emissions Directive – Appeal in relation to Maple Lodge Sludge Treatment Centre

I write generally in relation to the Industrial Emissions Directive (“IED”) and specifically in relation to the Environment Agency’s (“EA”) Statement of Case in respect of Thames Water’s appeal against the imposition of certain improvement conditions in its IED Environmental Permits for the Maple Lodge Sludge Treatment Centre (“Maple Lodge”). There is an inferred allegation in the EA’s Statement of Case that Thames Water is “not financially competent” to hold IED Environmental Permits. There are implied threats in the Statement of Case that future permit applications will be refused, that existing environmental permits will be revoked and that criminal proceedings will follow. Before taking any action on the basis of the EA’s Statement of Case, I wanted to check my interpretation of it with you.

I attach a copy of a fuller letter that the General Counsel of Thames Water has sent to the Environment Agency’s Director of Legal and Audit. However, I take this opportunity to write to you separately as there are some aspects of this correspondence that it is important I draw to your attention.

Paragraph 187 of the EA Statement of Case reads as follows (our emphasis added):

*“If in fact, the Appellant is arguing that they are not financially competent and is making this clear as part of this appeal, the Inspector is invited to take note of this fact in the context of giving consideration to the legal provision set out in paragraph 135 above. For the Environment Agency’s part, it may have to give greater consideration to refusing all subsequent permit applications made by the Appellant for sludge treatment facilities under the EPR 2016. **Under our regulatory duties outlined in paragraph 114 of this Statement, the Environment Agency would have a duty to refuse to grant permit applications for all 25 of the Appellant’s applications. The Appellant would then be operating a regulated facility without a permit. In other words, their activities would be illegal and be committing an offence under the EPR 2016. Regulation 38 of the EPR 2016 makes it an offence to operate a regulated facility without an environmental permit, in contravention of regulation 12. Contravention of the EPR (and consequently illegality) is a matter of fact and evidence as to whether regulated activities are being undertaken without a permit.”***

This is in the context of Thames Water's appeal against the EA's unilateral imposition of deadlines for compliance with improvement conditions that are incapable of being complied with in practice, despite the EA having been consistently made aware that Thames Water has not been provided with funding for IED improvements as part of AMP7 and in circumstances where the failure to meet such deadlines has the potential to result in criminal liability.

To be clear, at no stage has Thames Water made any suggestion that it is "not financially competent". As has been made repeatedly clear to the EA, the cost of IED improvements is significant. The latest estimate provided by Thames Water is between £500 and £600 million in capital expenditure and a £40 million increase in operational expenditure per annum.

However, if it should be read as an expression of the views of the EA, the position taken in the Statement of Case causes me a good deal of concern. The 25 treatment centres that are referred to take the vast majority of the sludge produced by Thames Water's sewage treatment works, and if they were all taken out of operation (as would be the EA's expectation if permits were refused or revoked), it is no exaggeration to say that the whole process of sewage treatment across the Thames Water area would be in jeopardy. It would be helpful to know whether, in your view, we should be preparing for this, both within the company and, crucially, with relevant government and civil society stakeholders.

If the threats implied in the Statement of Case are not intended to trigger these preparations, then I am not clear what they were intended to achieve, and I would suggest that they are both inappropriate and incendiary. The Thames Water General Counsel has asked the EA Director of Legal and Audit whether they represent the view of those in authority within the Environment Agency. I hope very much that they do not.

I am concerned that there is now an ever more pressing need for the Environment Agency and Thames Water to reach a consensus on how to address the environmental challenges that our business faces. Our financial situation cannot be ignored for these purposes and I do wonder the extent to which it is in the public interest for the EA to seek to take regulatory action against Thames Water on the basis of its currently limited financial resilience. The facts are plain and publicly available. Your officials have also been briefed on them in an open and transparent manner. Our liquidity runway currently expires on 25 March 2025. On the assumption that the High Court approves our restructuring plan in early February, our liquidity runway will be extended to the end of September and we will be able to start drawing on the relevant new money facility in early March. Substantially all of the Improvement Conditions in our IED permits are due to be delivered on March 31, 2025. Even if it was physically possible to deliver all of the relevant IED compliance works by that date (which it is not) we would not have the funds to do so. We currently have no access to shareholder capital. There is no grant funding available from HMG. But for so long as the EA insists that we have to complete these works by March 31, 2025 nonetheless, we appear to be in a never-ending circular conversation that serves nobody well and exposes all parties to criticism.

At a meeting last year Amira Amzour of Defra suggested that the pragmatic solution here must surely be for Thames Water and its regulators to agree a pragmatic programme for undertaking these works that also affords sufficient time for Thames to raise the necessary funding to complete the works. I agree. This latter point is important because our initial review of Ofwat's Final Determination (published on 19 December, 2024) is that we have been set an unprecedentedly high efficiency challenge with respect to IED. Such a pragmatic programme could be formalised by a Regulatory Position Statement or a Local Enforcement Position, such that the EA would retain

close oversight of the works, and Thames Water would have much needed certainty that it will not face enforcement action in respect of IED provided that it delivers on the agreed programme.

In the meantime and in any event, Thames Water continues to use its best endeavours to strive to be compliant with the requirements of IED as soon as possible.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Weston', with a stylized flourish at the end.

Chris Weston
Chief Executive Officer

cc David Hallam, Director, Floods and Water, Defra