

Official-sensitive

Chris Weston

Our ref: 24934

Via email: chris.weston@thameswater.co.uk

Date: 17 January 2025

Dear Chris Weston,

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

Thank you for your letter of 02 January 2025. In order to address the issues you have raised, I feel it is helpful to place the Industrial Emissions Directive (IED) requirements in context.

Timescales

You refer in your letter to the ‘unilateral imposition of deadlines for compliance with improvement conditions that are incapable of being complied with in practice’. I would like to remind you of the published implementation timeline for Industrial Emissions Directive facilities.

The water industry has been aware of the potential for sludge digesters to be within scope of the Industrial Emissions Directive and the implications for water and sewerage companies (WaSCs) at least as early as August 2011 when UK Water Industry Research (UKWIR) published a [report](#) on the subject.

The IED was transposed into English law on 27 February 2013. It includes compliance deadlines which would have required sewage sludge digesters to meet BAT standards of operation by 15 July 2015, i.e. within less than 29 months.

A difference of opinion about the scope of an exclusion for Urban Waste Water Treatment Directive activities caused a delay in requiring water companies to apply for permits. As a result the July 2015 deadline passed, and it was in April 2019 that water companies received confirmation of the need to comply with IED requirements. Since that date we have worked closely with and supported WaSCs with training sessions and regular engagement on technical issues.

The original compliance deadline of August 2022 has been extended several times to accommodate the needs of the water industry. The final deadline is 31 March 2025, six years after it was confirmed that the IED would apply to sludge digesters and nearly ten years later than the legislative deadline for compliance. No

other sector has been granted extended compliance deadlines. The rest of the biowaste treatment sector is broadly compliant and operating to the required standards; the water industry is the outlier. We consider a 14-year lead in period with 6 years to plan for and deliver improvements to meet BAT standards to be generous.

Financial considerations

Your letter states that Thames Water did not receive funding for IED improvements as part of AMP7. Other WaSCs have pursued all funding opportunities, have managed their processes prudently, and have actively planned their pathway to IED compliance meaning that they are able to proceed in implementing improvements in a timely manner and bring an end to the ongoing environmental damage from these facilities. In this respect Thames Water is the outlier.

Ofwat has also made clear that funding, or lack thereof, is not a valid reason for WaSCs failing to comply with environmental obligations. Its [letter to all WaSC Regulatory Directors](#) dated 01 August 2023 states that *“Companies need to comply with their obligations, and Ofwat's forthcoming 2024 price review (PR24) is not a reason for companies to delay compliance”*. It goes on to say that *“Some companies have said that their IED improvements cannot feasibly be delivered by the 2024 deadline. However, we expect companies to make every effort to have permits in place and to deliver the required improvement works by the December 2024 deadline. To encourage companies not to delay, we will consider whether to provide funding for costs incurred during the period 2020-2025”*.

We expect all WaSCs to manage their resources such that they can meet their regulatory obligations. It is now nearly 6 years since the industry was informed of its IED obligations and still Thames Water is unable to demonstrate it has a clear pathway to achieving compliance. Financial constraints are not an acceptable excuse for Thames Water's failure to meet these regulatory requirements. In short, we cannot allow Thames Water's activities in respect of Maple Lodge STC to remain unregulated and sub-standard for an indeterminate amount of time; the environment cannot be allowed to be a casualty of the company's financial difficulties.

Financial competence

In this regard, it should be noted that financial competence has a particular technical meaning under the Environmental Permitting Regulations 2016 and our comments are made only in this context.

Under the provisions of the Environmental Permitting Regulations the regulator has a duty to refuse a permit application where the financial competence of the operator cannot be demonstrated. Defra's Environmental Permitting Core Guidance, which is statutory guidance, states at paragraph 9.27 that *“The operator of any regulated facility should be financially capable of complying with the environmental permit. The regulator should consider an operator's financial competence when determining the operator's ability to comply with the conditions in its permit.”*

We considered financial competence during the determination of the Maple Lodge permit application and found in the company's favour. The permit was issued on the

strength of confirmation made on the permit application form and the fact that the company was paying internal dividends.

If an operator subsequently states that it does not have the funds to comply with the conditions of its permit, as Thames Water has done, we are under a duty to reconsider financial competence. Given that the company has made repeated references to the lack of funding in its notice of appeal and the subsequent statement of case for Maple Lodge, we see no basis upon which to retract our concerns about the financial competence of the company.

Thames Water is either financially competent or it is not. If the company insists it is financially competent then it has access to sufficient funds to comply with conditions of the Maple Lodge permit, and these funds should be made available for this purpose as a matter of priority. If paragraph 16 of the Thames Water statement of case is accurate when it states that “*funding for IED improvements at Maple Lodge does not exist*” then we are entitled to question the financial competence of the company.

Enforcement Action

References to financial competence are included in the statement of case to bring to the Inspector’s attention that a pre-requisite for holding a permit is having the financial means to comply with it. They are also intended to ensure the company is aware of the jeopardy it places itself in by pleading a lack of funds to support its case at appeal.

Whilst we have the powers to revoke permits or suspend operations, we do not currently believe this would be in the public interest. We do however expect Thames Water to address the shortcomings at its sludge treatment sites as a matter of urgency. Positively, some permit-required improvements will not only reduce the environmental impact of sludge treatment but also boost income, particularly through more effective biogas capture

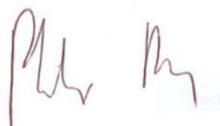
We are issuing over 100 installation permits for Water and Sewerage Company (WaSC) sludge digesters and expect 95% to be issued by the 31 March 2025 deadline. Companies failing to meet improvement conditions must demonstrate ‘best endeavours’ to comply as soon as possible. Our regulatory response will consider environmental risks, feasible timelines and company commitment to making the improvements. We expect you to put forward your proposals to bring your sites into compliance. Success means achieving strong compliance with improvement conditions as quickly as possible. We are currently considering the approach we will take to securing the compliance of the water industry and will outline our approach to all operators soon.

We will continue to assess performance against permit conditions, record any non-compliances and reserve the right to consider all enforcement options in accordance with our enforcement and sanctions policy. Meanwhile we expect Thames Water to prioritise investment and commission work such that it can demonstrate everything is being done to achieve compliance as soon as practically possible.

We will continue to discuss this matter further. However, I must be clear that in the meantime I expect Thames Water to do everything possible to comply with its legal obligations.

I understand that Nevil Muncaster is meeting with Georgina Collins on 23 January to discuss this matter further.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Philip Duffy', with a blue rectangular stamp or mark to its right.

Philip Duffy
Chief Executive