



Office for
Environmental
Protection

Casework Summary Report

Case Number (if relevant): CMS-358 and CMS 426

Description: Concerns about the Department for Environment, Food and Rural Affairs' (DEFRA), and other regulatory bodies including the Environment Agency's and Natural England's, alleged failures to protect the River Axe and River Wye from the adverse impacts of diffuse agricultural pollution including that associated with intensive poultry livestock farming (IPUs).

Case Overview

Background/Complaints Summary

The OEP received complaints and intelligence about concerns relating to the role of several public authorities in protecting rivers including the Axe and the Wye. DEFRA, the Environment Agency, Natural England, and a number of planning authorities were mentioned in the correspondence received.

Issues raised included:

- Concern about failures to implement the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the 'WFD Regulations') and River Basin Management Planning in England
- Concern about the DEFRA's alleged failures to protect the River Wye from the adverse impacts of IPUs and other sources of diffuse and point pollution.
- The Environment Agency's inspection and enforcement regimes for agriculture, including alleged failures to prosecute pollution incidents.

Reference was also made to concerns about pollution from Combined Sewer Overflows (CSOs), which were passed on to the OEP team responsible for the ongoing investigation into the regulation of CSOs in England.

OEP Actions

We considered the information submitted by the complainants along with information provided by relevant public bodies to determine whether enforcement action was the most appropriate route for the OEP to take. As part of this assessment process, we reviewed other relevant activity being undertaken by the OEP, including the findings of the OEP's report on the implementation of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the 'WFD Regulations') and River Basin Management Planning in England. This was published on 9 May and can be found on our website.

Conclusions and Outcomes

Our assessment of the complaints identified a number of specific areas of concern which we have addressed through the following activity:

Alleged failure to effectively implement the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (the 'WFD Regulations') and River Basin Management Planning in England.

We have concluded that the findings of our report on this subject, published on 9 May 2024, cover the issues identified by the complainant, and the recommendations set out in that report would address those concerns. Our principal finding is that Government is not on track to meet the Environmental Objectives it has set for water bodies in England under the WFD Regulations which include the requirement for water bodies to achieve 'Good Status'. For water bodies that are also protected sites under the Habitats Regulations such as the River Wye, achieving 'Good Status' includes an objective for the site to meet its conservation objectives. We therefore recommend that Government urgently brings forward additional measures where Environmental Objectives are unlikely to be met.

Based on the available information, we also identify in the Report several areas where we currently consider that the approach to implementation may not comply with the WFD Regulations. This includes a failure to demonstrate how Environmental Objectives will be met at the water body level and the setting of Environmental Objectives with 'low confidence' that they will be achieved.

We identify agricultural diffuse pollution as the second most major pressure affecting water bodies in England. We also explain that nutrient pollution is the main water quality pressure constraining the ability for water bodies to achieve their Environmental Objectives. For rivers and other surface water bodies, failure to achieve Good Ecological Status or Potential is driven primarily by phosphate pollution. This comes mostly from agriculture and wastewater treatment. Failure in rivers and other surface water bodies to achieve Good Chemical Status is driven by ubiquitous, persistent, bio-accumulative and toxic chemicals (uPBTs). In relation to the River Wye, these findings are consistent with the issues brought to our attention in the information provided in the complaint.

We conclude in our report that while we believe the underlying approach of the WFD Regulations is broadly sound, it is not being implemented effectively and is far from delivering as it should.

We have made a number of recommendations and the Government has 3 months to respond. We will review these responses alongside any additional relevant information to determine what further action may be appropriate to deal with the issues identified by the complaint and the wider report in due course.

Regulation of Intensive Poultry Units in the Wye Catchment

The complaint(s) also detailed concerns with regards to the regulation of IPUs in the Wye catchment by the Forest of Dean District Council and Herefordshire Council. Our assessment of the allegations found a lack of evidence that the authorities had considered the impacts of manure spreading on land when assessing historical agricultural planning applications, including those of IPUs.

Whilst we are not progressing this specific issue through our enforcement function at this time, we have written to the relevant councils to seek confirmation that they expressly consider the impacts of manure spreading on applicants' and third-party land on the River Wye SAC when assessing agriculture planning applications in the future. If we become aware of any applications that do not consider these impacts in future, we may consider enforcement action.

Where local planning authorities or the Environment Agency consider impacts such as these as part of an Appropriate Assessment in relation to an SAC, they are under a duty to consult with Natural England. We have therefore also written to Natural England to request confirmation that, if consulted on an Appropriate Assessment for an IPU or other agricultural planning application (in relation to a planning application or an environmental permit), their advice will consider these impacts.

Publicly available information also suggests that the Environment Agency may have failed to properly consider these impacts when granting environmental permits for historical agricultural planning applications, including IPUs. Following Government's response to our Report, we will be considering our next steps in relation to our work to address poor water quality in England, which may include further consideration of these matters.

Inspection and enforcement regimes

The complaint(s) referred to the Environment Agency's role in enforcing legislation concerning the protection of water bodies from agricultural diffuse pollution, including the Farming Rules for Water. We have concluded that the Environment Agency has broad discretion as to the exercise of its regulatory and enforcement powers. It is clear from information provided to the OEP that the EA has taken some enforcement action in relation to the relevant legislation. As such, we have concluded that there is no indication of a failure to comply with environmental law, and we will not be taking further action in relation to this aspect of the complaint.