

Date: 25 July 2023

Our Ref: EIR23140

Sent via email

Dear Vicki Elcoate

1. Background

I refer to your request for information, received by us on 07 July 2022, which reads as follows:

Data

It is obviously a serious matter that South West Water is now questioning its own data for the 2022 CSO discharges. As we have previously pointed out, we had speculated that some of the data was excessive, compared to expectations, but some (Gun Cliff and Monmouth Beach) are below what we would expect. It is therefore hard to know what to trust.

So our questions are:

1. Is there a systemic failure in SWW's monitoring of its CSOs? What are the issues that have given rise to these errors and are they replicated across your service area?
2. What gave rise to the errors SWW says apply to the CSOs at the Uplyme WWTW and at Jericho? If the original data was an error, how do you know that, for example, the Jericho CSO data was out by 50%? Please can you now supply data we can rely on for all the CSOs on the River Lim and at Monmouth Beach?
3. Is the Environment Agency aware of these errors and will any corrections be published?

Investment Programme

The River Lim Action group welcomes your application to Ofwat to bring forward the investment programme for Lyme Regis, given the scale of the environmental and human impacts. We welcome the opportunity to work with you to secure the improvements needed and can offer help with your stakeholder work to discuss the impacts of the construction phase.

It would be most helpful to have a clear statement of the outcomes you seek from the work you're proposing to carry out. This will help with communications about it.

Our questions are:

1. If Ofwat gives approval when will the works start?
2. Is the budget for this the £20m you previously mentioned or a sum yet to be determined which addresses the issues that need to be resolved (e.g. might it be greater than £20m)?
3. Your first bullet point refers to 3 storm overflows – which ones are these (as there are more than 3)?
4. How much additional storm storage is needed at the WWTW? What capacity will it have and on what projections has this calculation of capacity been based? If there is no phosphate/nitrate stripping at the WWTW currently will that be included?
5. You refer to Anning Road pump station where no work is proposed. However it is in this area that there is now general agreement of a real problem between Woodmead Road Bridge and Gosling Bridge with unlicensed discharges which is set out in Liz Davis' paper to the June 14 roundtable meeting. Will the proposed plan of works deal with these discharges as well as the CSOs? Or is this being dealt with more urgently given there is no permission for it to be happening?
6. Please clarify what work on the Cobb the answer refers to? Is it part of the scheduled harbour works or improvements to the Monmouth Beach CSO – or both?

We look forward to receiving more detail on all aspects of the scheme in due course. As you know our goal is to have a clean river and we would like to be confident that this scheme will deliver that within the next two years.

We consider that some aspects of your request fall within the Environmental Information Regulations 2004 ("Regulations"), and this letter provides the response to your request under those Regulations. However, some of your concerns are best addressed through our ongoing dialogue with you and with the River Lim Action Group, and so we propose to provide more detail when you meet with our Chief Operating Officer and colleagues on Monday 24 July 2023.

2. South West Water's (SWW) Response

Where you have requested specific information (such as data) and where SWW holds that information, SWW has a duty to make that information available, unless one of the exceptions contained within the Regulations applies. However, we have endeavoured to answer all of your questions in this letter, noting where appropriate that some may benefit from a more fulsome discussion during the meeting on Monday.

Data

Item 1

We will discuss your concerns about the accuracy of the data, and the steps SWW is taking to address those concerns, during our meeting on Monday. In short, SWW accepts that greater accuracy in the data is essential, and to ensure SWW achieves this, it is establishing a dedicated storm overflow team and a new SpillSure application, which we will explain on Monday.

Item 2

We are confident that we understand why we over-reported spill numbers occurred and are putting in place systems that will address this going forward (this will include new software and new analysis procedures, to reduce manual intervention).

For 2022 we reported a total of 43 spills at Jericho, for a duration of 628.4 hours. Having revisited the data however it is clear that the spill numbers and duration were both over-reported, with actual total spills at 20 and duration at 29.92 hours. Again, we will use the opportunity of our meeting with you on the 24 July to discuss the detail.

Item 3

The EA were made aware at our regular Lyme Regis Bathing Water group meeting (14 June) attended by yourselves, Lyme Regis Town Council, Dorset Council, , SWW and Jim Flory (EA Area Environment Manager), where these issues were discussed.

It is not possible to make corrections to data already submitted in the Annual Report.

Investment Programme

Item 1

As per our previous response we are not yet in a position to confirm scope, cost, or plan any start dates.

Currently we are undertaking a monitoring exercise to gather data which will then need to be carefully analysed and interpreted before any accurate conclusions can be drawn.

We have commissioned an impermeable area survey of the whole of Lyme Regis, we have not done this before. The surveyor will colour a map showing where each area drains, e.g. highways drains, surface water, soakaways, or combined sewer. We can then see where we need to carry out surface water separation. We need to complete this survey to know the detail of where surface water separation will take place, how much is needed and when it will happen.

We will share headlines as they emerge and as we are able to.

Item 2

At present the cost is a forecast/estimate. Once we have completed our investigations, we will be able to be specific around the required actions, timeline and costs for each aspect of the whole scheme.

If we are successful in our application to Ofwat for transitional funding, we will be able to bring early investigative work forward, which will result in benefits of the work across the catchment being felt earlier. Much of the work will involve surface water separation.

Item 3

The SOs in question are Uplyme, Jericho, and Gun Cliff. We are also looking at the other SO to the Lim, which are included in the £20m

Item 4

We do not yet know exactly what storm storage will be required at a particular site until the final hydraulic modelling and scope of the project is defined. We are looking closely at the types of solutions being developed and are seeking to deploy nature-based solutions in preference to storm storage by removing surface water from the network rather than deploying grey based solutions. Our Green First framework published alongside our DWMP can be found here [our-green-first-framework_final.pdf \(southwestwater.co.uk\)](#)

There is currently no permit requirement for nutrient removal at Uplyme. Nor is this site identified for Phosphate or nutrient reductions in future investment periods as the discharge from works discharges directly to the sea.

Anning Road PS is not linked to the investigations being undertaken around Woodmead Road Bridge and Gosling Bridge. Investigations have however identified defects on the foul sewer and surface water line on Anning Road that are allowing sewage to contaminate the surface water line. These are planned in for repair. We are currently awaiting permission to access properties.

Item 5

Woodmead Road Bridge (Jericho CSO) and Gosling Bridge (Gosling Road) are both included within the £20m project. Gosling Road currently is not showing any significant spills and so the only improvement at this location is to fit a screen to ensure that discharges are screened and are removing any sewage litter from the discharges should it spill in future.

As included in your 30th June update from us:

Woodmead Surface Water Outfall (SWO) 9506

- Investigations and sampling indicate the source of contamination at SWO 9605 beside Woodmead Road bridge has now been rectified.
- CCTV identified defects on the foul line beside the cemetery that was allowing sewage to escape and then enter the surface line beside it through defects. Both lines were repaired on the 16th of June 2023.
- A SWW sampler attended the outfall on the 27th and 29th of June 2023, on both occasions no discolouration was observed and flows from the outfall tested negative for Ammonia indicating no contamination.

Item 6

SWW's plans cover the Cob CSO (Monmouth beach) only, however now that we are aware of the works planned by the council, we will liaise with them to discuss this further.

3. Further Queries

We have the opportunity to discuss these answers further at our meeting on Monday 24 July, and we can also consider any additional questions you may have during the meeting.

For those aspects of this letter that fall within the Regulations, you do also have the right to ask for an internal review. Internal review requests should be submitted within 40 working days of the date of receipt of this response and should be addressed to Dr Lisa Gahan (Regulatory Director) who can be contacted by e-mail on EIInternalreviews@southwestwater.co.uk

If you are dissatisfied with the outcome of the internal review, you can apply, without charge, to the Information Commissioner, who will consider whether SWW has complied with its obligations under the Regulations and can require SWW to remedy any problems. You can find out more about how to do this, and about the Regulations in general, on the Information Commissioner's website at: www.ico.org.uk. Complaints to the Information Commissioner can be made via the "report a concern" section of the Information Commissioner's website.

With best regards,

South West Water

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Appendix A

In this instance SWW will be relying on exception 12(5)(b) of the Regulations, which provides that environmental information may be withheld where disclosure could 'adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature'.

As you may be aware water industry regulators are currently undertaking an industry-wide investigation into the use of overflows.

It is important that the regulators are given the opportunity to make their own assessment following their investigations and that the investigations are protected against the risk of any undue influence from outside sources that might be caused by the prior release of relevant information into the public domain.

As the information requested is directly relevant to the investigations referred to above, SWW considers that these are appropriate circumstances in which the exception 12(5)(b) provided in the Regulations should be applied and the request refused.

This exception is subject to the public interest test and SWW has therefore considered carefully whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. On this occasion, we have decided that the public interest in the information being disclosed whilst the investigations described above are ongoing does not outweigh the need to ensure a fair investigation and to protect the course of justice that stands to be adversely affected in the event the information sought is disclosed at this stage.

SWW must ensure, whilst EA and Ofwat investigations are ongoing, that the fundamental principle of the course of justice is preserved and as such we have had to reflect upon our decision to give access to EDM data.

The data you have requested falls squarely within the scope of the investigations by the Environment Agency and Ofwat. In Information Commissioner's Office (ICO) decision notice IC-163737-D3Q3, the ICO considered the potential for the disclosure of such information to have an adverse effect on the course of justice and reached the following conclusion:

"In this case it is clear to the Commissioner that the balance of the public interests lies in maintaining the exception, rather than being equally balanced. Where an investigation is on-going and, where that investigation could lead to criminal charges, it cannot be in the public interest to disclose information that is relevant to that investigation."

The nature of the information you are requesting is of the same nature as the information requested in ICO decision notice IC-163737-D3Q3. After careful consideration, SWW has reached the same conclusion as the ICO, for the same reasons.

SWW's position is also supported by the decision dated 30 January 2023 of the Information Commissioner (decision reference: IC-206971-F9G9). In that decision, the Information Commissioner upheld a refusal of SWW to disclose information relevant to the ongoing investigation by Ofwat and the EA.

At paragraph 10, the decision notes that *"The investigations into sewage treatment works launched by the Environment Agency and Ofwat are also still ongoing. The Commissioner is therefore satisfied that, like Severn Trent Water, SWW is entitled to withhold the information requested in this case under 12(5)(b) of the EIR"*.

Following the application of the public interest test, the Commissioner concludes, at paragraph 12, that *"as in the previous case, it is clear to the Commissioner that the balance of the public interests lies in maintaining the exception. Where an investigation is ongoing and where that investigation*

could lead to criminal charges, it cannot be in the public interest to potentially undermine that investigation by disclosing information that is relevant to it.”

This conclusion is also consistent with ICO guidance, which makes clear that if there is an investigation ongoing, the public interest may be better served by allowing it to continue without interference, rather than disclosing information prematurely. Further, ICO notes that the fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information that has been requested about it.