



Salmon & Trout Association

Fighting for the future of game angling

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**Environment Agency Consultation Paper
Risk based regulation of discharges to water:
Encouraging better environmental performance by business**

Response by the Salmon & Trout Association

The Salmon & Trout Association has studied with much interest, but no little concern, the proposals outlined in the Consultation Paper. Although the document is largely addressed to operators, the purposes of the proposals are of particular importance to the Association whose very *raison d'être* depends on the health and well being of the aquatic environment. However, as some of the questions are more specifically directed to operators the following response considers the proposals in a more general manner as would seem appropriate in the circumstances.

Introductory

- 1.1 Compliance with all aspects of the Water Framework Directive must be the end result; that is a statutory requirement, and any changes to current practice must be for that purpose. Efficient monitoring of effluents and their receiving waters is arguably the most important factor to that end. But its thoroughness and extent will have to be greater than hitherto if WFD objectives are to be fully and timely met. It is accepted that monitoring is a costly and labour intensive operation and in these circumstances there can be no objection to, indeed there should be encouragement for, developing methods which are both effective in their purpose and cost-efficient in their operation.
- 1.2 However, a study of the Consultation Paper raises many serious doubts.
- 1.3 The principal intentions are clearly to save cost and reduce the burden on the Environment Agency with its Government-controlled and limited resources. But will that be the case, and even more important, will the proposals do the job? Will they

reduce the number of pollution incidents? And will they ensure compliance with WFD?

- 1.4 In the Association's view the evidence that, as between the EA and the operators, there will be any financial advantage is not compelling. And there are cogent reasons for believing that certainly in their presently proposed form the proposals will be neither practical nor successful in their essential aims.
- 1.5 It must always be remembered that the EA are the Competent Authority for WFD purposes and that title will sit oddly on their shoulders if they avoid their WFD responsibilities by, as the official regulator, letting part of their regulating work be done by those whom they are required to regulate.
- 1.6 The Association has no objection in principle to a risk-based approach to regulation. It must be remembered, however, that risk-based management and the precautionary principle make uneasy bedfellows. If a risk-based strategy is to succeed, the risk element must be tailored to ensure that:
 - consent conditions are so determined as to ensure that by their regular compliance no harmful pollution or ecological damage is caused; and, so far as is practicable, and certainly more assuredly than at present,
 - consent conditions are not breached, and
 - incidents of harmful pollution are prevented.
- 1.7 These conditions can only be met if the end of pipe discharge is of such a quality as to protect the receiving water from harmful pollution. It is therefore a matter of great concern to the Association that, as indicated in Table 12.1, out of nearly 100,000 existing consented discharges, only some 500 will be subjected to discharge sampling. That is not satisfactory. Occasional inspections of treatment plants etc. can never take the place of actual data from the direct monitoring of samples. The incentive to the operator to produce consistently good results will be inevitably reduced. Information that will be of great value ecologically will no longer be available. Moreover there is a significant number of smaller discharges that are potentially more hazardous than domestic sewage. While the OPRA proposals properly applied may identify these discharges, to omit sampling of them would increase the risk factor beyond acceptable limits. There is need for flexibility in the operation of any scheme of this nature.

2 OPRA

- 2.1 The concept of OPRA is not new, and there can be no objection in principle to adapting it for regulating consented discharges. In the Association's view, however, some aspects of the proposals in their present form are open to serious criticism.
- 2.2 Of the five attributes, the Operator Performance category surely presents problems in the form set out. It may well be that operators, and particularly Water companies, will find the prospect of doing their own monitoring attractive. What, however, will be their attitude to the fairly searching information demands set out in Annex 1,

especially if the answers to those questions and the scores awarded are made public knowledge in the important interests of openness? And even a 'yes' answer to the question is no guarantee that the systems or plans will always be properly followed. It may also be relevant to ask: if an operator given a high performance rating by the EA subsequently caused a pollution incident, might not the EA's position, were prosecution to follow, be compromised? Or alternatively will the incentive to prosecute be correspondingly lessened?

- 2.3 In the Association's view, this attribute, highly desirable though it may be in theory, has practical difficulties. These could be avoided by reducing the importance of Operator Performance in the points category, or even removing it, and increasing correspondingly the importance and points score of the Compliance Rating attribute. For compliance is what is sought; how it is achieved must be the responsibility of the operator and the EA will take over some of that responsibility, if only by implication, at its peril.
- 2.4 With the proviso that the Band scores are subject to regular review and amendment in the light of experience, and perhaps greater weighting given to Compliance Rating, the other Attributes would seem appropriate.
- 2.5 What is not satisfactory is the straight application of simplified OPRA to discharges of 50 m³/d or less, and to intermittent discharges. Of the former there are many instances of small village sewage treatment works discharging to little more than running ditches where dilution is poor and any deterioration of performance could have more serious consequences. Again, flexibility in OPRA operation is needed in classifying such discharges as may be identified. Intermittent discharges pose more serious problems. There are basically two sorts. Storm sewage overflows, where effectively only the rate of sewage flow at which overflow is permitted can be controlled numerically, are still a serious source of harmful pollution. Both quality and quantity result from the intensity and duration of rainfall, and in neither case can numeric parameters be imposed. It is far from clear how such discharges can be satisfactorily fitted into the OPRA system. Other intermittent sources can be found in the fruit and vegetable processing industry where substantial seasonal flows of potentially highly polluting effluent can be produced. Other industries producing a generally continuous discharge of effluent may have a weekly wash of equipment producing a slug discharge of high strength effluent. Simplified OPRA is not a satisfactory means of controlling such discharges.
- 2.6 There is need for more information as to how OPRA will satisfactorily deal with intermittent discharges and also in more general terms for all discharges how the points scored are to be related by the EA to the monitoring costs involved and the charges made to the operators. Scores should be regularly reviewed so that operators who have performed well will receive due reward, while those who have failed are suitably penalised.

3. Operator Self Monitoring (OSM)

- 3.1 The two main factors affecting OSM are ability and trust.
- 3.2 The majority of discharges requiring monitoring will be from Water company operated sewage treatment plants. Water companies are all accustomed to and have the skills and equipment necessary for routine sampling and analysis. It is something they need to do for their own purposes. They have the necessary ability.
- 3.3 Other industrial dischargers however are a different matter. In this context we are concerned only with those making consented discharges direct to a watercourse. To most of them their business or the manufacturing of their particular product and the profit they can make for themselves and their shareholders has to be the dominant requirement. Effluent treatment is at best an unwelcome necessity and an operation that must be kept as inexpensive as possible consistent with meeting their consent conditions. Many will have little or no skills in sampling or any capacity for adequate analysis. Moreover, industrial discharges vary widely in both volume and strength and character. Some discharges are intermittent, some are seasonal; all require some degree of individual assessment. In general terms many industrial consented discharges are unlikely to be suited to OSM. They will not have the necessary ability.
- 3.4 But where OSM is to be practised, trust becomes essential for success. There must be trust between operator and the EA and between both and all those justly and properly concerned with the health of the aquatic environment. There must be openness and availability of results all round. That is asking a great deal if OSM is practised. All may be well until the effluent deteriorates. If that is shown as a result of a sample taken and analysed by the EA, there can be no argument. But if an OSM sample shows a bad result, there is both incentive and temptation for it to be quietly lost, especially if there are financial implications, and however vigilant the EA may be, the means for such practice can always be found. There will always be a 'them and us' relationship which can only engender a lack of confidence in the results.
- 3.5 Even here the Hampton principles need interpreting with care. That inspections shouldn't happen without a reason begs the question of what constitutes a reason. Waiting until matters go wrong would certainly create a reason for inspection, but an inspection before they went wrong might forestall the trouble. There may always be a good reason for an inspection as indeed there are also always means of ensuring that what is being looked for isn't found.

4 Conclusions and Summary

- 4.1 The OPRA system suitably revised to give greater emphasis to the Compliance Rating, together with a clearer indication as to how the scores will be converted to action with the operators and are reviewed according to performance, may well prove a valuable tool. But OSM implies the regulator expecting the regulated to do the regulator's work. That is a fundamentally flawed concept, and the detailed

information demands and inspections that the EA envisage as a check may prove to be impractical and inadequate.

4.2 Compliance with WFD will necessitate an increase in the frequency and extent of monitoring, and it is right that operators, whose activities for that purpose need to be regulated, should meet the cost on the polluter pays principle. For that to work, industry should be charged what it costs for the EA to carry out the monitoring work in accordance with their responsibilities as Regulator and as the Competent Authority for the WFD. An OPRA based system could well provide a satisfactory means of determining how, as between different operators, costs should properly be assessed

4.3 The Salmon & Trout Association regard the proposals as set out in the Consultation Paper in principle at best as not proven, and in detail as requiring fairly fundamental amendment if they are not only to work, but also be seen to work. The Association look to the Environment Agency as both Regulator and Competent Authority to carry out its duties efficiently, cost effectively and openly so that the requirements of WFD are fully and timely met.

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