

# YW Wholesale Enforcement Policy for Trade Effluent Consent Conditions

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Blueprint for Yorkshire



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## Introduction

This policy sets out the principles that Yorkshire Water (YW) Wholesale will adopt to promote effective and targeted regulation. The aim of which is to achieve and maintain a goal of zero sample failures at our waste water treatment works (WwTW) without imposing unnecessary regulatory burdens on Non-Household Customers.

YW Wholesale will adopt a positive and proactive approach to enforcement and will concentrate its resources where high risk effluent discharges occur.

YW Wholesale believe that it is not unreasonable to expect Non-Household Customers to meet their environmental and legal responsibilities by complying with the terms and conditions of their trade effluent consents at all times, but accept that from time to time failures may occur.

The principles underlying this policy and YW Wholesale approach are:

- Targeting of enforcement action;
- Consistency of approach;
- Proportionality;
- Transparency;

This policy is intended to provide clear guidance to the Market Operator, Retailers, Third Parties and Non-Household Customers.

This policy will be compliant with the following:

- Wholesale-Retail Code Part G: Trade Effluent.

Any charges related to the services outlined in this document can be found on the Yorkshire Water website (<https://www.yorkshirewater.com/business/services#ls2>).

## Timescales

YW Wholesale will comply with the permitted timescales as set out in the Market Codes.

YW Wholesale shall use reasonable endeavours to meet these timescales, but there may be instances where this is not possible due to factors beyond our control.

## Aim

The aims of the policy are:

- to ensure a consistent approach is followed within YW Wholesale operational area;
- to provide Retailers and Non-Household Customers with our guidelines that shall be complied with at all times;

Any breach of this policy may result in YW Wholesale taking enforcement action. The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with our policy, market codes and associated regulation. A breach of consent conditions is a criminal act covered under the water industry act 1991

## Principles

To ensure the policy is enforced fairly, the following section contains our guidelines.

## Background

1. Illegal discharges of trade effluent pose a potential threat to YW Wholesale assets and operations, and to the health and safety of both staff and the general public, and may cause harm to the environment.
2. The environmental standards which YW Wholesale has to meet continue to become more stringent, as a consequence of European Union (EU) and national legislation, and will tighten further from 2015 under the Water Framework Directive.

## The Regulatory Framework i.e. The Water Industry Act 1991 (“the Act”)

3. The Act imposes a duty on sewerage undertakers to “effectually deal with by means of sewage disposal works or otherwise, the contents of public sewers” (Section 94 (b)).
4. The Act sets out restrictions on the use of public sewers such that it is an offence to discharge effluent of a quality that will impact adversely on the receiving sewer, sewage treatment and health and safety, or to discharge “any petroleum spirit” into a public sewer (Sections 111 (1) (a) and (c) respectively).
5. Under the provisions of the Act consent is required from a sewerage undertaker for any discharge of trade effluent to a public sewer (Section 118 (1)).
6. If a trade effluent discharge is made to the public sewer without consent, then the occupier of the premises is guilty of a criminal offence (Section 118 (5)).
7. A sewerage undertaker has the power to impose conditions in a consent relating to the sewer into which a discharge may be made, the quantity, rate and nature or composition of any trade effluent which may be discharged (Section 121).

8. If a condition of consent imposed under the Act is contravened, then the occupier of the premises is guilty of a criminal offence (Section 121 (5)).
9. There may be other statutory controls imposed by the Environmental Agency under the Environmental Permitting Regulations 2010, and other legislation with which Non-Household Customers must comply; but responsibility for and the control of consents which permit discharges of trade effluent to the public sewer rests with YW Wholesale. All Non-Household Customers must comply with the conditions set out in their trade effluent consent.

## Targeted Enforcement

10. YW Wholesale has identified those trade effluent discharges that can impact on WwTW sanitary and non-sanitary compliance, the sewerage system (corrosion and blockages), the health and safety (sulphide, cyanide, volatile organic compounds (VOCs)) of employees, and the public, sludge disposal routes and the capacity to cause harm to the environment. For the purpose of this policy, these discharges will be referred to as “**high risk effluent discharges**”.
11. YW Wholesale will routinely sample all high risk effluent discharges. Non-high risk effluent discharges may be sampled from time to time.

## Consistency

12. The steps proposed for the enforcement of trade effluent consent limits are:
  - The Trade Effluent Manager (TEM) in conjunction with the Trade Effluent Team will continue to keep under review trade effluent consent documents for discharges to ensure that the limits are appropriate and will determine whether a trade effluent consent relaxations that may be appropriate;
  - On an ongoing basis the TEM will monitor WwTW compliance and review the list of high risk effluent discharges;
  - TEM will monitor progress in the application of the policy;
  - Where either a Formal Caution or a Prosecution in accordance with the Act is being considered by the TEM in consultation with the TE Team, or any recommended action shall be forwarded to the YW Wholesale Legal Department for review. In the event that a decision to prosecute is taken, we may refer the decision to the YW Wholesale Legal Committee for review.

## Proportionality and Transparency

13. Not all discharges which fail consent will have a significant impact on the receiving WwTW or will pose a threat to the health and safety of employees, or the public, or the environment.
14. In order to ensure a targeted, consistent and proportionate approach the following guidelines will be applied to all high risk effluent discharges.

**a. Failures Impacting on WwTW Sanitary Compliance – Flow, Chemical Oxygen Demand (COD), Biochemical Oxygen Demand (BOD), Solids, Ammonia, Inhibition (as appropriate):**

Samples Failing <2x Limit	Action
1	Warning Letter
2	Warning Letter or Formal Caution
3	Formal Caution or Prosecution

Samples Failing >2x <3x Limit	Action
1	Warning Letter or Formal Caution

Samples Failing >3x Limit	Action
1	Formal Caution or Prosecution

**Note:** In a situation where a WwTW is failing an ‘Upper Tier’ limit, then action against any failing trade effluent discharges in the catchment will have to be reviewed and determined on a case by case basis taking into account the circumstances behind the works failure.

**b. Failures Impacting on Health and Safety - Cyanide, Sulphide, VOCs:**

- First failure – Formal Caution and Warning Letter threatening prosecution, or if the breach is severe, Prosecution; and
- Further failure - Prosecution.

**c. Failures Impacting on Assets - Oil and Grease, Sulphate:**

Samples Failing <2x Limit	Action
1	Warning Letter
2	Warning Letter or Formal Caution
3	Formal Caution or Prosecution

Samples Failing >2x <3x Limit	Action
1	Warning Letter or Formal Caution

Samples Failing >3x Limit	Action
1	Formal Caution or Prosecution

**d. Failures Impacting on Assets – (Potential of Hydrogen) pH:**

Samples Failing $\pm <1$ unit of PH	Action
1	Warning Letter
2	Warning Letter or Formal Caution
3	Formal Caution or Prosecution

Samples Failing $\pm >1 <2$ units of pH	Action
1	Warning Letter or Formal Caution

Samples Failing $\pm >2$ units of pH	Action
1	Formal Caution or Prosecution

**e. Failures Impacting on Current/Future Non-Sanitary Compliance:**

Samples Failing $<2x$ Limit	Action
1	Warning Letter
2	Warning Letter or Formal Caution
3	Formal Caution or Prosecution

Samples Failing $>2x <3x$ Limit	Action
1	Warning Letter or Formal Caution

Samples Failing $>3x$ Limit	Action
1	Formal Caution or Prosecution

## Dealing with Continuing Failures

15. If circumstances are such that a discharge continues to fail consent following prosecution, the level of enforcement action taken over the continued failures will be dependent on:

- The status of any agreed Action Plan;
- The nature of the failures;
- The impact of the failures; and
- The magnitude of the failures.

**a. Agreed Action Plan Implemented**

Where an Action Plan has been agreed with the Non-Household Customer and the Non-Household Customer is implementing that plan within the agreed timescale, then minor consent failures within the time period for the completion of the Action Plan will be tolerated, and no action taken. Provided the breaches are <3x the consent limit and there is no impact on YW Wholesale assets. Breaches of consent >3x limit will result in a Formal Caution.

#### **b. Date of Agreed Action Plan Not Met**

If the date for completion of an Action Plan has passed, then in the absence of an explanation for failure to complete the Action Plan or a request for extension of time, then provided there is no impact on YW Wholesale assets, a letter will be sent warning that further failures will result in a Formal Caution. If the failures are having an adverse impact on YW Wholesale assets and/or are >3x limit, then a Formal Caution will be issued.

#### **c. Action Plan Unsuccessful**

Failures of consent after the agreed date for completion of an Action Plan then the presumption is automatic Formal Caution or Prosecution depending upon the severity of the breaches. A further Action Plan can be agreed if circumstances warrant it and the failures are not having an impact on YW Wholesale assets.

#### **d. No Action Plan**

Where a Non-Household Customer has not signed up to an Action Plan then continuing failures will result in automatic Formal Caution or Prosecution depending on the severity of the breaches, and any impact on YW Wholesale assets.

**Note: The above procedures do not apply to parameters that cause or have the potential to cause injury or illness to persons or damage to the environment, and continuing to failure consent will result in an automatic Formal Caution or Prosecution.**

## **Non-High Risk Effluent Discharges**

16. Whilst the aim of this policy is to encourage and ensure compliance it is accepted that from time to time failures may occur. Sample failures for the determinands shown below, in non-high risk effluent discharges may be tolerated, for up to 25% of samples taken in any 12 month period, **provided** the receiving WWTW is not at risk of failing and provided that they do not cause injury or illness to persons or damage to the environment. Each breach shall be reviewed by a member of the TE team.

- Flow Rate;
- Daily Volume;
- Solids (concentration and load);
- COD (concentration and load);
- BOD (concentration and load);
- Ammonia (concentration and load);
- Inhibition.

17. In respect of such failures the following action should be taken:



- The Non-Household Customer will receive an analytical report marked 'The discharge failed consent and therefore constituted an illegal discharge. Please investigate the cause';
- If the 25% failure rate is exceeded, then the Non-Household Customer will be required to implement an Action Plan with a date when the Non-Household Customer will be fully compliant;
- The Non-Household Customer will be warned of a Formal Caution if failures continue after the due date;
- Further failures after the agreed date will result in an automatic Formal Caution. A new compliance date will be agreed + warning of prosecution; and
- Continuing failures after the new date will result in prosecution.

**Note:** Failures of determinands impacting on health and safety, assets and non-sanitary compliance will be dealt with in the same manner as for priority discharges detailed in section 11. (b).

## Compliance with General Consent Conditions

18. A rigorous use of Warning Letters, Formal Cautions and Prosecutions will be adopted to enforce compliance with "administrative" consent conditions such as those relating to the installation and maintenance of flow measurement and sampling equipment and the provision of information.

## Right of Access for Inspection, Sampling etc.

19. If difficulty is being encountered in gaining speedy access to a discharge for purposes of inspection, sampling etc., then to ensure that effective control of the industrial waste discharges can be exercised the matter will be passed to YW Wholesale Legal Department to write to the Non-Household Customer to resolve the issue.

YW have a right of entry under section 171 of the water industry act 1991.

## Extenuating Circumstances

20. Whilst the enforcement actions proposed in this policy are intended to achieve a consistent approach across the region, it is accepted that there needs to be some form of residual discretion retained to allow flexibility in light of local circumstances. The exercise of discretion should be the exception rather than the rule and any move away from the procedures should be reasoned and properly documented. Factors which may be taken into consideration in deciding whether it is appropriate to deviate from the policy are:

- Past compliance record;
- Potential future risk;
- Existence of good system for managing risks;
- Evidence of relevant external accreditation;
- Willingness to co-operate;
- Lack of financial gain from the breach.

## Contact Details

21. For more information contact the YW Wholesale Service Desk by email at:


- [wholesaleservice@yorkshirewater.co.uk](mailto:wholesaleservice@yorkshirewater.co.uk).

## References

- The Water Industry Act 1991;
- Wholesale-Retail Code Part G: Trade Effluent;
- YW Wholesale Anomalous Trade Effluent Sample Policy.

## Review Date

22. This Policy will be reviewed annually or when necessary as a result of changes in Market Codes or centrally issued guidance. Date of last review November 2017

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