Data & Facts - Gaps: The Law, Makers, Breakers

This is a start in terms of learning where the power lies and where laws are being broken by those who have power to help us improve a key element of our quality of life: healthy and safe places to thrive.

Proposed Deregulation of Chemicals

The race to the bottom may be nigh, bringing more degradation of land and water. Biocide article - George Monbiot (August 2025).

Water Framework Directive Regulations

In England and Wales, the Water Framework Directive Regulations (WFD) form the overarching statutory framework for our water environment. Despite Brexit, this remains in place in terms of regulatory frameworks. Other regulatory frameworks, such as the Urban Waste Water Treatment Regulations 1994 and the Bathing Waters Regulations 2013, also impact environments. However, the WFD provides the overarching targets on conditions of our waters and the framework for achieving them.

WFD Regulations oblige the creation of a River Basin Management Plan for each river basin catchment area. This covers environmental objectives, plus a summary of measures required to achieve those objectives. Current River Basin Management Plans were published in December 2022.

The **WFD requires governments to 'aim to achieve' Good Ecological Status (GES) for all surface water bodies by 2027**.

There are currently no published plans (as at April 2025) for these objectives beyond 2027. While the regulations implementing the WFD will still apply then, they do not provide scenarios beyond 2027. The UK and Welsh governments need to decide what, if anything, should follow this objective after 2027.

The Directive has been described as a "demanding and timely 'identification and rectification'... requirement" by the Windrush Against Sewage Pollution (**WASP**) campaign, "but has been inexplicably ignored". Instead, lobbying by the water industry has led to this being sidelined in favour of weaker implementation measures, such as the **Storm Overflow Assessment**

Framework (SOAF). SOAF has been referred to at an OFWAT consultation meeting, as "the mechanism relied on as the means for the rectification of failing storm overflows", according to page 4 of a WASP report linked to elsewhere on this page. (Use: CTRL,F / COMMAND F to search on their name).

More recently, The UK government and EU parliament, under **Directives 2005/29/EC** and **2011/83/EU**, have put forward plans to prevent greenwashing by the commercial sector. Let's watch that space and share updates on our Telegram chat.

Water Industries Act 1991

- Citizens are not prevented by the Water Industries Act 1991 from bringing a claim for nuisance or trespass over pollution caused by sewage discharges, even if there has been no negligence or deliberate misconduct. More to follow here since a landmark case brought against a (sewerage element of) water bill boycotter in Spring 2025. We will also be updating our page on Boycott Dirty Water and ditching your Direct Debit. Check back at the end of April 2025.

Environmental Protection Act (EPA)

- The EPA obliges local authorities (LA's) to identify contaminated sites, but there is a fear of peering under rocks here by LA's, because of potential costs of remediation and public outcry of health implications for communities, to say nothing of identifying responsible bodies involved, when sites are legacy landfills, for instance. This legislation also points to methodologies for dealing with contamination. In terms of short-comings, the Chester case study is useful for anyone concerned about sites near their communities flagged for development.
- **Environmental Protection Act Part II** is almost unenforceable and **unfit for conservation and restoration purposes**; this explains some of the campaigns now happening to strengthen regulatory powers against the polluters.
- For instance, the **Environment Agency** (England) can **downgrade pollution events** from Category 2 or 3 to Cat. 4's, which involve no enforcement actions. Minimising the significance of a pollution incident is a disturbingly commonplace practice and often happens without the public understanding how the benchmarking process works (or, more accurately, doesn't).
- Land classified as **contaminated land** legally triggers some level of remediation by a local authority, so do not take a 'nothing to see here' at face value if your local authority claims that land you suspect has been contaminated is not within the parameters. There are experts around who can navigate you through digging deeper to see if there is potential negligence. Whilst tricky, freedom of information (foI) requests can be a good lever here (see FoI section below).
- **Industrial legacy**. Furthermore, don't be deceived if at the site of a previous gasworks, paint factory, or other toxic manufacturing industry, **legacy topsoil pollution** under investigation is superficially investigated and subsequent recommended remediations are

inadequate as a result. Some communities, living in 'new-build' properties in particular, have been advised not to grow food in their gardens due to deeper levels of contamination, which can be drawn up through plant tissue; such notified risks are purely because of what that land was used for before redevelopment.

- Some residents have had to find out the hard way, where public information on **previous land use** has been scant, due to **commercial** or **national security** sensitivities.
- Even where industrial history is well-known, local knowledge of risk may still be minimal. Southall gasworks is a case in point.
- Similarly, residents around Porton Down are advised not to eat any fruit or food they grow. In the 1950's the War office (now Dept. of Defence) agreed to the spraying of toxic chemical agents from airplanes flying over the area to observe impacts on human health. What legacy has this left on the land and the health of those subjected to this horror show? This story only recently came to light in recent years after the expiry of a **'D' Notice**, preventing the public from finding some information out. (These are now called 'Defence Advisory Notices')
- If the local authority have informed housing developers that the topsoil isn't 'clean' or safe and recommended its removal, and a building contractor then just spreads e.g. 60cm of clean soil onto that site for topsoil, what happens when a keen gardener grows fruit trees, which root deeper and unwittingly start drawing up contaminants through their vascular systems into their fruit?
- What do you know about the **history** and **natural landscape** of where you live?
- Local **geology** can also be significant. Contamination can remain either within soils, or aquifers. Some foundation rock types will pose greater risks than others. For example, porosity / permeability of Triassic sandstone may mean that site investigations miss key chemical contaminants from former process residues. Compare this with eg granite, where permeability is less of a risk.
- Which of these scenarios is then considered as a pathway for e.g. **EPA Part 2A purposes** ? It's important to know which sections of the EPA trigger obligatory remedial action; Part 2A obliges remedial action on the part of a local authority.
- Then, assuming you have achieved recognition of land being contaminated, where are the nearby watercourses potentially at risk of leachate? Are there any local geology maps of acquifers? If your local authority is obliged to undertake works, be ready for deliberate obfuscation, given their increasingly constrained finances. Your group may need to really be persistent to bridge any gaps of officer expertise lost over time. It has been estimated that on average a UK citizen lives no further than 2km from a landfill. It has also been shown that increasing precipitation with our climate crisis will exacerbate problems. These are the complex dilemmas communities now face in protecting their family and neighbourhood well-being.
- Digging deeper into detail can get complicated in terms of local history, chemistry, biology and engineering. We recommend you come together as a community and build allies where you can, wherever you can. Make connections with relevant academics, scientists, technicians, especially those who are retired, having no remaining constraints on their expert openness!

Water Resources Act

- **The Water Resources Act**, 1991 may mean that your local river has been designated as a **Water Protection Zone**. It is worth checking this out with your local authority, because this legislation obliges companies in the locality to apply for consent where certain substances are used or stored at specific sites anywhere within the designated area, such as local industrial estates. Water regulators will also have responsibilities here. However, sadly, such protective designations do not guarantee business best practices in pollution prevention. It is down to the public knowing these protections exist, being the eyes and nose on the ground and knowing where to take their concerns.
- Is it enough for people to have to go online when they witness potentially serious pollution incidents, or to form **river watch groups**? Do you have any idea about any legal protections for your local watercourses? Chances are that you don't, because the regulators do not see it as their role to pro-actively engage the very people who are likely to blow the whistle when businesses systems fail, resulting in catastrophes. In the words of one regulatory officer, Elizabeth Felton, NRW Environment Team Leader for Wrexham: “Pollution incidents from industrial estates can happen every day because of spills, accidents, negligence, or vandalism....Such incidents can then put human health at risk and devastate wildlife habitats on rivers..."

Freedom of Information Act (FoI)

- In terms of the **Freedom of Information Act**, letters from the public, seeking information from **local authorities responsible for remediation of pollution sources** can result in only partial information sharing, buck passing, legal loopholes or downright misrepresentation. Being aware of what the organisational pitfalls you might face can all feel demotivating, but it's helpful to know what holes in the system you are navigating to keep records for any subsequent legal proceedings your campaign group might take up. Forewarned is forearmed.
- Here are some of the common FoI pitfalls:
  - Lack of funding for thorough investigation by NGOs, local authorities or regulators.
  - Deprioritisation of environmental obligations.
  - Limits to Environmental Information Regulations 2004 (EIR - see below).
  - Poor oversight of engineering contractors.
  - Lack of adequate staff training and incompetence.
  - Scientific illiteracy.
  - Lost records.
  - Historical memory loss as staff retire and leave.
  - Deliberate obfuscation due to fear of repercussions and fall out of disclosure (also: more than my jobsworth / arse covering).
  - Misuse of **Re-Use of Public Sector Information Regulations** (see section below).
  - Appealing to the **Information Commissioner's Office** by campaign groups to obtain information from institutions may or may not bear fruit. See the **Windrush Against Sewage Pollution** campaign's downloadable report.

For a great example of how to avoid obfuscation and avoidance by the recipient of an FoI request, take a look here.

If this intrigues you, whet's your appetite, do check out more of the Reverend's FoI requests, by searching his name on this website. Chances are he will have tested water somewhere not too far from where you are.

Environmental Information Regulations (EIR)

- Water companies are subject to legislation requiring them to disclose pollution data, one key example being the Environmental Information Regulations 2004 ("EIR"). However, water companies frequently seek to avoid their legal obligations. A case in point is United Utilities, which was issued with a practice recommendation by the Information Commissioner's Office ("ICO"). The ICO found that the company had repeatedly **failed to categorise information as "environmental" in order to avoid disclosing it under the EIR**; the ICO suggested that the company leadership needed to "review its culture around proactive disclosure". United Utilities is not the only company using such underhand and corrupt practices, so is worth looking into where you are and checking **Regulation 16**.
- **Environmental Information Regulations 2004 (EIR)** contain **exemptions** to the public's rights to access information held by some public bodies, including local authorities. For example: **[1]Exception 12(5)(d)** states: "Confidentiality of proceedings where confidentiality is provided by law". One particular FoI rejection case involving Spelthorne Council to be aware of is as follows: **12(5)(d)** states:
"**(5) a public authority may refuse to disclose information** to the extent that its disclosure would adversely affect –
(d) "the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;" This legalese was deployed by Spelthorne Council in response to a 2024 FoI request. Here, the confidentiality obligation cited refers to outcomes of a **Coroner's Court**, which by law can impose confidentiality instructions on a local authority impacted by their proceedings.

  Thus we are in a situation where Environmental Information Request responses by water companies **border on the criminal**. "Academics and campaign groups wanting to understand the frequency, severity and risks posed by sewage discharges in England have routinely had environmental information requests (EIRs) denied or incomplete datasets provided after prolonged delay." Deflect, Distract, Delay, Deny tactics are commonplace, according to this 'Nature' Journal article.

Re-Use of Public Sector Information Regulations

- A further constraint imposed by local authorities on sharing information with the public comes under **Re-Use of Public Sector Information Regulations**. Shocking as it may seem, a local authority may say that information shared with you under your FoI request is solely **"for your personal use"**. It is important, therefore when asking for information from a local authority that you also **seek permission to share with interested parties** ; name them if you can. Alternately, use the WhatDoTheyKnow.com website for FoI requests; this limits institutional divide and rule tactics.
- The following response has been made to someone making a FoI request: "Any re-use of this information will be subject to the **Re-Use of Public Sector Information Regulations (2015) and authorisation from the Council** will be required. In the event of any re-use, the information must be reproduced accurately and not used in a misleading manner." This is a difficult pill to swallow if someone becomes seriously ill or dies through water contamination. If anyone can share effective rebuttals the Dirty Water team would love to hear from you.

Bathing Water Regulations 2013

- **Defra's designated 'bathing water' status** is an opaque application process. While the designation does require closer monitoring by the authorities when achieved, the idea is deeply flawed. See:
  - 'The Great Washout: The Futility of Bathing Water Status'
  - Public applications generally result in a rejection.
  - You cannot trust a Blue Flag bathing beach safety categorisation, even those beaches with apparent 'excellent' rating. Raw sewage contamination is still a risk, especially after heavy rain.
  - The government refused to provide the Guardian newspaper with a list of the rivers and coastal areas **where bathing water status had been turned down since January 2022**. Campaigners have attacked the lack of transparency around this process. **Freedom of Information requests** to find out why an application for a local river has been turned down have been refused by DEFRA.
  - The bathing water application process also minimises the number of local people who may use local waters, because the application asks for number of bathers using the water, but does not include boaters such as paddleboarders & kayakers, let alone dog walkers and paddlers.
  - Signs on-site, warning bathers of hazards can be risible at best, and virtually invisible at worst! Be sure to share the worst 'box-ticking' examples on our Dirty Water Live Content Telegram chat.

The Stockholm Convention on Persistent Organic Pollutants (POPS)

This convention is one of a number of international regulatory tools. The Stockholm Convention is a global treaty to protect human health and the environment from chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on human health or on the environment. You will find other international conventions on the above website.

Industrial Emissions Directive (IED) - Best Available Techniques (BAT)

Note- this is copied verbatim from the government web page: The EU's Industrial Emissions Directive (IED) takes an integrated approach to controlling pollution to air, water and land, and sets challenging industry standards for the most polluting industries. The IED aims to prevent and reduce harmful industrial emissions, while promoting the use of techniques that reduce pollutant emissions and that are energy and resource efficient.

Larger industrial facilities undertaking specific types of activity are required to use BAT to reduce emissions to air, water and land.

BAT means the available techniques which are the best for preventing or minimising emissions and impacts on the environment. 'Techniques' include both the technology used and the way the installation is designed, built, maintained, operated and decommissioned.

BAT reference documents (BREFs) include BAT Conclusions that contain emission limits associated with BAT, which must not be exceeded unless agreed by the relevant competent authority.

2024 Water (Special Measures) Bill

Government web page on new bill "To clean up the Water Sector"

This Bill has attracted critics, who maintain it contains loopholes. One firm of environmental solicitors provide a good analysis of the current overall situation in relation to this, the wider legal landscape and other litigation actions. (XR do not endorse the company posting this article, but welcome the discussion): Strategic Litigation and the Water Crisis

Steve Reed, MP's Water (Special Measures) Bill is, according to commentators inadequate, focusing pretty much entirely on sewage, while saying nothing on landfill/chemicals and leachate.

There will be amendments brought forward to try to improve its environmental aspects (e.g. addressing issues such as the River Wye, where 70% of pollution is from farms). There is also the question of whether fines imposed on companies will merely be viewed as a cost of doing business

and ultimately be passed onto customers.

Dirty Water and other groups claim the Bill needs to promote the cessation of water pollution, but not stop there; we need a Citizens' Assembly on Water, given the widespread concerns of the public and failures of existing business models.

Lack of Regulatory Powers

- **Regulatory bodies** can be toothless. For example, data suggests the **Environment Agency** is failing to monitor water firms in England. Similar criticisms are made of **Natural Resources Wales** and other regulatory bodies and departments of government.
- Scotland's water is **not privatised**, but pollution management, accountability and transparency still persist. Find out more at Scotland Sewage Dumps 2023.

The point here is that power to withhold information or limit its uses means that pollution of our waterways continues. Fragmentation of responsibilities between faceless bureaucrats and boardroom members make our push for clear waters an upstream struggle... Those very agencies we rely on or water companies we pay to endanger our lives seem to be getting away with ... well... even murder... If you don't know how bad abuse of the law by those who hold it can get, just read Zane Gbangbola's story.

Good News!

Check out how the public is fighting back on our 'Legal Campaigns Go Upstream' page

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