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# Appendix: Waste Permitting Cost Sharing Proposal

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YorkshireWater

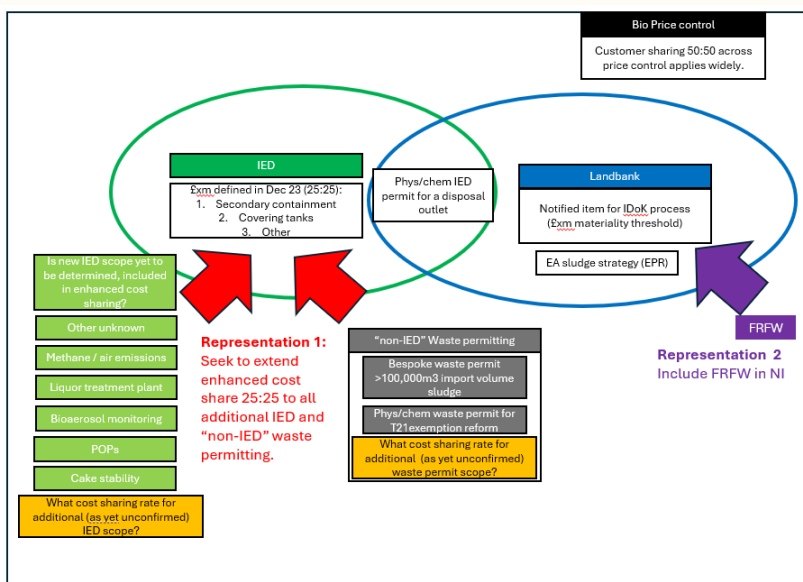
## Waste Permitting – Cost Sharing Proposal

### (Bioresource Working Group)

Following the draft determination, we understand that Ofwat propose that these areas of uncertainty in IED enhancement expenditure are managed within the scope of the 25:25 IED enhancement expenditure cost sharing mechanism, with Ofwat stating, "this applies for enhancement IED expenditure only. Additional base expenditure for companies to improve asset health to help achieve full IED compliance will continue to attract the base cost sharing rates<sup>1</sup>".

We welcome this proposal from Ofwat and we agree it is an appropriate mechanism to manage on-going uncertainty in IED compliance requirements and costs. However, when considering Bioresources waste permitting requirements more broadly than the implications of the IED, there are further potential changes that may drive material new investment requirements in the Bioresources sector but these are not addressed by Ofwat's draft determination proposals for managing uncertainty. We present in Figure 1 a Venn diagram to summarise the risks.

**Figure 1: Venn diagram showing the waste permitting uncertainties that we propose are managed through an enhanced 25:25 cost sharing mechanism**



Waste permitting requirements, outside the IED, continue to evolve and the industry risks iterative and ad hoc new requirements over the course of AMP8 in the absence of a clear regulatory timeline. As these requirements are not yet confirmed, companies have not included costs to address any potential requirements in their business plans.

Potential changes outside IED include, but are not limited to, the following:

- Waste exemption reforms2: The Environment Agency proposals are not yet finalised and will be subject to consultation (postponed from May 2024). The latest government advice states that changes to the exemptions are likely to start in 2025 but timescales have not been finalised. Direct implications of the proposals are twofold:
  - **Charging for exemptions:** Significant elements of our bioresources business operate under registered waste exemptions (this negates the need to obtain a permit for those activities). The introduction of charging will introduce new costs into the Bioresources price control.

<sup>1</sup> Footnote 185 on page 162

<sup>2</sup> Insert link

- **Prohibition of registering exemptions on a permitted site:** Registered exemptions on a permitted site will be prohibited at the end of a 6-month transitional period. Sites which carry out a permitted activity (e.g. import waste to the inlet of a wastewater treatment works) will no longer be able to register an exemption for a different activity on the same site. By default, the currently 'exempt' activity e.g. physical-chemical sludge treatment must now be incorporated within the site permit, if within the same operational boundary. This will require waste permit variations, but significantly for sludge treatment activities, the requirement for a permit makes compliance mandatory with Appropriate Measures guidance. Under a waste exemption, operators 'may refer to' Appropriate Measures standards but meeting these standards is not a legal requirement. In obtaining a waste permit the obligation to meet Appropriate Measures guidance becomes mandated through the permitting process.
- **Environmental permit competence requirements<sup>3</sup>:** Changes to technically competent manager attendance requirements (resources qualified under a technical competency scheme e.g. WAMITAB<sup>4</sup>). A consultation on the proposed reforms closed in December 2023 and the output of the consultation is not yet available. The consultation proposed an increase to attendance hours currently undertaken by technically competent staff which may drive an increase in the required headcount to operate our sites.
- **Appropriate Measures Guidance:** Updates to Appropriate Measures Guidance are iterative and we have no timetable for updates to guidance. For example, Appropriate Measures for the Biological Treatment of Waste was published in September 2022. However, there have been iterative updates and in February 2024 new specifications were introduced for leak detection and repair (LDAR) monitoring. We expect further changes in guidance in AMP8 but the scope, scale and timing of those changes are unknown. The changes will impact sites permitted under the IED and non-IED permitted sites.
- **Renewal of Regulatory Position Statements, such as RPS231<sup>5</sup>:** The industry relies on this RPS to allow the storage and treatment of sewage sludge under an S3 or T21 waste exemption. RPS are time limited, and the latest government advice is "*This RPS will be reviewed by 31 January 2024. You will need to check back then to see if it still applies.*" Should there be changes to the scope of Regulatory Position Statements this may drive further significant (but unknown) cost into the Bioresources Price Control in AMP8.

Under Ofwat's draft determination proposals, each and all these costs, if not incurred directly as a result of IED permit requirements, would be managed by 50:50 cost sharing in the Bioresources price control. We do not believe that this is a satisfactory management of the risk, as it does not recognise the different regulatory framework that Bioresources now operates, and the increased likelihood of changing requirements in AMP8.

We instead propose that the uncertainty in wider waste permitting risks is managed by broadening the scope of the enhanced cost sharing (25:25) for IED compliance to include equivalent risks at non-IED sites. We believe that enhanced cost sharing is the best approach to allow companies to invest in new and emerging waste permitting needs. The scope of the expanded costs sharing would include new improvement conditions arising within waste

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<sup>3</sup> Insert link

<sup>4</sup> The CIWM (WAMITAB) operator competence scheme is designed to allow permitted waste facilities in England and Wales to demonstrate they employ technically competent people with the knowledge and skills to ensure waste sites comply with Environmental Permitting Regulations (2007).

<sup>5</sup> [Waste codes for sewage sludge materials: RPS 231 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/waste-codes-for-sewage-sludge-materials-rps-231)

permits, statutory guidance or the requirements to meet exemption criteria. This could be either as a variation to an existing permit (or exemption), or from the creation of a new permit.

We believe our proposal is the right option to balance managing the risks for companies and protecting customers from inefficient expenditure. It avoids companies seeking to recover significant additional amounts up front from customers and then refunding them if those investments are not required and has multiple additional benefits:

- The proposed approach is consistent with how equivalent IED waste permitting risks are proposed to be managed. Ofwat's approach to managing permit compliance expenditure should be consistent across the Bioresources price control and not be differentiated by the type of permit held – the need for expenditure and cost recovery is the same whether a site holds a registered exemption, a bespoke waste permit or an IED permit.
- The enhanced cost sharing would reflect that bioresources now operates under the Waste Framework Directive. The resulting investment requirements to ensure compliance with new and evolving waste regulation obligations are excluded from the WINEP and consequently are without the WINEP planned look ahead of future requirements. There is, however, a high confidence that there will be change and the approach to cost recovery must be updated to reflect the changing regulatory framework and the application of that framework on our activities. Given the high confidence that risks will materialise, and the additional costs that will be incurred, this warrants a more balanced cost-risk share with customers.
- We have discounted reliance on the IDoK mechanism to manage broader waste permitting uncertainty, given that the implementation of the IED was not considered a Relevant Change in Circumstance (RCC). It is preferable for waste permitting risks to be managed through enhanced cost sharing as the scale of the potential changes are lower in magnitude than landbank risks, which we propose are managed through a Notified Item.
- This would be a common industry approach. The changes will likely impact all companies and therefore funding mechanisms must be considered and applied consistently at an industry level. We have worked collaboratively across the industry to develop a proposal that is supported by the vast majority of companies
- Without an appropriate flexible funding arrangement to manage broader waste permitting risks there is a systemic risk to the capability of the industry to deliver environmental obligations. If we are not funded to efficiently comply with our regulatory requirements, we may be unable to provide a resilient sludge management service.