

Enforcement Undertakings

Potential for a developing a Rivers Trust Pollution *Mitigation Service?*

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3rd July 2018 – The Rivers Trust AGM/CEO's Meeting

Today's topics



- Benefits of EU's
- The scale of the opportunity
- Issues with the process and steps taken to influence change
- Recent successes: *Mersey Rivers Trust* case study
- How can we work together to better take advantage of ad-hoc funding opportunities and development of a RT pollution mitigation service?

Enforcement Undertakings (EUs) – Opportunities to mitigate pollution incidents

- What is an EU?
- *Legally binding agreement with The EA, proactively offered by the offender which sets out to mitigate the environmental impact of pollution event within agreed timescales.*
- *If the EU is accepted and enacted within agreed timescales the original offence will not be prosecutable through court proceedings.*

EA FACTORS IN FAVOUR OF ACCEPTANCE

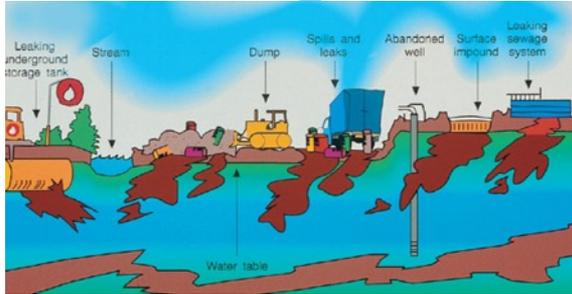
- Early offer
- Timely deliverables and a satisfactory environmental outcome
- Offering more than the bare minimum



FACTORS IN FAVOUR OF REJECTION

- Legal proceedings have commenced
- Intent/bad faith
- Offender denies liability or sets up defence for possible non-compliance
- Repeat offences
- Serious Cat. 1/2 pollution incidents

Multiple-Benefits of an Enforcement Undertaking



The
Rivers
Trust



Offender Benefits

- Financial / Reputational
- Avoids potential:
 - Court/ Prosecution
 - Fines from new sentencing guidelines
 - Points on licence/ higher insurance costs

Environmental Benefits

- Direct environmental mitigation, opportunity to fund restoration of natural capital.
- Court fines benefitting HM Treasury would not see direct environmental
- Provides EA with opportunity to protect and improve environment and still hold offenders to account.

RT/CaBA Benefits

- Source of adhoc, potentially significant, funding to kick start unfunded projects.
- Opportunity to build stronger partnerships with EA and the private sector and helping implement the *Water Stewardship* approach

EUs – The scale of the opportunity?

March – August 2017

Regulation Breached	No. of EU's accepted	Total value of accepted offers
Waste & Packaging	24	£894,000
EPR	13	£419,000
Salmon and Freshwater Fisheries	6	£504,000
Oil Storage	1	£1,000

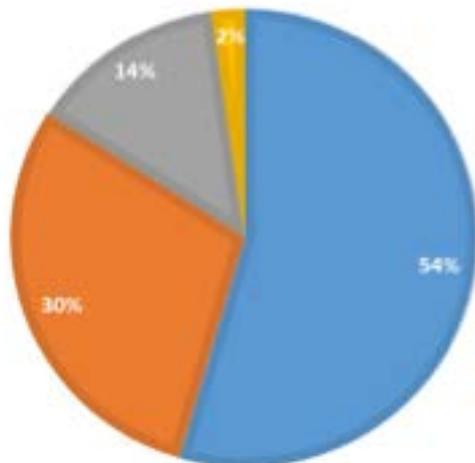
44 EU's accepted totalling **£1.8m**

7 EU's benefitting local RT's **£182,125**

Total value of EA prosecutions for offences during this period - **£24m**
(includes significant Thames Water Fine)

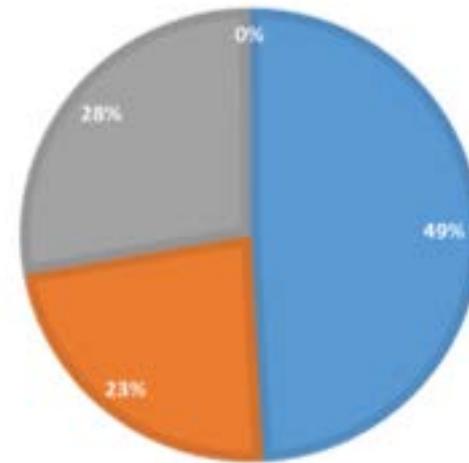
NO. OF EU'S ACCEPTED MAR - AUG 2017

■ Waste & Packaging ■ EPR ■ Salmon and Freshwater Fisheries ■ Oil Storage



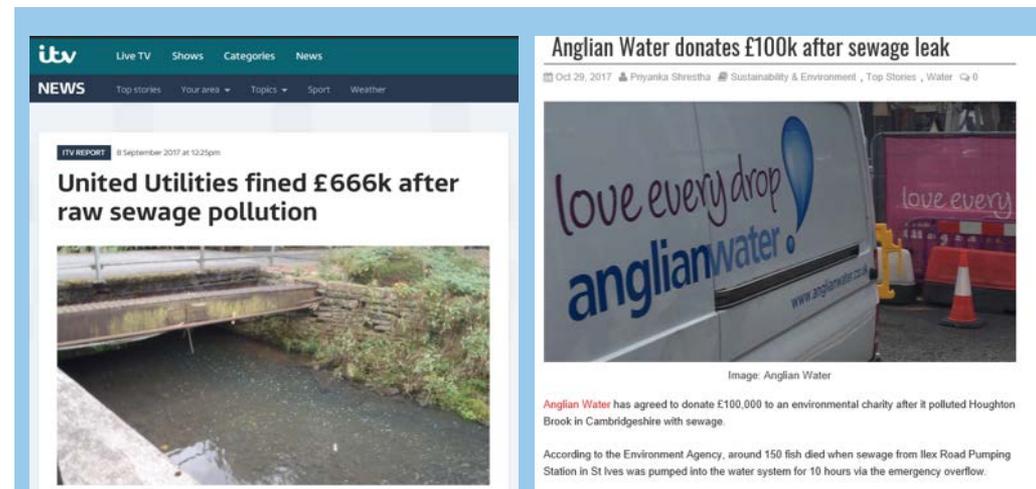
TOTAL £ OF EU'S ACCEPTED MAR - AUG '17

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Concerns with EA EU Determination Process

- Data review suggests EU's for EPR (WQ) are **underexploited**; significant gap between fines through court and EU's providing direct mitigation.
- **Lack of consistency** from EA in determination of EU offers – geographically and across different regulations (waste and packaging vs. e.g. EPR).
- **No SLA's** for determination and poor communication on offers made.
- **Lack of guidance** for
 - EA themselves
 - Offenders
 - Beneficiaries/Delivery Partners
 - Water Companies
- Opportunities to **maximise RT benefit**



Different approaches across EA regions?

Influencing Change



- **Policy level** - Formal response to EA's Enforcement and Sanctions Policy consultation
- **Top down** - Meetings with Senior EA Managers (Area Directors and Head of EA Legal Services)
- **Bottom up** - Discussions with EA catchment co-ordinators and local EA field staff



- Discussion with Defra Head of Water Pollution.
- Raised suggestion that The Rivers Trust were best placed develop a national programme of water quality mitigation projects delivered through local RTs and CaBA Groups.
- Invitation to write to Michael Gove to outline opportunities and proposals in more detail.

EUs – Increasing EA appetite?

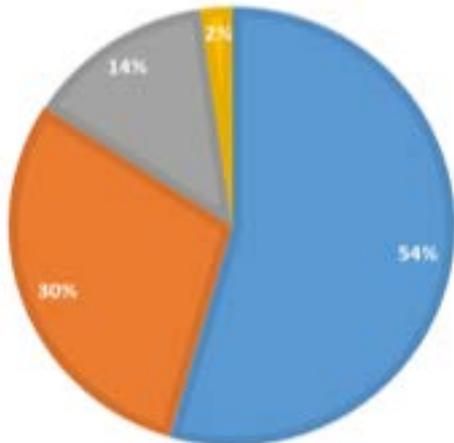
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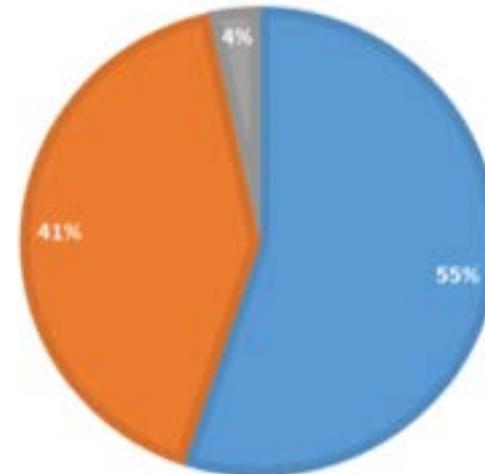
Feb – May 2018 (but includes Sept – January if not previously reported???)

Regulation Breached	No. of EU's accepted	Total value of accepted offers
Waste & Packaging	16	£307,915
EPR	12	£510,200
Salmon and Freshwater Fisheries	1	£110,000



NO. OF EU'S ACCEPTED FEB TO MAY '18

■ Waste & Packaging ■ EPR ■ Salmon and Freshwater Fisheries



EUs – Increasing EA appetite?

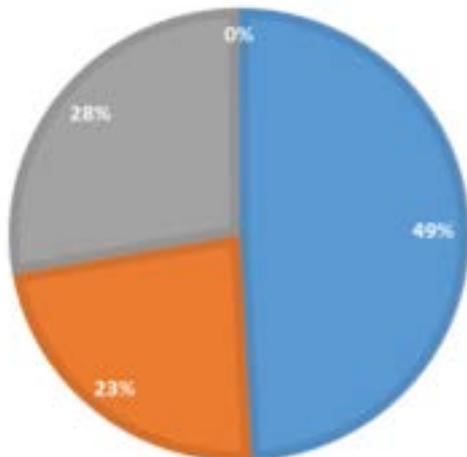
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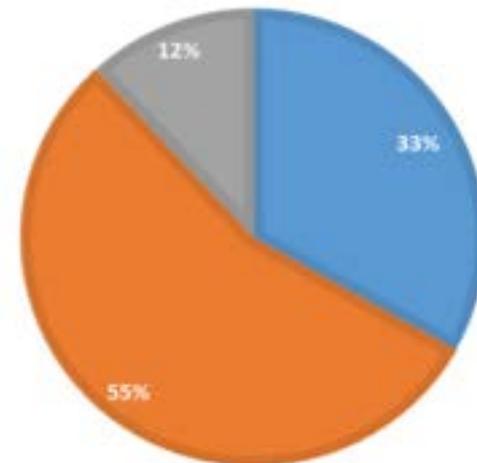
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TOTAL VALUE OF ACCEPTED OFFERS FEB - MAY 18

■ Waste & Packaging ■ EPR ■ Salmon and Freshwater Fisheries



Approved EUs summary?



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Total value of EU's for this period **£1.8m**

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Total value of EA prosecutions for offences during this period - **£24m**
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Total value of EU's for this period **£928k**

5 EU's benefitting local RT's **£83,500**

Total value of EA prosecutions for offences during this period - **£1m**

Moving towards a better balance for EPR's, but still a gap for RT's to exploit

Case Study: Mersey Rivers Trust



Enforcement Undertakings Accepted by the EA with MRT as beneficiary since December 2017 following focussed RT lobbying and involvement

EU Offer Area	Source	Total donations to MRT	Date accepted
River Goyt	Water Company	£36,000	Accepted December '17
Swineshaw Brook	Water Company	£45,000	Accepted December '17
River Weaver	Water Company	£35,000	Accepted April '18
River Roch	Private manufacturing co. via law firm	£20,000	Accepted June '18
Salford	Water Company	£150,000	Accepted June '18

Total: **£286k**

* Historic EU offer which RT lobbied EA to review/resurrect. Provided further opportunity for MRT offers to be considered



Next Steps: A RT Water Pollution Mitigation Service?

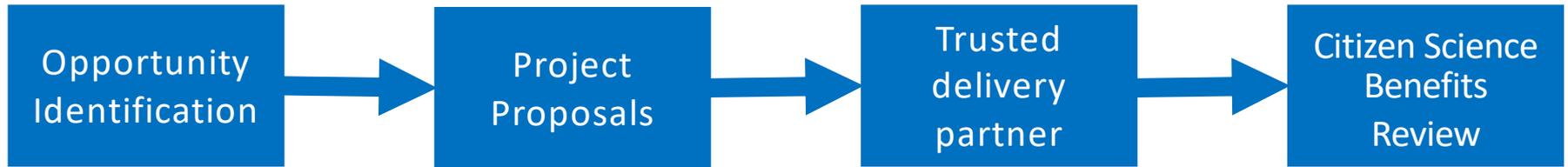


- Based on The Rivers Trust Water Stewardship Principles
- Ambition to put The Rivers Trust at the frontline of development of pollution mitigation/EU offers resulting from **water pollution events** in an increasingly competitive market.

What's required to make this successful:

- Increased liaison with **private sector** through Water Stewardship raising awareness of EUs (liaison with Business sector, industry bodies, environmental law firms etc.)
- Improved partnerships with **Water Companies**.
- Closer working with **EA** to influence improved internal/external guidance. Continued lobbying top down and bottom up to build trust in RT/CaBA ability to develop and deliver EU offers.
- Working with **local Rivers Trust networks and CaBA Groups** to develop project proposals that might be called upon at short notice to feed into EU offer. This includes development of a national database of shovel ready projects to feed into EU offers.
- **Funding....**

The Role of Local Trusts/CaBA Groups?



- **Eyes and ears on the ground** – awareness of local pollution events, identification of opportunities for EU's.
- Development of **work-bank of projects** through concise and deliverable catchment plans to feed into EU offer build at short notice.
 - **Key info** – Project location, scope, timescales for delivery, identified delivery organisation, cost estimate, idea of benefits. Potential to include/pull fields from existing story maps?
- **Trusted delivery partner** – commitment through EU offers to deliver proposed mitigation projects.
- Aim to develop further commitment to **monitor benefits of schemes** to feed back into catchment planning process, ensuring environmental mitigation/enhancement is realised.

Benefits of RT EU Service for RT/CaBA Groups



- Co-ordination of adhoc funding source for catchment based approach where WQ is an issue and Government funding is shrinking.
- Take advantage of The Rivers Trust's national lobbying power with EA/Defra/Ministers to unlock EU opportunities.
- Links to The Rivers Trust's relationship with Water Companies, Environmental Law Firms and private sector in identifying opportunities for pollution mitigation
- Benefits of a consistent approach to developing and managing EU offers – knowing what makes a successful EU offer.
- Dissemination of EU opportunities which are raised at national level with local Trusts/CaBA Groups.

Discussion

- Understand appetite for proposed Rivers Trust Pollution Mitigation service to secure adhoc funding opportunities for local trusts
- What could this look like?
- How could development of service/project pipeline be developed?

Questions?