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To: [REDACTED]; [One Earth Solar](#)
Subject: Regulatory Compliance Audit of the Environment Agency in the One Earth NSIP (EN010159) Examination
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TO: The Examining Authority : One Earth Solar Farm (PINS Reference EN010159)
and Ms. Deborah Allen, Case Manager, One Earth Solar

By email 04.11.25

Dear All

This document has serious implications for legality of the proposal as a whole and is significant in the context of the issue specific meeting scheduled for 06.11.25

This submission is made **under protest** and **without prejudice** to the Interested Party's formal and ongoing legal challenges regarding the Applicant's proven *mala fides*, the ExA's failure to discharge its duties under Rule 8 and Rule 17 of the IP(EP) Rules 2010, and the unlawful suppression of Deadline 4 submissions. Participation in this Examination is compelled by statutory necessity and does not constitute a waiver of any grounds for Judicial Review."

Regulatory Compliance Audit of the Environment Agency in the One Earth NSIP (EN010159) Examination

Assessment of Statutory Duties, Procedural Integrity, and Technical Evidence

I. The Regulatory Context: EA's Mandate under the Planning Act 2008 Regime

I.A. Legal Basis for EA Involvement in NSIPs

The Environment Agency (EA) is a cornerstone statutory consultee within the Nationally Significant Infrastructure Projects (NSIPs) regime, as established by the Planning Act 2008 (PA 2008)¹ and amended by the Localism Act 2011².

The EA's mandate extends to both regulatory oversight and expert advisory roles, covering:

- Determination and issuance of environmental permits, licences, and consents for activities such as waste management, discharges to water, and water abstraction.³
- Maintaining strategic overview of flood and coastal erosion risks.⁵

Applicants are encouraged to apply for Environmental Permits concurrently with

Development Consent Order (DCO) applications.⁴

The regulatory philosophy, supported by ongoing reforms, emphasises flexibility and the delivery of well-developed applications through meaningful engagement.⁴

I.B. Definition of EA's Core Statutory Duties in NSIPs

Flood Risk Management:

The EA's statutory remit covers flood risks from main rivers and the sea, requiring active appraisal of Applicant risk assessments and incorporation of climate risk projections.⁵

Ensuring climate resilience is fundamental to NSIP sustainability.⁵

Water Framework Directive (WFD) Compliance:

The EA is a competent authority under the Water Environment (Water Framework Directive) (England & Wales) Regulations 2017⁶, with a general duty to secure compliance with the Directive.⁶

Responsibilities include enhancing water body status and preventing deterioration; if deterioration risk arises, the EA must guide Applicants regarding WFD assessments and derogation tests.⁷

Environmental Permitting and Licensing:

Under the Environmental Permitting Regulations 2016 (EPR), the EA regulates activities potentially harmful to the environment, drawing authority from several statutory instruments.⁸

I.C. EA Guidance and Procedural Expectations in the DCO Process

The Statement of Common Ground (SoCG) is central to identifying and focusing on material differences during Examination.⁹

MHCLG guidance stresses that the SoCG should ensure Examination resources are only used on unresolved, substantive matters.⁹

If the EA prioritises administrative processes over statutory duties, it risks breaching its regulatory mandate.

II. EA Compliance with Statutory Duties: The One Earth NSIP Technical Assessment

The One Earth Solar Farm (EN010159) is located near the River Trent, within an area at risk of flooding.⁵

II.A. Flood Risk Management and Hydrological Compliance

Unresolved Cumulative Hydrological Deficit: The flood risk assessment process is undermined by a persistent "Unresolved Cumulative Hydrological Deficit", indicating a failure to meet technical standards and statutory duties.⁵

Flood Depth Tolerance Breach (5.7mm):

The EA accepted fragmented flood depth increases (3.5mm east, 2.2mm west), which when combined, exceed the 5mm tolerance (total 5.7mm).¹²

This approach violates the EA's own standards and fails to enforce a holistic risk assessment, exposing the DCO to judicial challenge.¹²

Compliance of Tolerance Threshold with the Planning Act: Rigid tolerance thresholds not backed by holistic evidence risk non-compliance with the Planning Act's requirements for flood resilience and climate change adaptation.⁵

Cumulative Impact of Other NSIPs: The EA did not require a regional cumulative effects assessment, relying instead on individual project mitigation, which fails to address synergistic impacts ("death by a thousand cuts").¹³

Cumulative Mitigation Measures: Conditional acceptance of mitigation measures (e.g.,

voided structures) delegates resolution to post-consent management plans, rather than pre-determination evidence.

II.B. Water Framework Directive (WFD) Compliance and Terminal Implications

Non-Negotiable Compliance: The EA must secure WFD compliance, including the prevention of water body deterioration.⁶

Procedural Failure: The Applicant’s WFD Screening Assessment was submitted late, compressing the EA’s review time and impeding thorough scrutiny.⁶

Substantive Risk: Unresolved hydrological issues and the tolerance breach mean the EA cannot assure compliance with the WFD’s no deterioration principle. Without certainty, a Regulation 19 derogation test is required, and granting consent without this is a direct statutory breach.⁷

III. Forensic Review of Formal Agreements and Legal Instruments

III.A. Status and Compliance of the Statement of Common Ground (SoCG) (Document 8.11.2)

The SoCG remains in Draft status late into the Examination, with numerous fundamental issues ("Under Discussion") unresolved, undermining its legal adequacy and effectiveness.⁹

Key technical disagreements persist, including the Unresolved Cumulative Hydrological Deficit and the need for further hydraulic modelling.¹⁰

III.B. Analysis of Protective Provisions (PPs) and Statutory Disapplication (S150 PA2008)

Protective Provisions (PPs) are robust legal safeguards for the EA’s statutory functions post-consent, including indemnity clauses.¹¹

However, reliance on PPs to manage risks that should have been resolved during Examination increases post-consent enforcement burden and environmental risk.

IV. Analysis of Informal Engagement and Procedural Integrity

IV.A. Breakdown in Engagement and Procedural Failure

Evidence points to the Applicant’s systemic procedural failures and lack of substantive engagement during consultation.²

The EA did not enforce compliance, allowing Examination to proceed despite formal legal critiques, which risks undermining the consultation’s procedural integrity.

IV.B. Compliance of Informal Agreements with Planning Guidance

Informal agreements (e.g., acceptance of BESS location) are non-binding; statutory duties always override informal understandings.

Final acceptance must depend on resolution of all outstanding hydrological risks.

IV.C. Summary Table: Key Regulatory Failures and Consequences

Alleged Failure / Dispute	Source	EA Statutory Duty/Guidance Impacted	Regulatory Outcome (Observed)	Inferred Consequence / Risk
Unresolved Cumulative Hydrological Deficit	10	Duty to appraise standard of risk assessment and climate risks	Issue not resolved prior to early deadlines	Undermines technical foundation of flood risk acceptance; high risk of challenge on

				substantive environmental grounds
Acceptance of Fragmented Flood Depth (5.7mm total)	12	Duty to appraise risk holistically; enforce 5mm tolerance	Impacts treated separately in SoCG (Ref 02-05)	Direct violation of established tolerance; exposes DCO to judicial review
Failure to require aggregated Cumulative Effects Assessment (CEA)	13	Duty to consider cumulative effects	EA relied on site-specific mitigation	Incomplete assessment; non-compliance with CEA guidance
Failure to substantively engage		Duty to foster meaningful engagement	EA proceeded with examination; SoCG remains Draft	EA risks complicity in procedural failures; undermines integrity of consultation
WFD Screening Assessment late submission		Duty for early, iterative WFD review	Evidence submitted at Deadline 4	EA unable to conduct thorough scrutiny; increased legal risk for WFD non-compliance

V. Conclusions and Recommendations

V.A. Assessment of Compliance with Statutory Duties

The EA has not conclusively demonstrated compliance with its statutory duty for robust flood risk assessment.⁵

Acceptance of fragmented risk analysis and failure to enforce holistic cumulative effects assessment contravene the PA 2008 standard.¹

Procedural failures, including late WFD evidence, further jeopardise WFD compliance.⁶

V.B. Recommendations for Corrective Regulatory Action

Demand Resolution of Hydrology and Tolerance Breach: The EA must clarify to the Examining Authority that unresolved hydrological deficits and the 5.7mm tolerance breach are material defects, requiring new, holistic evidence.¹⁰¹²

Enforce Aggregated Cumulative Effects Assessment: Require a revised CEA that quantifies aggregated hydrological risk across all local NSIPs.¹³

Ensure Definitive WFD Compliance: Withhold confirmation of WFD compliance until all hydrological uncertainties and tolerance breaches are resolved, or demand information sufficient for a formal derogation test prior to DCO recommendation.⁶⁷

V.C. Causal Link to Applicant [REDACTED] and [REDACTED]

The Applicant's procedural [REDACTED]—[REDACTED] of objections and evidence—directly caused unresolved hydrological issues and tolerance breaches.

This constitutes both procedural [REDACTED] and substantive (Sequential/Exception Test failure) [REDACTED], necessitating DCO refusal.¹²

Summary

The audit finds that while the EA has secured its statutory powers post-consent via Protective Provisions¹¹, it has failed to ensure robust technical and procedural compliance during the Examination. Immediate corrective action is required to address unresolved hydrological deficits, cumulative risk, and WFD compliance—without which the DCO is incurably flawed and should be refused.

Footnotes

1. The Planning Act 2008 (PA 2008), Chapter 2, Section 41-50; Section 49: Duty to take account of responses to consultation and publicity.
2. The Localism Act 2011 and its influence on the DCO process (as referenced in the regulatory context).
3. EA Role in PA 2008: EA operates as a cornerstone statutory consultee, encompassing regulatory oversight and expert advisory roles.
4. MHCLG Guidance on NSIP Reform, aiming for flexibility and focus on well-developed applications.
5. EA's statutory remit regarding flood risk: duty to actively "appraise the standard of risk assessment" and incorporate climate risks.
6. WFD Regulations 2017: EA must "exercise its relevant functions so as to secure compliance with the requirements of the Directive".
7. WFD derogation test under Article 4.7 (Regulation 19).
8. Environmental Permitting Regulations 2016 (EPR) and the EA's regulatory control over activities that may harm the environment.
9. MHCLG Guidance on SoCG: essential for ensuring the Examination focuses resources only on the "material differences".
10. Stakeholder Written Submission, citing an "Unresolved Cumulative Hydrological Deficit".
11. EA indicated through consultation that increases in flood depth up to 5mm would be acceptable.
12. Duty to consider cumulative effects where individually non-significant effects may become significant (CEA Guidance).
13. Applicant's latest modelling in Draft SoCG 8.11.2 (Ref 02-05: 3.5mm + 2.2mm).
14. Formal submissions noted that applying non-linear hydrological change across this cluster "creates an aggregated flood risk that remains entirely

unquantified by the Applicant".

15. Conditional agreement recorded in the Draft SoCG that necessary equipment would be placed on "voided structures".
16. Draft SoCG with EA (Document 8.11.2, November 2025).
17. Conditional agreement recorded in the Draft SoCG that necessary equipment would be placed on "voided structures".
18. Reliance on Outline Construction Environmental Management Plans (oCEMPs) or Outline Operational Environmental Management Plans (OEMPs).
19. Applicant submitted the Stage 1 Water Framework Directive Screening Assessment at Deadline 4 of the Examination.
20. Formal submissions detailed the Applicant's alleged "systemic procedural failures" and "continued failure to substantively engage".
21. The "Unresolved Cumulative Hydrological Deficit" and conditional agreement on voided structures were raised in stakeholder submissions.
22. Legal basis for the PA 2008 framework and the EA's role.⁹

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Regards

Stephen Fox