

SCOTTISH ENVIRONMENT PROTECTION AGENCY

THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) ORDER 2015
("the Order")

FIXED MONETARY PENALTY NOTICE

To: Tough Construction Limited

Glasgow
G15

Company number: SC055889

The Scottish Environment Protection Agency ("SEPA"), hereby notifies you, that you are liable to a Fixed Monetary Penalty (FMP) because SEPA is satisfied on the balance of probabilities that you have committed a relevant offence prescribed under the Order, namely an offence under Regulation 44(1)(d) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 ("CAR 2011"), in that you did fail to comply with or contravene a water use licence (including any conditions imposed), namely condition 3.2.1(b) specified in water use licence CAR/S/5002708 in relation to the level of suspended solids in discharges of treated surface water from Phase 2, Johnston Road, Gartcosh (also known as Cloverhill) construction site, as more particularly described below.

Grounds for imposing the penalty: In terms of Regulation 8 and subject to Part 2 of Schedule 10 of CAR 2011, a controlled activity may be authorised by a water use licence if it is carried out in accordance with the conditions provided for in this regulation.

A 'controlled activity' is an activity referred to in Regulation 3 of CAR 2011. Regulation 3 specifies a number of activities, which includes 'activities liable to cause pollution of the water environment'.

Paragraph 2 of Regulation 8 of CAR 2011 requires that SEPA must impose such conditions in a water use licence as it considers necessary or expedient for the purposes of-

- (a) Protection of the water environment.
- (b) Enhancement of the water environment; or
- (c) Protection of the interests of other users of the water environment,

and such conditions may include monitoring requirements.

It is an offence under Regulation 44(1)(d) of CAR 2011 for a person to fail to comply with or contravene a water use licence (including any conditions imposed).

On 22 February 2023, authorised SEPA officers observed silty brown water being intermittently pumped from a lagoon located on the Phase 2, Johnston Road, Gartcosh construction site, to a tributary of the Bothlin Burn at NGR NS 70299 69139. The said lagoon formed part of the treatment infrastructure designed to treat and remove silt from contaminated surface water run off from the construction site. On the same date, SEPA officers took a sample of the brown silty water being discharged at NGR 70299 69139. At the time the sample was taken, the silty discharge was causing brown discolouration of the water in the tributary of the Bothlin Burn and a visible brown plume of discolouration in the Bothlin Burn downstream of the confluence between the tributary and main stem of the Bothlin Burn.

Further inspection of the lagoon on the construction site by SEPA officers on 22 February 2023 revealed that an operational pump was drawing down the treated water in the lagoon and discharging it to the tributary of the Bothlin Burn. However, the ongoing drawdown had emptied the lagoon and the residual layer of settled silt at the bottom of the lagoon was being pumped to the burn. Once the pump was switched off, the discharge of silty water ceased. SEPA issued a water use licence (CAR/S/5002708) to Bellway Homes Limited on 12 July 2022 which contains conditions relating to the discharge of water run-off from construction works at Phase 2 Johnston Road, Gartcosh construction site to the water environment. Condition 3.2.1(b) specified in water use licence CAR/S/5002708 states that the discharge of water run-off from the construction site must not exceed 80 mg/l suspended solids. The water run-off from the construction site to the tributary of the Bothlin Burn, sampled by SEPA officers on 22 February 2023, contained 83,200 mg/l suspended solids, and as such, constitutes a breach of condition 3.2.1(b) of said water use licence.

Bellway Homes Limited engaged the services of Tough Construction Limited, as principal contractor, in relation to surface water management at Phase 2, Johnston Road, Gartcosh construction site. As at 22 February 2023, Tough Construction Limited was responsible for the day-to-day management of the surface water treatment system installed on site, including the aforementioned lagoon.

SEPA is satisfied that Tough Construction Limited failed to comply with condition 3.2.1(b) specified in water use licence CAR/S/5002708 on 22 February 2023, namely the discharge of water run-off from the construction site must not exceed 80 mg/l suspended solids and as such you did commit an offence in terms of Regulation 44(1)(d) of CAR 2011.

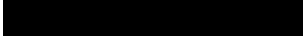
Date of offence: 22 February 2023

Location of offence: Phase 2, Johnston Road, Gartcosh construction site

The amount of the FMP is £600.

You are required to pay the sum in full within 56 days beginning with the day this notice is served on you.

Details of how to pay, what will happen if you do not pay and how to appeal against this Notice are provided overleaf.

Signed 
Authorised to sign on behalf of
The Scottish Environment Protection Agency

Date: 26 July 2023

Amount of Penalty and effect of payment

The penalty has been set in accordance with the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 ("the Order").

How to Pay a Fixed Monetary Penalty

Acceptable payment methods are: Personal or Company Cheques, Debit Card, Credit Card, Postal Orders, and BACS.

Card payments can be made via the SEPA "Pay My Account" Service at www.sepa.org.uk/payments. You should quote the FMP Reference Number and Payment Reference Number as detailed on the front of this Notice in all communications with SEPA.

To make a BACS payment please email invoices@sepa.org.uk or call 07388 371 621 for our bank account details or queries.

Cheques and Postal Orders should be made payable to: Scottish Environment Protection Agency and sent to FMP Unit, SEPA, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, Motherwell, ML1 4WQ

Late payment and Non-payment

If you do not pay the full amount owed within 56 days beginning with the day this notice is served on you, the amount due will be increased by 40% in accordance with the Order. SEPA can recover sums due but not paid in full as a civil debt.

Appeals

You can appeal against this Notice to the Scottish Land Court within 28 days beginning with the date of service of this Notice on the grounds that:

- The decision was based on an error of fact
- The decision was wrong in Law
- The decision was unreasonable
- any other reason, (with the exception that the Order states that it is not a valid ground of appeal that SEPA failed to comply with the Guidance issued to it by the Lord Advocate under the Act).

You should submit your Appeal to The Scottish Land Court, George House, 126 George Street, Edinburgh, EH2 4HH. An application form for an appeal can be obtained by contacting the Court on 0131 271 4360 or from the Court's website at <http://www.scottish-land-court.org.uk/using/making-an-application>. It would be helpful if you also sent a copy of your appeal documentation to SEPA, The Registry Department, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, Motherwell, ML1 4WQ.

The bringing of an appeal will have the effect of suspending payment of the penalty until after the appeal has been determined or withdrawn.

Queries

Any queries about this Notice should be addressed to SEPA, The Registry Department, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, Motherwell, ML1 4WQ or by email to registry@sepa.org.uk. Please note that entering into correspondence does not alter the timescale for submission of an appeal or payment being due.

The Data Protection Act 2018

Any personal data, provided in connection with this Notice, will be processed by the Scottish Environment Protection Agency for the purposes of publication and may be disclosed to Scottish Government and other public bodies. We may also pass it on to our agents/representatives to act on our behalf in connection with this Notice. Please address any questions, comments and requests regarding our data processing practices to dataprotection@sepa.org.uk

Additional information about how we use personal information in the context of monetary penalties is available in the relevant SEPA Privacy Notice, which can be accessed from our website www.sepa.org.uk/help/privacy-policy/privacy-notices

Information in relation to penalties will be published and publicised in accordance with SEPA's Policy on Communicating Penalties and Undertakings, which can be accessed from our website.

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