

SCOTTISH ENVIRONMENT PROTECTION AGENCY

**THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND)
ORDER 2015 (“the Order”)**

FIXED MONETARY PENALTY NOTICE

To: GMR Henderson Builders Ltd

██████████

Wick

Caithness

KW1 ██████

Company No: SC337487

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 Section 34(6) of the Environmental Protection Act.

Grounds for imposing the penalty:

Section 34 of the Environmental Protection Act 1990 (“the Act”) imposes a number of duties with respect to the management of controlled waste. These duties apply to any person who imports, produces, keeps or manages controlled waste or, as a broker or dealer, has control of it. Any person subject to the duty under Section 34 must take reasonable measures to comply with those duties.

Section 34(5) of the Act enables the Scottish Ministers to make regulations imposing requirements on a person subject to a duty under Section 34 of that Act, as respects the making and retention of certain documents, and the furnishing of those documents or copies of documents. The Environmental Protection (Duty of Care) (Scotland) Regulations 2014 (“the Regulations”) are made in exercise of that power. The Regulations impose various requirements on persons transferring and receiving controlled waste.

Regulation 3 provides that the transferor and the transferee of controlled waste must ensure, on the transfer of waste, that a document containing the information in paragraphs (3) and (4) (“a transfer note”) is completed in writing and signed by each of them in respect of the waste being transferred.

It is an offence under Section 34(6) of the Act to fail, without reasonable excuse, to comply with a requirement in the Regulations.

SEPA is satisfied that, on the dates and at the location specified below, GMR Henderson Builders Ltd, being a transferee of controlled waste, failed, without reasonable excuse, to complete transfer notes in the form required by Regulation 3 of the Regulations.

On 23 November 2022, whilst undertaking an inspection at [REDACTED] authorised SEPA Officers observed a pile of what appeared to be construction type waste. On inspection, the SEPA Officers noted that the waste was a combination of hardstanding, geotextiles and concrete. The SEPA Officers were satisfied that the waste was controlled waste. One of the SEPA Officers took photographs of this. On making enquiries with the landowner, the SEPA Officers were advised that the waste had been deposited there by an individual now known to be the Director of GMR Henderson Builders Ltd.

On 1 December 2022, an authorised SEPA Officer spoke with the Director of GMR Henderson Builders Ltd by telephone to discuss the deposit of controlled waste at [REDACTED]. Following the telephone call, the authorised SEPA Officer requested further information relating to the waste, including copies of any waste transfer notes relating to the movement to [REDACTED].

On 7 December 2022, the authorised SEPA Officer received an email from GMR Henderson Builders Ltd stating that the material had been “dug up from Invergordon Port and loaded onto 8 wheel tipper”. The email also attached three scanned waste transfer notes (REF No: 223102 and a duplicate REF No: 223103) relating to movements of waste between Invergordon Port and [REDACTED] on 23 and 24 February 2022.

On reviewing the transfer notes REF No: 223102 and 223103 (hereinafter “the transfer notes”), these were found to be inadequately completed as detailed below:

- In terms of Regulation 3(1), the transferor and transferor must ensure that the transfer note is signed by each of them. The transfer notes had not been signed by the transferor of the waste.
- In terms of Regulation 3(3)(a), the transfer note must give the name and address (including the postcode) of the transferor. The address and postcode of the transferor was not provided on the transfer notes and only stated "Roadbridge."
- In terms of Regulation 3(3)(e), the transfer note must describe the type and composition of the waste being transferred. The waste is described in the transfer notes as, 'Type 3 subbase Invergordon Port.' The material observed on site was not Type 3 subbase, but a combination of excavated hardstanding, geotextiles and concrete.
- In terms of Regulation 3(3)(f), wastes being transferred should be identified by reference to the appropriate six-digit code in the European Waste Catalogue. No EWC codes were provided in the transfer notes.
- In terms of Regulation 3(3)(g), the activity carried out by the transferor should be identified in respect of the waste being transferred by reference to the SIC code for that activity. No SIC code was provided in the transfer notes.

SEPA is satisfied, based on the transfer notes provided on 7 December 2022, together with observations made by SEPA Officers on site on 23 November 2022, that GMR Henderson Builders Ltd, being the transferee of controlled waste failed, without reasonable excuse, to complete transfer notes as described in Regulation 3 of the Regulations on the date and at the location specified below and therefore committed an offence under Section 34(6) of the Act.

Date of offence: 23 and 24 February 2022

Location of offence: Land at Invergordon Port, Invergordon, IV18 0HD
(NGR: NH 7026 6849)

The amount of the FMP is £300.

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  Date: 31 July 2023

Authorised to sign on behalf of
The Scottish Environment Protection Agency

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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