



## OFFER OF ENFORCEMENT UNDERTAKING

Regulatory Reform (Scotland) Act 2014 and the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (“the Order”)

When you have fully completed this form and signed the statement that follows section 12, please send the form to SEPA, The Registry Department, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, North Lanarkshire, ML1 4WQ, alternatively you can email your completed form to us at [registry@sepa.org.uk](mailto:registry@sepa.org.uk).

### The Data Protection Act 1998

The Scottish Environment Protection Agency (SEPA) is responsible for protecting and improving the environment (including managing natural resources in a sustainable way). SEPA also has a duty (except where it would be inconsistent with protecting and improving the environment) to contribute to improving the health and wellbeing of the people of Scotland and contribute to achieving sustainable economic growth.

The information, including any personal data, provided will be processed by the Scottish Environment Protection Agency in connection with this undertaking, including any subsequent investigation and subsequent action, and may also be processed and/or disclosed in relation to the following:

- consulting with the public (including community groups and community councils), public bodies and other organisations (e.g. Scottish Government, Crown Office, Revenue Scotland) about the matters set out in this undertaking
- disclosing information to government or other public bodies about this undertaking
- if accepted by us, this undertaking will be published (with personal data removed) in accordance with our policy on publication of penalties and undertakings
- improving our service

Data Protection Registration Number: Z6161946

Please address any questions, comments and requests regarding our data processing practices to [foi@sepa.org.uk](mailto:foi@sepa.org.uk).

You should ensure that any persons named on this form are informed of the contents of this Data Protection Notice.

Section 1

<b>Details of person making this Offer</b>			
Full name of person making offer:			
William Grant & Sons Distillers Limited			
Are you:			
An individual		A partnership	
A limited company	X	A limited liability partnership	
Public Body		Other	
If 'Other', please specify:			
Address and full Postcode:			
The Glenfiddich Distillery, Dufftown, Keith, Scotland AB55 4DH			
Registered office Address (if different from above):			
As above			
Registration Number (if a company or an LLP): SC134248			
Contact Telephone Number: 01340820373			
Email Address:			
<p>If the Offer is made by a partnership, a limited company, a limited liability partnership, a public body or another entity, please give us the contact details of a person we can contact about the offer (e.g. this could be a managing partner, a company director or a Head of Service).</p> <p>Full Name: ██████████</p> <p>Address (if different from above):</p> <p>Strathclyde Business Park, Phoenix Cres, Bellshill ML4 3AN</p> <p>Contact Telephone Number: 01465 716591</p> <p>Email address: ██████████@wgrant.com</p>			

## Section 2

**Tell us about the act or omission that has led you to make this offer. Please give the location of the offending behaviour, include a National Grid Reference (NGR) if you can.**

On Monday 24<sup>th</sup> January 2022, whilst undertaking a weekly inspection of the Mill Lade and the River Fiddich (NJ 3264 4166), sewage fungus was noted growing in both. The source of this impact was traced and stopped.

On being notified of this incident on the 24<sup>th</sup>, a thorough investigation took place throughout the day, ultimately indicating that our Worts Cooler No.2 had failed leading to wort (Sugary liquid) passing to the cooling water side of the cooler.

The cooling water exits the worts cooler and is passed to the hot water tank No.1 where it is used for mashing water in mash tuns 1 & 2. When the level in the hot water tank reaches 85%, a water divert valve diverts water to the mill lade where it is cooled in the cooling pond at Balvenie before being discharged to the river Fiddich. Interrogation of the SCADA system proved that around 6 times per day, the water was diverting into the mill lade.

Once discovered, mashing was immediately stopped on mash tuns 1 & 2 until a recovery plan could be formulated. The hot water tank was drained to the effluent plant, flushed and refilled with uncontaminated spring water. It was determined that a fault had arisen in the cooler serving mash tun 2, but mash tun 1 was operating without fault. At this point mashing on mash tun 1 was restarted; however mash tun 2 remained off until a plan for repair could be formulated.

As a repair to mash tun 2 would take 3 weeks, a review of operations highlighted an option to route the overflow from the hot water tank to the effluent treatment plant. Here the BOD/COD could be reduced to lower than consent limits before discharge to the River Fiddich.

Once the overflow was rerouted to the effluent treatment plant and proven effective, mashing was restarted on mash tun 2.

Our investigation into the root cause of this failure was operator error. One operator was creating a pressure spike in the system to help keep it clean, but this was not part of any work instruction or carried out by anyone else. They have since been retrained on how to operate the system correctly.

On Tuesday 25<sup>th</sup> January 2022 we became aware that a smaller issue had also occurred, which we immediately investigated and remedied. To explain, on the 25<sup>th</sup> the weekly cooling water results highlighted that there was an issue with the southern leg wash pre-heater due to elevated COD results. The pre heater was therefore isolated and taken off line.

Samples of the mill lade taken the following day (26<sup>th</sup> January) indicated that the COD levels were back to where they expected to be and it was noted on both the 26<sup>th</sup> & 27<sup>th</sup> of January that the growths in the river arising from the incidents on the 24<sup>th</sup> and 25<sup>th</sup> of January were dying off.

The reason for the pre heater failure is still being investigated as it was the result of a failed plate within the heater and the manufacturer cannot explain it. Currently the plate in question is being examined by a metallurgist, to determine if there was a weakness in the metal.

### Section 3

**If the act or omission was a breach of an environmental authorisation, please provide the authorisation number and tell us what condition or conditions were breached.**

The discharge to the River Fiddich was made via the outlet covered by authorisation CAR/L/1002417/VN01.

We believe conditions 2.6.1 & 3.5.1 of this authorisation were breached, namely:

2.6.1 – “Other than as specifically permitted or limited by any condition of this licence, none of the authorised activities shall have a significant adverse impact on, or cause pollution of, the water environment.”

3.5.1 – “Any discharge authorised by this licence shall not cause:  
(e) significant growth of sewage fungus in the receiving waters”

### Section 4

**If you know the legislation that has been breached, please refer to it here, giving the name of the Act and section number or the name of the Regulations and regulation number.**

The legislation is

***Water Environment (Controlled Activities) (Scotland) Regulations 2011***

The regulation breached was 44(1)(d) namely,

**44.—(1)** It is an offence for a person to—  
(d) fail to comply with or contravene a water use licence (including any condition imposed)

### Section 5

**What, if any, environmental impact was caused by the offending behaviour (e.g. any impact on water, air, land, human health or amenity)?**

Growths of sewage fungus were visible immediately downstream of the cooling water outfall (CAR/L/1002417/VNo1) for a distance of 1.3km, covering most of the width of the river.

SEPA indicated that an ecological impact assessment was carried out by them within days of the incident being reported and this indicated an impact upon the river invertebrates. (Actual specifics unknown at time of writing as this assessment has not been shared by SEPA).

## Section 6

**What, if any, costs did you avoid, or financial benefit did you make from the offending behaviour?**

There was no financial benefit from this event, the two incidents occurred during normal distilling operations. There was actually a negative financial impact, as production was stopped whilst the wash pre-heater was bypassed and the other problems were rectified.

This resulted in a £6k cost due to lost production, and an increase of £35k in energy costs.

## Section 7

**How are you going to ensure the offence does not continue or recur and what date/dates will you have achieved that/those action(s) by? Please specify what will be done and the date which it will be done by.**

At the time of the incident we rerouted the two worts cooler overflows, so that they are directed to the effluent system rather than overflowing into the cooling water and this still remains in place.

The industry standard for ensuring that cooling water has not become contaminated with any process effluents or product, is to undertake weekly laboratory sampling and testing and this has been a standard practice on site. We also carry out visual inspections of the various outlets across the site, the Maltkiln Burn and the river.

We have reviewed these systems and it is now obvious that leaks/contamination can occur due to mechanical fault and not be detected for a few days between samplings.

We have now instigated twice weekly sampling, plus daily inspections with the results passed to the site Head of Operations daily.

By December 2022, we will further enhance this system by installing continuous TOC monitoring equipment, at a cost of circa £115K, on our cooling water system, to allow the earliest detection of any future inputs.

Each of the two still houses at Glenfiddich will have a unit placed on their cooling water outlets, a third unit will be placed at Balvenie Pond (Both cooling water discharges and some other site discharge accumulate in the pond) and a final fourth unit will be placed on the lade discharge to the river, which captures the outlet from the Balvenie pond and potential spillages from Balvenie and Kininvie Distilleries.

Each unit will continually feed back into our SCADA (Supervisory Control and Data Acquisition) system. There will be alarms set and these will alert the distillery operators if an issue occurs, hence this provides 24 hours cover, 365 days of the year, equivalent to whenever the distilleries are operational. We believe this provides the earliest detection for future pollution risks.

## Section 8

**What are you going to do to restore the environment to the state it was in prior to the offence having occurred? OR If restoration is not possible or not a viable option, what alternate actions are you going to do to benefit or improve the environment? What date/dates will you have achieved that/those actions by?**

SEPA has confirmed that the only impact was the growth of fungus and the loss of invertebrates, with no fish being harmed during this event.

Once the inputs stopped, the microbial growths in the river quickly died off and were washed away. The river is quite dynamic and it is fully expected that after a few heavy spates the upstream invertebrates would quickly re colonise the stretch impacted within a few months and any impact would not be long term.

## Section 9

**If you intend to make a financial donation to a third party, tell us the amount, who it will be paid to, why and the date you will make the payment.**

Wm Grant & Sons Limited has been in discussion with the Spey Foundation and is prepared to provide a financial donation of £12,000 to the Spey Foundation to help fund their research into improving their understanding of fish and aquatic wildlife in the River Spey catchment.

This is also to include a particular focus on advancing the education and understanding of all aspects of the River Spey catchment to a wider audience via social media.

The donation will be made within three months of SEPA's agreement to the Enforcement Undertaking.

## Section 10

**What additional commitments are you making to benefit or improve the environment? What date/dates will those commitments be fulfilled by?**

On site at considerable expense we are going to move to continuous monitoring of the cooling water discharge to provide immediate information should an unexpected mechanical or other failure arise within our systems in the future. It is hoped to have this system installed by the end of the year.

Off site, at the SWA Water & Effluent Group meeting in November we plan to share the lessons learnt from this incident with the other SWA members, including our new standard for cooling water monitoring.

Off site, we believe that by contributing to the Spey Research Foundation, we will be investing in better public awareness of the River Spey catchment.

Section 11

<b>Has the offending behaviour had an impact on the local community? NO</b>
<b>If YES, have you consulted with them regarding this offer? YES / NO</b>
If so, please provide details of any consultations


Section 12

<b>If you intend to make a contribution towards SEPA's costs in connection with this offer, tell us the amount and the date you will make the payment. Alternatively, if you have not requested information from SEPA in respect to our costs and intend to make a contribution please state this intent.</b> <b><i>Please do not submit any payments with this offer. Any payments submitted to SEPA will be returned prior to any decision being made by SEPA in respect to your offer.</i></b>	
We confirm that we intend to make a contribution towards SEPA's costs.	
Known Amount: £2500	Date for payment: 31 <sup>st</sup> December 2022

**Statement:**

**I confirm that any financial donation to a third party mentioned in Section 9 is a donation that I will receive no benefit from.**

**This offer of undertaking is made in accordance with Schedule 3 of the Order**

Signature: 

Full Name: 

Date: 21/10/2022

Please be aware that if you are signing this form on behalf of a company, partnership or other corporate body, you are holding yourself out as being an authorised signatory and your signature will bind the company, partnership or other corporate body.

## **Information and guidance about making the offer**

We strongly advise you to obtain independent legal advice before making any offer. The offer must be in writing. We encourage you to use this form because it has been designed to capture the information SEPA needs and will make it easier for SEPA to process your offer. If you cannot fit all of the details into any section, please continue on a separate piece of paper and submit that to us with the offer form and sign and date the separate pieces(s) of paper.

We aim to acknowledge receipt of your offer within 10 working days of receiving it and we will give you a contact name for the person who you should correspond with should you have any queries. There is no statutory determination period within which SEPA must decide whether to accept or reject your offer, however, we aim to communicate our decision to you in a timeous fashion.

### **When an offer is inappropriate**

In the following circumstances, we will not consider an offer to be an appropriate enforcement action where:

- the offence has caused significant environmental harm (including damage that requires remedial measure to be taken under the Environmental Liability (Scotland) Regulations 2009);
- the offer includes a clause denying liability;
- we believe the responsible person will not comply with the EU offered;
- In addition we cannot accept an EU when we have already decided to:
  - impose a fixed monetary penalty or a variable monetary penalty in respect of the offence; or
  - refer the offence to COPFS for consideration of prosecution.

In addition, there will be circumstances where it is not appropriate to accept an EU. This will be determined when reviewing the circumstances of the non-compliance against our

- enforcement factors and the Lord Advocates Guidelines.

Section 6 – where you have avoided costs (e.g. the costs of obtaining an environmental authorisation) and/or made a financial gain as a result of the offending behaviour, we expect you to make an offer that at least removes that benefit. You should not experience any financial benefit as a result of the offending behaviour.

SEPA can accept or reject your offer; we will inform you in writing of our decision. If your offer is rejected, there is no mechanism to lodge a statutory appeal.

If the offer is rejected you may decide to submit a different offer. Any revised offer should be submitted quickly as we are unable to accept an offer of an EU if we have already taken a formal decision about what other enforcement action we will take.



If we accept your offer and you fail to comply with its terms, we will issue a certificate of non-compliance and may subsequently take any enforcement action against you for the offending behaviour; this can include referring the matter to COPFS for consideration of prosecution.

Further guidance on making a suitable offer can be found in Guidance on the use of Enforcement Action June 2016 <http://www.sepa.org.uk/media/219242/enforcement-guidance.pdf>