



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.

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.

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

Details of person making this Offer [REDACTED]

Full name of person making offer:

[REDACTED]
[REDACTED]
Story Scotland

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:

Story Scotland
Whistleberry Road
Blantyre
G72 0TA

Registered office Address (if different from above):

Story Contracting
Burgh Road Industrial Estate
Carlisle
CA2 7NA

Registration Number (if a company or an LLP): 03709861

Contact Telephone Number: [REDACTED]

Email Address: [REDACTED]@storycontracting.com

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).

Full Name: [REDACTED]

Address (if different from above):

Contact Telephone Number: [REDACTED]

Email address: [REDACTED]@storycontracting.com

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 the 6th of September 2021, SEPA contacted Story Contracting Ltd, to report a pollution event. SEPA were notified of a discolouration of the Dryfe Water, Sandbed Mill, Lockerbie, NY 12810 83889.

SEPA inspected the site in the presence of Site Manager, [REDACTED] and Senior Project Manager [REDACTED]. As a result of the inspection, SEPA cautioned both [REDACTED] and [REDACTED]. Story's internal investigation showed that the pollution event resulted due to the pollution prevention mitigation being removed prior to the works having been completed. The below account outlines the pertinent steps.

- 13/04/21 - CAR licence issued
- 12/07/21 - Works commenced
- 04/09/21 - Temporary mitigation works removed. The portadam was removed prior to final completion of the works as per the design. The reinstatement of the flood channel had not been completed to the required level or to the design specification. Once the portadam was removed and the area re-wetted the loose sediment in the area of the flood channel was washed away. The increase sedimentation resulted in the decolourisation of the Dryfe Water.
- 05/09/21 – SEPA receives a complaint.
- 06/09/21 – SEPA receives a complaint and notifies Story. SEPA inspected the site and took water quality samples (no formal samples were taken).
- 10/09/21 – SEPA agreed that further in-channel works could be completed as described in the revised method statement (submitted to SEPA on the 09/09/21) under the current licence provision. An EnCoW was to be present on-site to supervise all remaining inchannel works.
- 10/09/21 – SEPA fish ecologist surveyed the site. No fish kills were recorded. SEPA notified Story that there was a potential impact to the spawning area up to 1km downstream.
- 13/09/21 – In-channel works recommence under revised MS and new temporary pollution prevention mitigations are installed. No further pollution events were reported.
- 14/09/21 – Story commission an independent kick sample survey to assess impact to the invertebrates. Results show a localised minor impact within the macroinvertebrate data with some potential impact to salmonid redd survival if there is not sufficient flow prior to spawning time.
- 21/09/21 – In-channel works are completed, SEPA notified.

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 following non-compliances against Authorisation Number CAR/S/1198402 were noted. The specific Conditions which have not been complied with are bulleted below.

- **2.1.1 – Engineering works**

Table 1 – Description of Engineering works as outlined in Condition 2.1.1, Table 1 was not complied with.

The revised method statement submitted to SEPA showed that following amendments to the licence were required

- *The bank protection on both banks is not reinforced concrete but is now rip-rap*
- *Additional concrete upstanding required along the left-hand bank from the upstream inner edge of the riprap bed protection. Approximately 25-35m in length.*

- *A layer of riprap stone at the toe of the newly formed flood channel slope (between Pier 3-2), where the slope interface is with the main channel. Approximately 25m in length.*

- **2.1.2 – The engineering works in Table 1 must not;**
(a) Cause significant deposition in the water environment

An increase in sedimentation of the riverbed over a 1km stretch.

- **2.1.3 – The engineering works in Table 1 must not have a significant impact on the water environment as a result of; (b) Discolouration**

Discolouration of the Dryfe Water as a result of an increased in sedimentation.

- **3.1.1 – Notification of SEPA must be notified via its pollution hotline contact telephone number as soon as reasonably practical and in any case within 24 hours of the identification of an event.**

SEPA were not notified by Story regarding a potential pollution event at the time of the incident.

- **3.3.1 – Notification of SEPA within 14 days of an event a report must be submitted to SEPA.**

SEPA were not notified by Story regarding a potential pollution event at the time of the incident.

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.

Water Environment and Water Services (Scotland) Act 2003
Water Environment (Controlled Activities)(Scotland) Regulations 2011

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)?

The following environmental impacts were reported.

- Discolourisation of the Dryfe Water
- Potential to impact salmonid spawning area with sediment deposition up to 1km downstream if no increased flow was experienced prior to spawning period.
- No fish kills were reported.
- A localised minor impact within the macroinvertebrate data was recorded.

Section 6

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

There were no costs avoided or financial benefit as a result of the offending behaviour. It was done purely to assist with the final reinstatement works. The action cost us circa £20k due to the need to reinstate temporary dam, recommence the reinstatement works and additional visits from the fisheries officer.

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.

An EnCoW was hired to be on-site for the remainder of the works. This ensured that whilst it was necessary to continue the works under a modified method statement (including the reinstatement of temporary mitigation measures), the works did not cause any further pollution of the Dryfe Water during the construction period.

Story Contracting Ltd, are determined that the company will promote and practise a culture that demonstrates environmental best practise. Going forward, Story have taken a number of proactive steps to ensure that this type of pollution event does not happen again, these include.

- As part of all future engineering designs sign off, a suitably qualified individual will sign off the design from an environmental perspective, including compliance with any associated authorisations. This action is to be implemented immediately. As part of the design process, Story will add the requirement for habitat enhancement to be considered for all future projects with local stakeholder engagement.
- Story will ensure that all in-channel work method statements highlight the high-risk activities and 'Hold Points', where an EnCoW must be present. Story will ensure that all projects allow both adequate budget and time to accommodate the presence of an EnCoW. These 'Hold Points' will also highlight points where works must be put on hold until fish rescues have been undertaken. The method statement template is currently under review and any necessary additional steps will be highlighted and enacted upon as soon as possible and by no later than December 2021.
- Story are currently reviewing their environmental training programme to ensure all site employees have the current most up to date environmental training and the assurance team are likewise upskilled to ensure compliance. This review will be undertaken by the end of 2021.
- As part of the training review, Galloway Fisheries Trust are going to provide a training course to all employees who work in the watercourse. This course will outline best practise for fish rescues and how in-channel works can affect the aquatic environment. This training course is due to be delivered before the end of 2021 to all site management teams.
- Story are also going to review the process of undertaking Environmental Site Audits, how and what data is recorded, the frequency of the audits and how the information can be stored and disseminated with lessons learnt to all relevant personal. This review will be undertaken by the end of 2021
- With specialist consultation, Story will develop a hierarchy of control for silt mitigation highlighting best practice mitigations and will ensure all site teams are trained in the use thereof before in-channel works recommence in 2022.
- Story have agreed with Galloway Fisheries Trust (GFT) to provide staff to work on environmental enhancement projects in and around the Annan catchment. This offer is not time limited, but it is hoped that a suitable project(s) will be available by the first quarter of 2023.

It is believed that by staff undertaking the physical works to benefit the aquatic environment they will learn first-hand about the risks and consequences of their actions when they work in and around watercourses. It is also believed that by staff undertaking such works, the staff will develop a culture which understands the importance of protecting the environment to the same degree as is bestowed upon Health and Safety.

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?

It will not be possible to immediately restore the water environment to the state it was prior to the pollution event. To try and remove the sediment from the riverbed will potentially have caused far more environmental harm than any foreseeable benefit. It was believed that in this case it is far better to leave the environment to self-recover. It is hoped that if the flow levels within the watercourse rose, this will disperse the sediment over a far greater area and hence reduce the impact. After a few larger spates, a follow up survey will be undertaken to assess the level of impact to the spawning area. The results of this survey will be passed onto SEPA.

To achieve maximum environmental benefit, it is believed to be far better to try and enable environmental enhancements elsewhere within the Annan catchment. To this end, Story are proposing on working with the GFT to deliver aquatic environmental enhancements to the Annan catchment. Story's donation will consist of a financial contribution; staff time and the provision of equipment/machinery in the short-term. In the long-term Story desire to provide ongoing support to GFT and continued involvement in future projects. Currently GFT have not highlighted a specific project (s). However, as a charity they will ring fence the donation to ensure it is only used for an environmental enhancement project (s) to directly benefit the aquatic environment within the Annan catchment. Examples of such projects could include tree planting alongside a river (once appropriate landowner agreement had been confirmed). This would give multiple environmental benefits such as increased shading for fish spawning areas, stabilisation of the riverbanks, reduced run-off during heavy periods of rain etc.

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.

A financial donation of £10,000 will be made directly to the GFT.

This funding is being provided towards the delivery of environmental works to enhance riverine habitats within the River Annan catchment. Ideally Story would like the works to be completed within 18 months of the donation being provided and we will be asking GFT for regular updates on progress up until the work is finished.

It has been noted that an agreed completion date for utilisation of the funding will be no later than 30th November 2023. This is to ensure that suitable time period is available to co-ordinate and maximise the most effective and efficient use of the proposed funding.

Section 10

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

Part of Story's over all donations to GFT, will include additional in-kind support in the form of staff, equipment, and machinery up to a value of £5,000 to assist with these riverine habitat works/projects within the River Annan catchment. This in-kind support will be available once a suitable project (s) has been identified. Like the financial contribution Story would ideally like these works to be completed within 18 months.

It has been noted that an agreed completion date for utilisation of the funding will be no later than 30th November 2023. This is to ensure that suitable time period is available to co-ordinate and maximise the most effective and efficient use of the proposed funding.

As a rough example, £5000 equates to 10 staff days and 5 days use of excavator and plant operator. The exact breakdown of the in-kind contribution to GFT will be recorded by Story and will be made available upon request.

Section 11

Has the offending behaviour had an impact on the local community? YES/ NO

If YES, have you consulted with them regarding this offer? YES/ NO

If so, please provide details of any consultations

It is not believed that there has been any recorded impact of the pollution event on the local community. However, it is understood that there could have been an amenity impact as a result of the decolourisation of the watercourse. It is also recognised that if suitable spawning areas downstream of the site remain were impacted at the time of fish spawning (approximately late October/early November), there may be an impact of the salmonid redds. This could have a degree of environmental, recreational, and financial impact for the local community.

Section 12

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.

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.

Story intend to make a payment to SEPA to contribute to some of the costs accrued as a result of the pollution event. The contribution to SEPA will be made at £1,520.49 to support with the following requirements:

- Inspections and surveys
- Testing requirements
- Interview support
- Reporting and recommendations

Known Amount: £1,520.49

Date for payment: February 2022

Statement:

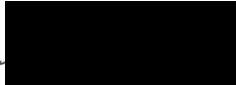

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Nov 2016

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: 30/01/22_____

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 piece(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 noncompliance 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/enforcementguidance.pdf>