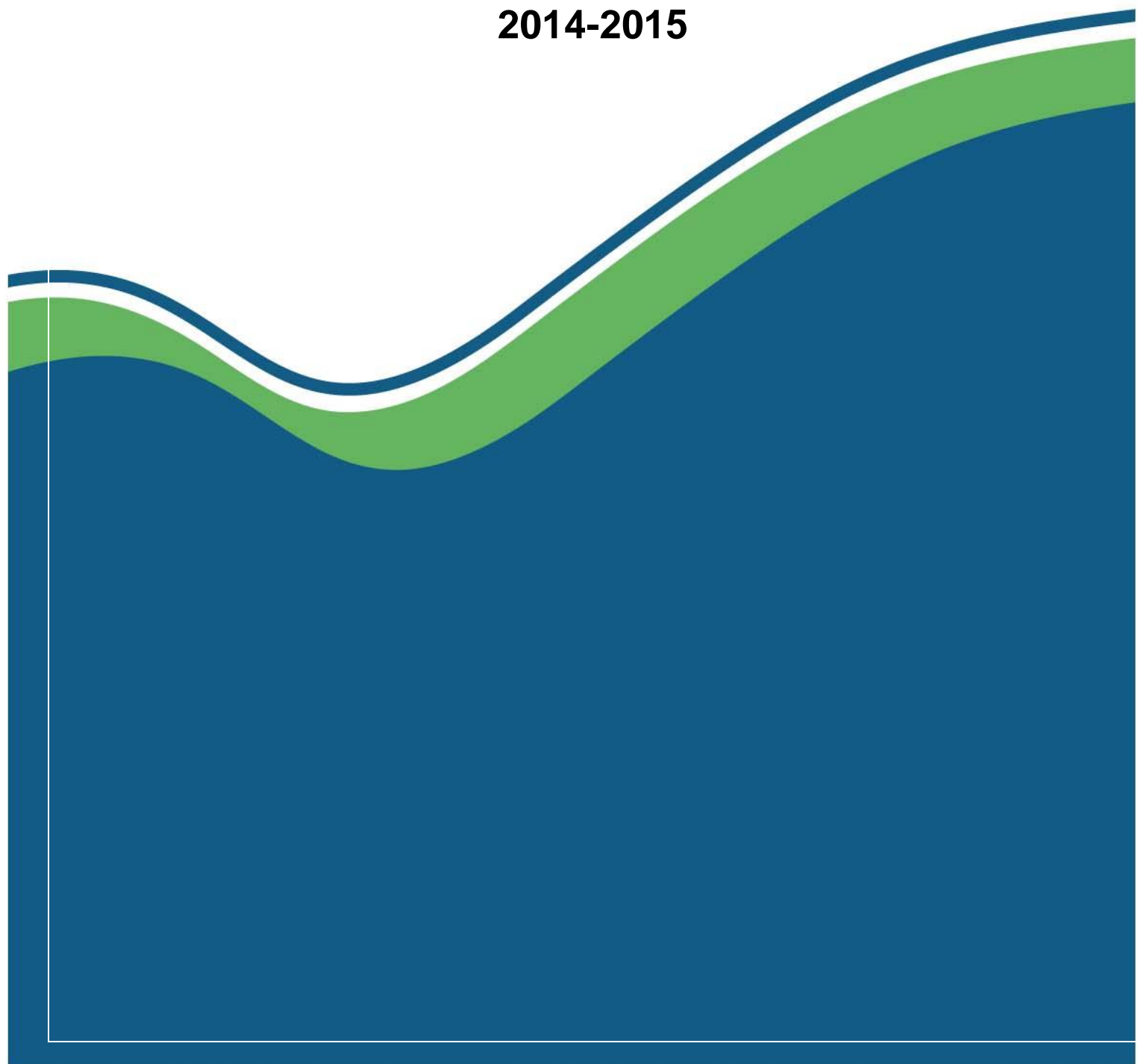


SEPA Enforcement Report

2014-2015



SEPA Enforcement Report 2014-15¹

Foreword



The Scottish Environment Protection Agency's (SEPA) Enforcement Report is an annual publication, which provides an overview of enforcement action taken each year by SEPA. This publication summarises how we have utilised the enforcement tools available to us, to deal with those who have failed to comply with environmental legislation, which exists to protect Scotland's environment, local communities and the economy.

While most operators in Scotland understand and comply with their environmental obligations, there continue to be those who flout the law by running illegal activities or failing to comply with their legal requirements laid out in permits. As a direct result of SEPA's actions against major non-compliance and illegal activities, we have seen the total fines handed down to offenders, and the average fine, reach their highest levels in 2014-15. In addition, one custodial sentence was handed out to an offender. Further details of these can be found in this report.

SEPA has recently consulted on its Revised Enforcement Policy and Enforcement Guidance which, when implemented, will give transparency to how we will make decisions regarding enforcement action in the future, and how we plan to use the new enforcement tools available to us as a result of the Regulatory Reform (Scotland) Act 2014. We now have the ability to issue Fixed Monetary Penalties, Variable Monetary Penalties, Enforcement Undertakings and Non-Compliance Penalties, and we understand that these new enforcement tools will allow us potentially to impose a significant financial penalty, removing any financial benefit gained from non-compliance or illegal activities.

A handwritten signature in blue ink that reads "C. MacDonald".

Calum MacDonald
Executive Director

¹ This report covers the period from 1 April 2014 until 31 March 2015. References in this paper are to financial years running from 1 April to 31 March

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1. Formal enforcement action

SEPA currently has a number of enforcement options in its toolkit, which range from informal advice and guidance letters to the use of formal enforcement tools including final warning letters, statutory notices and reports forwarded to the Procurator Fiscal (PF) for criminal sanction.

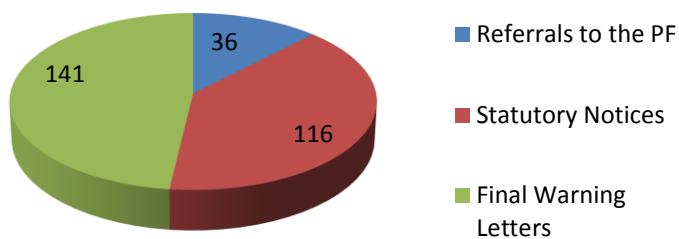
1.1 Overview of enforcement activity in 2014-2015

1.1.1 Formal enforcement action

In 2014-2015, we:

- referred 36 cases to the Procurator Fiscal;
- served 116 statutory notices (not including information notices);
- issued 141 final warning letters.

Figure 1: Enforcement actions taken by SEPA in 2014-2015

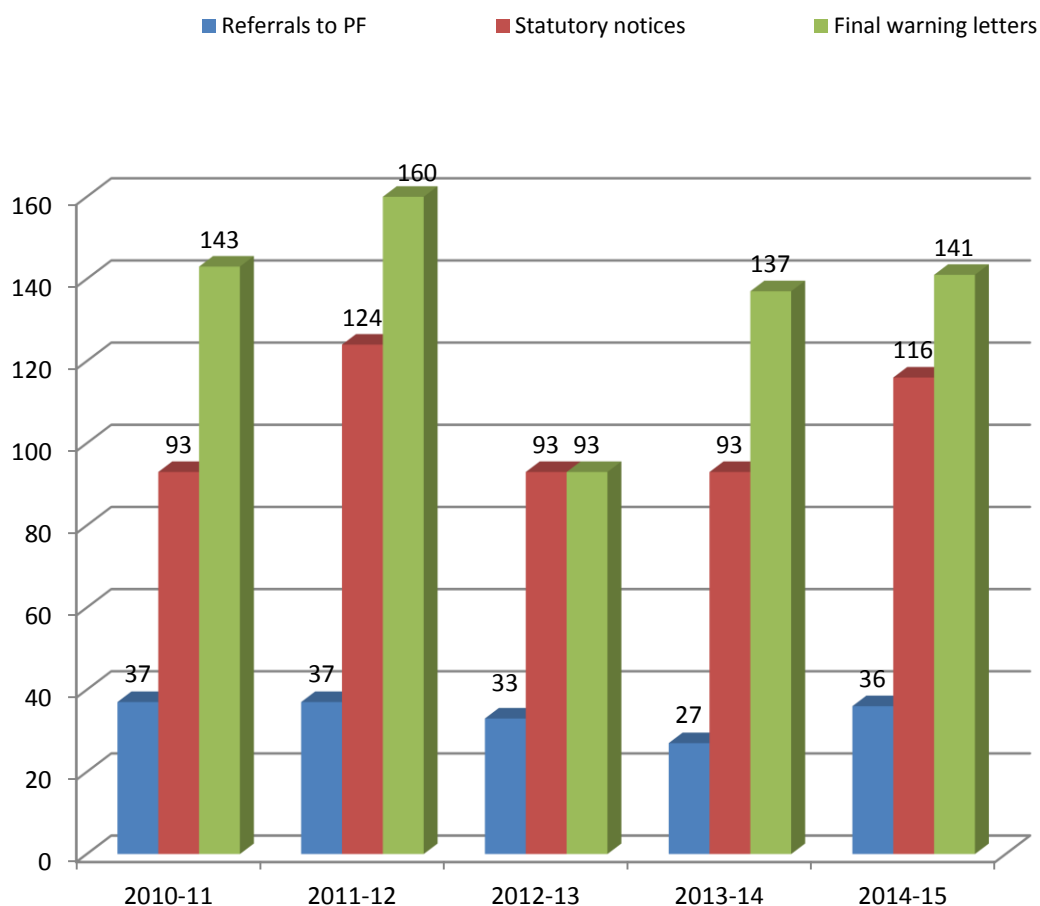


SEPA's enforcement actions taken since 2011-2012 to 2014-2015 are set out in Table 1 & Figure 2 below.

Table 1: Enforcement Action taken by SEPA

Type of enforcement action	Total for 2010-2011	Total for 2011-2012	Total for 2012-2013	Total for 2013-2014	Total for 2014-2015
Referrals to PF	37	37	33	27	36
Statutory notices	93	124	93	93	116
Final warning letters	143	160	93	137	141

Figure 2: Enforcement actions taken by SEPA from 2010-2012 to 2014-2015



We seek to engage, encourage and educate those who are subject to environmental legislation, so as to secure compliance. Most operators in Scotland understand and comply with their environmental obligations. Where there is non-compliance, our experience is that most of those we regulate respond quickly to our advice and guidance to rectify any issues. Enforcement action is a reactive tool that SEPA can use to return a licensed activity back to compliance. It is one tool in the compliance assurance toolkit,

which SEPA may use when other interventions to return a licensed site to compliance have failed.

SEPA has the ability to choose the most appropriate enforcement tool to meet the level of non-compliance or illegal activity. We would normally use the lowest form of action to elicit improvement, but may go directly with a case to the Procurator Fiscal if required.

1.1.2 Referrals to PF under each regime

In 2014-2015, we referred 36 cases to the PF. Of these referrals:

- 15 (41%) were under the waste regime;
- 9 (25%) were under the water regime;
- 5 (14%) were under the Transfrontier Shipment of waste regime (TFS);
- 4 (11%) were for combined offences²;
- 1 (3%) were under the Pollution Prevention and Control (PPC) regime;
- 1 (3%) was under Section 110 Environment Act 1995;
- 1 (3 %) was under producer responsibility.

² one Water and PPC case, one Waste and Section 110 EA 1995 case and 2 PPC and Waste cases

Figure 3: SEPA cases referred to the PF by regime in 2014-2015

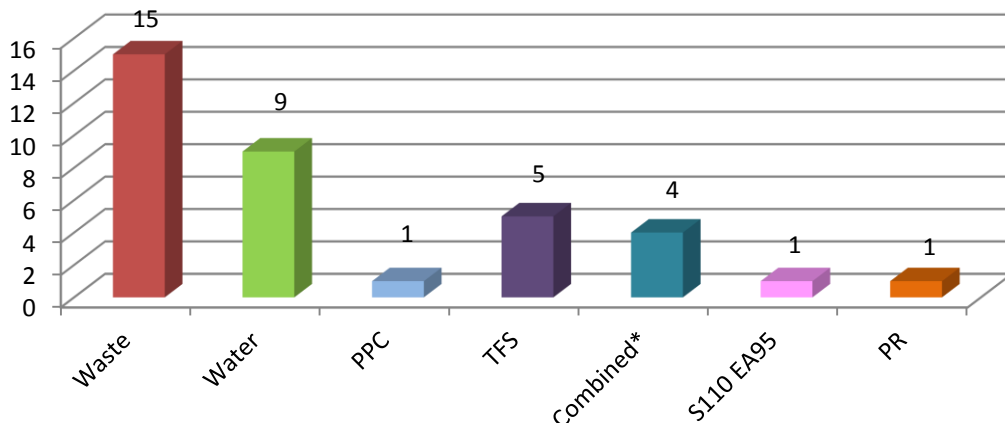
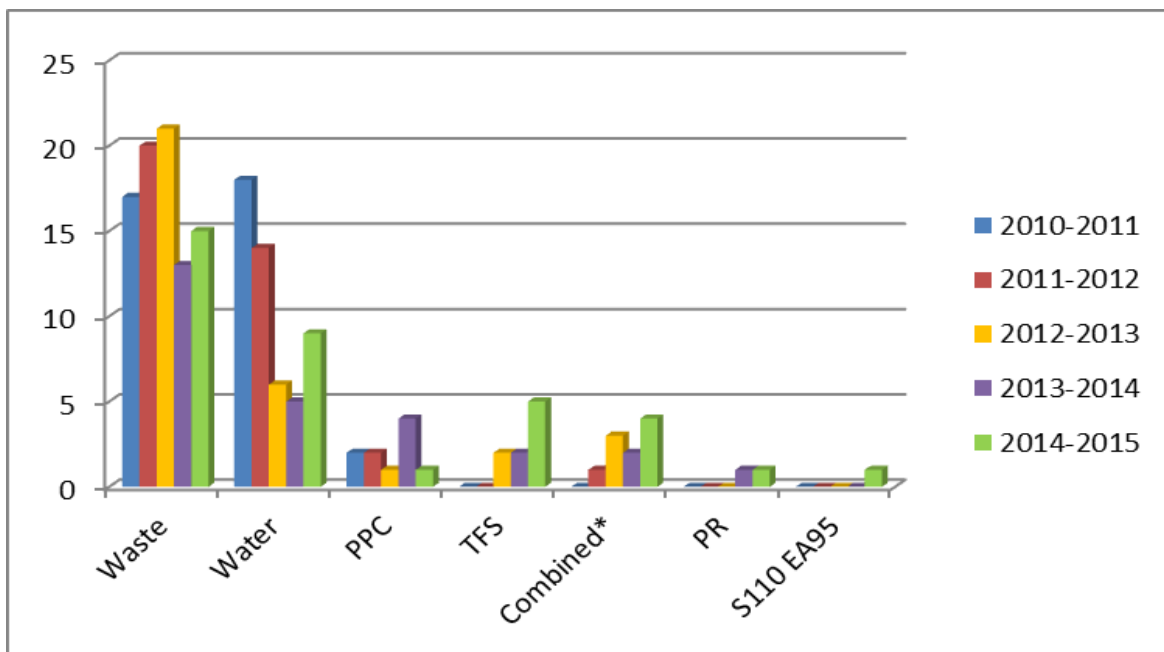


Figure 3 highlights that in 2014-2015, there were more cases referred to the Procurator Fiscal (PF) under the waste regime. This is consistent with the [Compliance Assessment Scheme](#) (CAS) results for 2014, which show that the waste regulatory regime has the highest percentage of sites rated as 'Very Poor', with a rate of 2%, and the amount of illegal activity identified also being highest in the waste regime.

Figure 4: SEPA cases referred to the PF by regime, 2010-2011 to 2014-2015



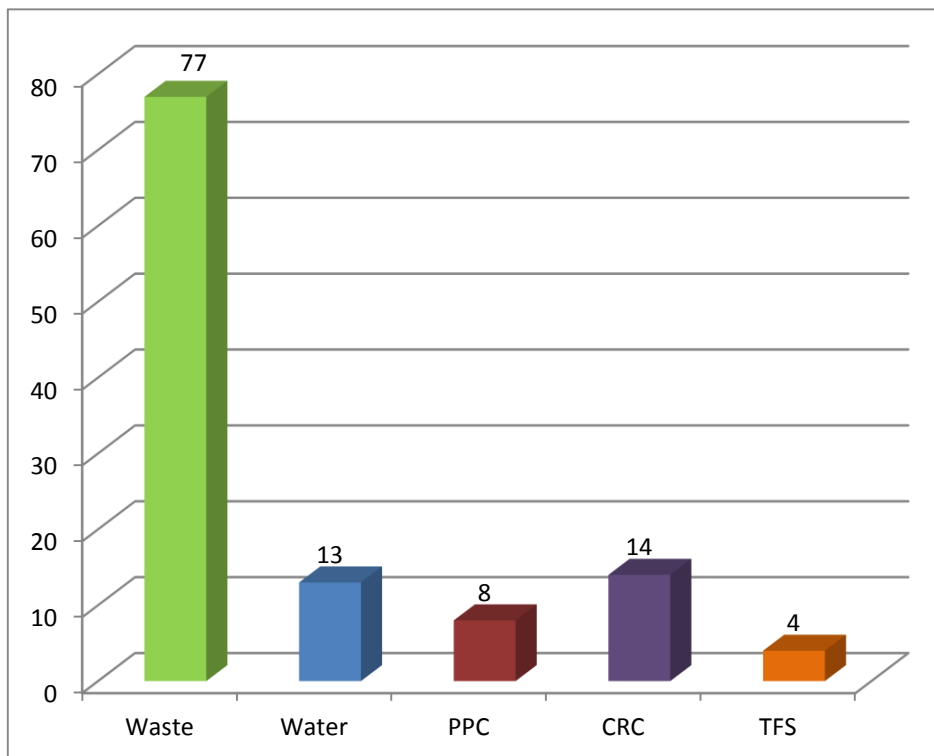
- *2011-2012 One combined waste and PPC case
- *2012-2013 One combined CAR and COMAH case, one combined PPC and waste case and one combined water and waste case
- 2013-2014 One combined PPC and water case and one combined waste and water case
- 2014-2015 Four combined offences (one case submitted under PPC and water, one case submitted under waste and Section 110 Environment Act 1995 and two cases submitted under PPC and waste)

1.1.3 Statutory notices served under each regime

We served 116 statutory notices for non-compliance during 2014-15. Of these notices:

- 77 (66%) were under the waste regime;
- 13 (11%) were under the water regime;
- 8 (7%) were under the Pollution Prevention and Control regime;
- 14 (12%) related to the carbon reduction commitment;
- 4 (4%) were served relating to Transfrontier Shipment of waste;

Figure 5: Statutory notices served by SEPA in 2014-2015



The statutory notices issued under each regulatory regime are shown in [Figure 5](#) above. Figure 5 shows that there were more statutory notices served under the waste regime than any other in 2014-2015. This has been a consistent trend over the last five years, as shown in Figure 6.

Figure 6: Statutory notices served by SEPA, 2010-2011 to 2014-2015

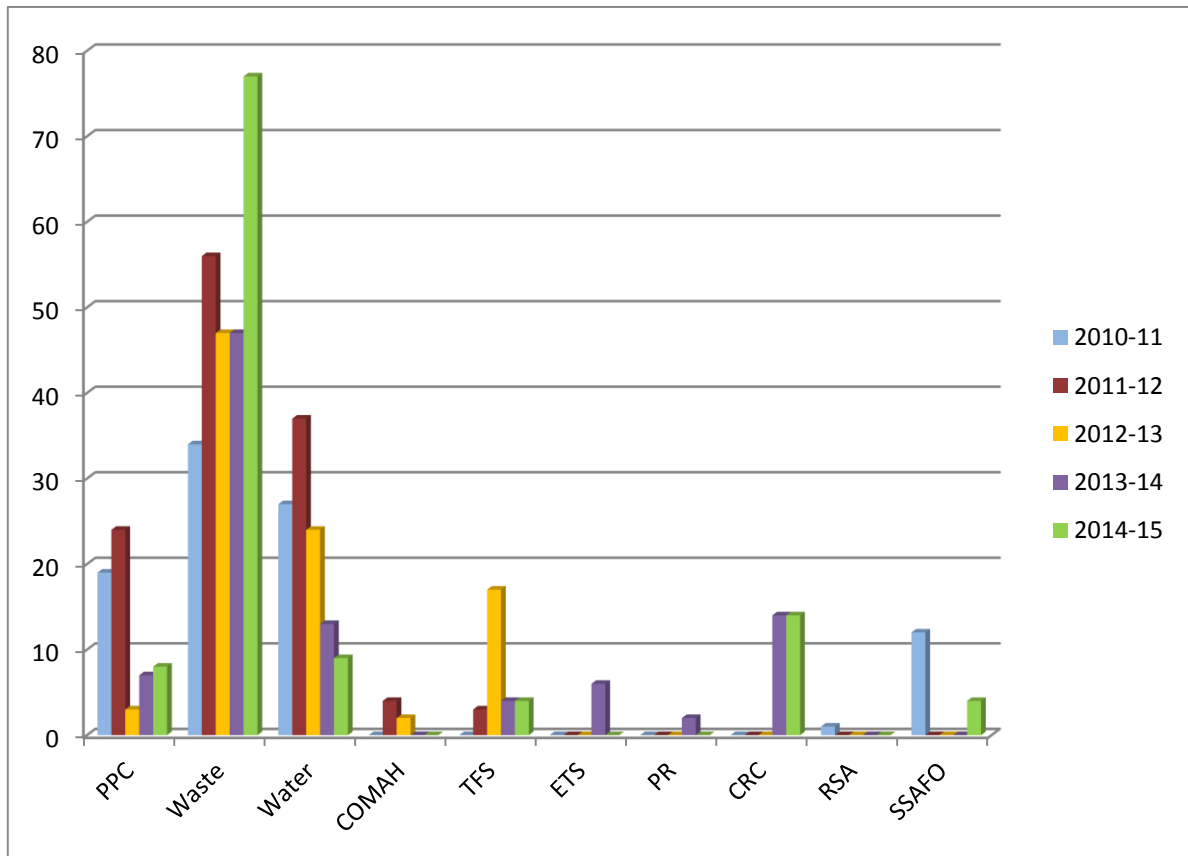


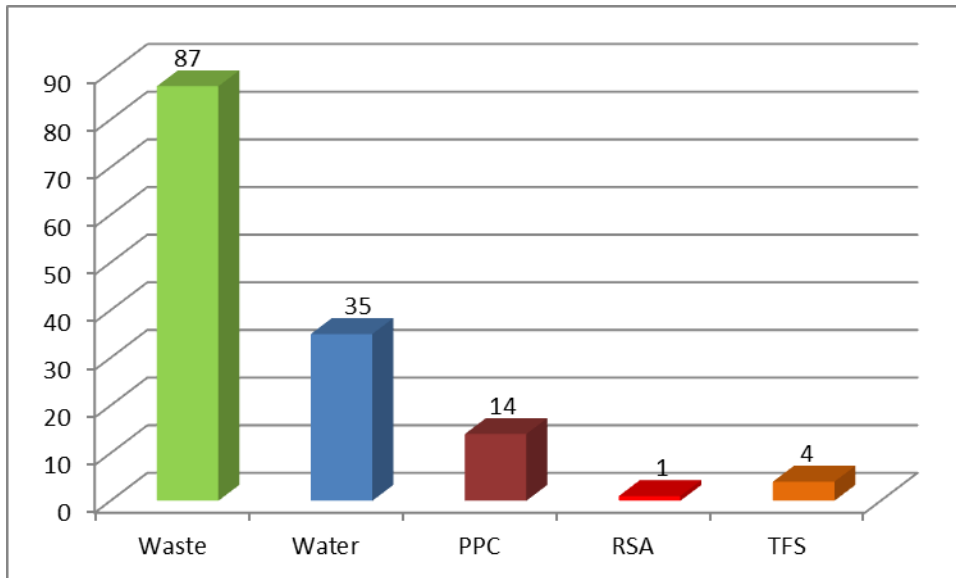
Figure 6 above shows an increase in the number of Statutory Notices issued under the Waste regime in 2014-2015. This increase is largely due to an End Of Life Vehicle initiative undertaken by SEPA’s East Region and North Highland Team during this period. The initiative was to tackle non-compliance in a sector with a very poor compliance record. We served 27 Section 42 Notices, for non-compliance with a licence condition, and four Suspension notices were served under the initiative, primarily for failure to fully depollute waste vehicles. The notices issued as part of this initiative were all complied with.

1.1.4 Final warning letters served under each regime in 2014-2015

We served a total of 141 final warning letters. Of these:

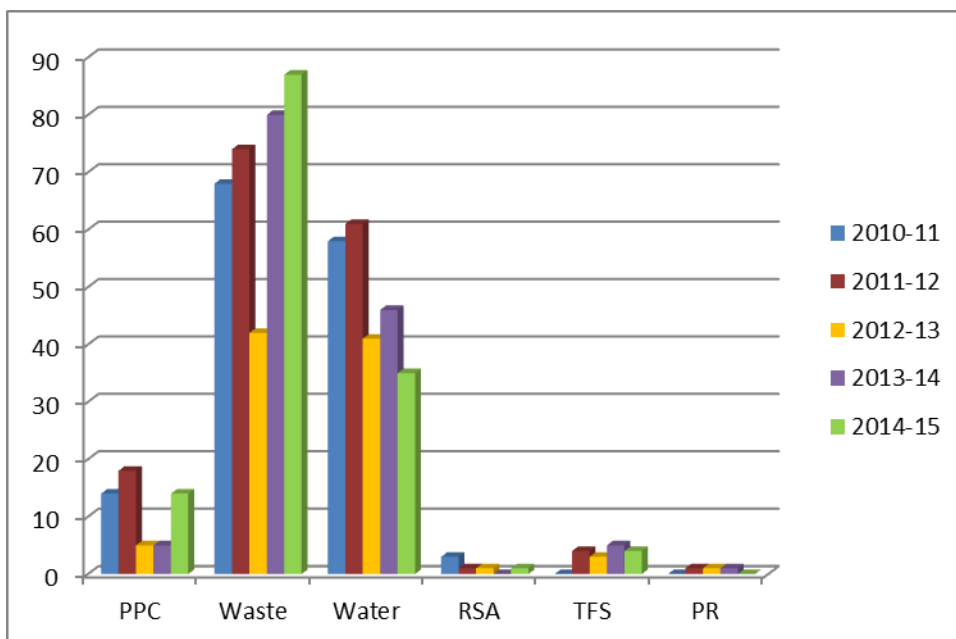
- 87 (62%) were under the waste regime;
- 35 (25%) were under the water regime;
- 14 (10%) were under the Pollution Prevention and Control regime;
- 4 (3%) were under the Transfrontier shipment of waste regime;
- 1 (>1%) was under the radioactive substances regime.

Figure 7: Final warning letters issued by SEPA in 2014-15



The Final Warning Letters (FWL's) issued under each regulatory regime are shown in Figure 7. It is evident that that there was more enforcement action taken under waste in 2014-2015 which is consistent with previous years, as shown in Figure 8 below.

Figure 8: Final warning letters issued by SEPA, 2010-2011 to 2014-2015



1.2 Convictions secured in 2014-2015

1.2.1 Total number of convictions secured in 2014-2015

The number of cases instigated by us, which resulted in a conviction in 2014-2015³, was 18. Of these 18 cases resulting in convictions, the sentences given were:

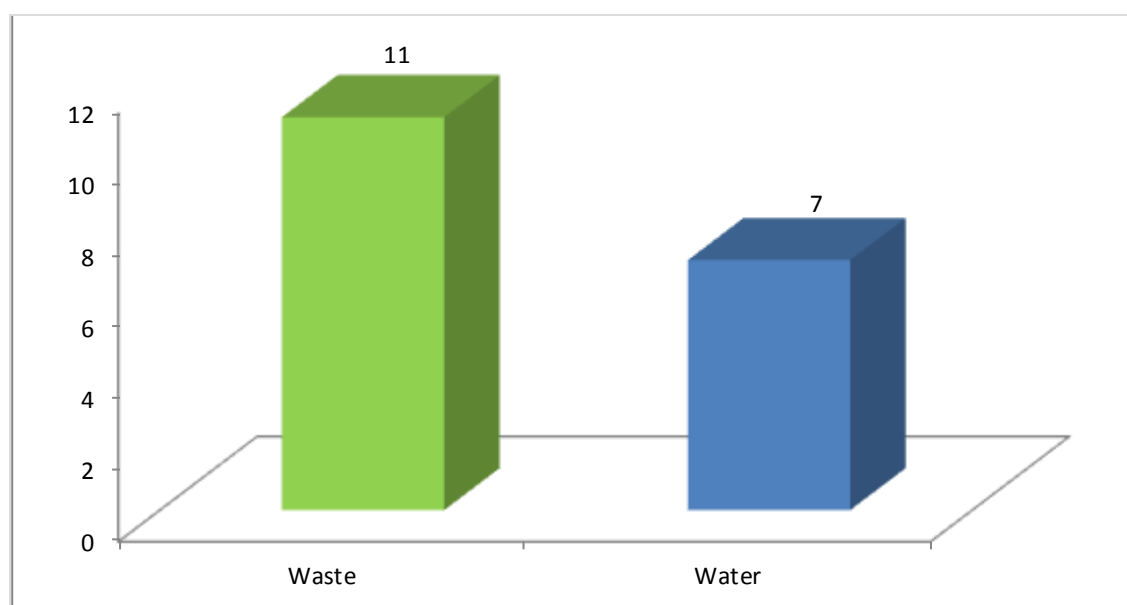
- one six month prison sentence and a fine;
- 13 cases resulted in a fine alone;
- two community service orders, totalling 360 hours;
- one admonishment;⁴
- one 6 month restriction of liberty order where the person had to be at home between the hours of 9pm and 5am.

1.2.2 Convictions secured in 2014-2015 by regime

Of the 18 cases resulting in convictions secured in 2014-2015:

- 11 (61%) were under the waste regime;
- 7 (39%) were under the water regime.

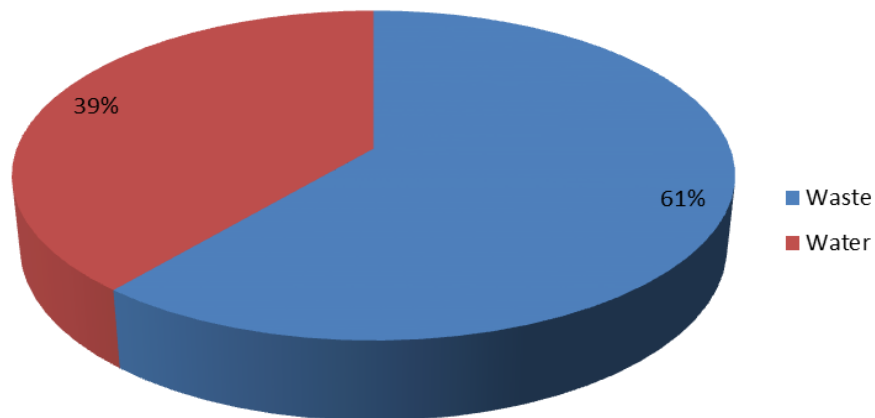
Figure 9: Total convictions secured in 2014-2015 by regime



³ Due to the time taken for cases to come to court, it is unlikely that the convictions secured in a particular year would relate to cases referred by SEPA within in the same year. Figures for cases reported and cases resulting in convictions are therefore not directly comparable.

⁴ An admonishment means the accused has been convicted, but no fine/ imprisonment is imposed.

Figure 10: Percentage of convictions secured in 2014-2015 by regime



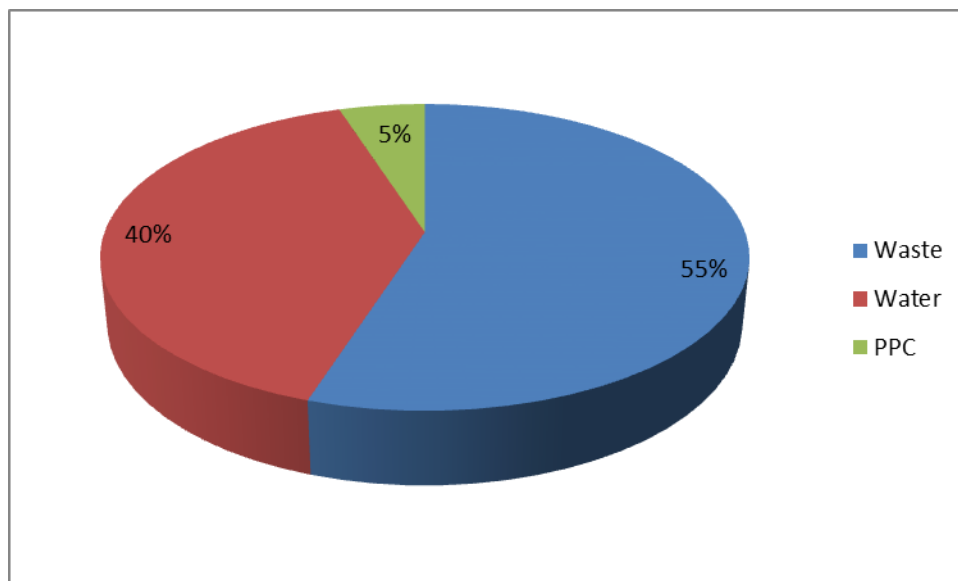
The number of convictions, by regulatory regime, which have resulted from cases instigated by us since 2010-2011 is shown in Table 2.

Table 2 Total convictions secured between 2010-11 and 2014-15

Year	Total of outcomes	Waste	Water	PPC
2010-2011	16	10	5	1
2011-2012	21	11	9	1
2012-2013	16	7	8	1
2013-2014	14	8	5	1
2014-2015	18	11	7	0

The highest number of convictions secured relate to the waste regime. A breakdown of the percentage of convictions under each regime is shown in Figure 11.

Figure 11: Percentage of convictions secured from 2010-2011 to 2014-2015 by regime

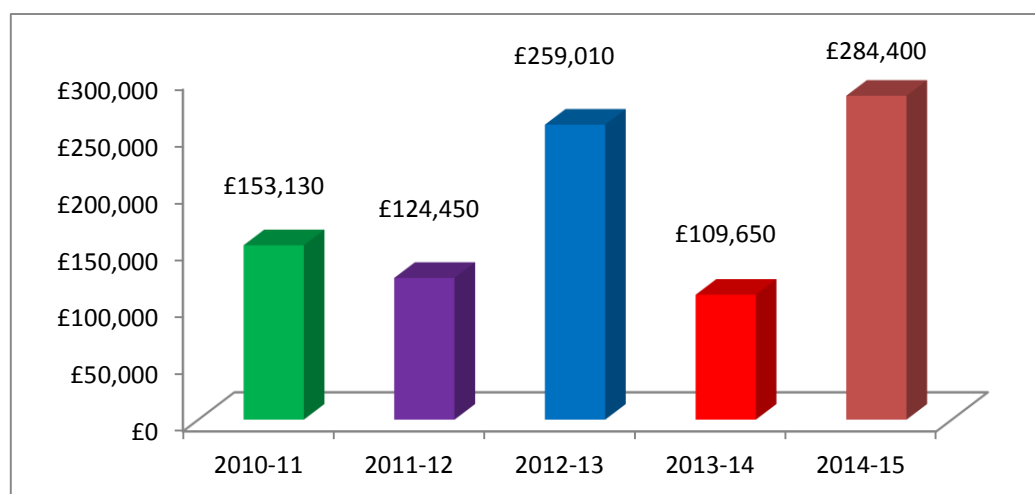


1.3 Fine levels

1.3.1 Total fine levels

Of the 18 cases which resulted in convictions in 2014-2015, 14 fines were imposed, totalling £284,400. Figure 12 shows the total fines imposed since 2010-2011, which also shows that 2014-2015 has the highest total fines over the last five years.

Figure 12: Total fines arising from SEPA convictions, 2010-2011 to 2014-2015



1.3.2 Average fine levels where fines imposed by criminal courts

The average fines imposed by the criminal courts in SEPA instigated cases since 2010-2011 are shown in table 3, below. Average fines were at the highest level since 2010-2011, in 2014-2015.

Table 3: Average fine levels where fines imposed by criminal courts

Year	Average fine imposed
2014-2015	£20,314
2013-2014	£10,965
2012-2013	£16,188
2011-2012	£5,926 ⁵
2010-2011	£9,570

The average fine awarded against bodies corporate, as opposed to individuals, in 2014-2015 was £28,583. Note that Table 3 shows all cases, both corporate bodies and individuals.

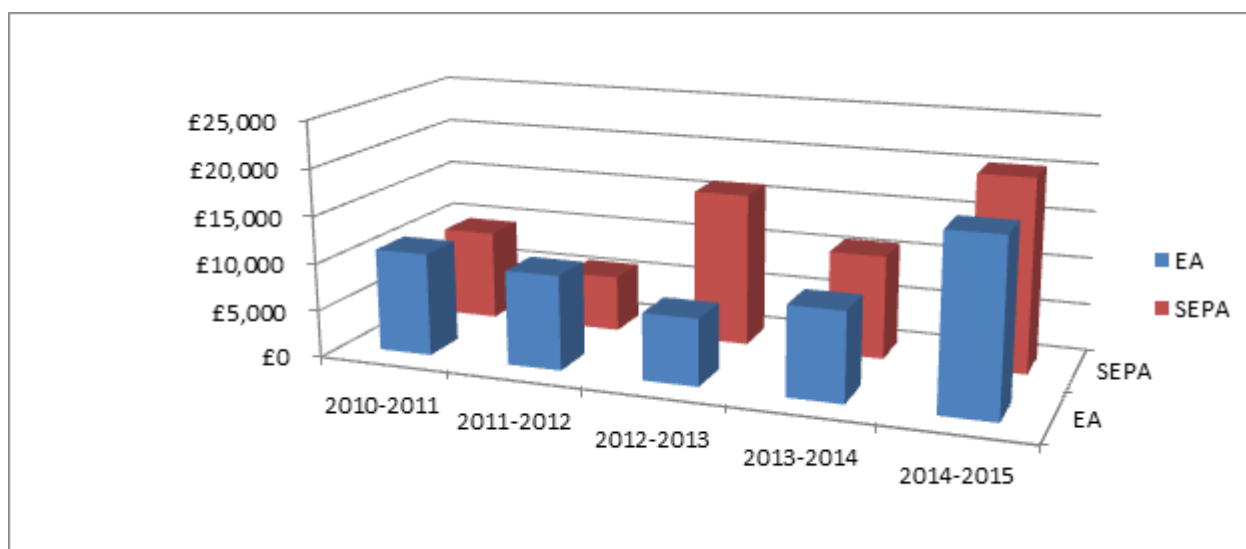
For comparison, the average fines in England and Wales in Environment Agency cases are shown in Table 4.

⁵ In 2011-2012 report this was shown as waste totals £42,250 with the overall total of £141,550. However, in May 2012 a waste case was appealed, and on appeal, the fine was reduced from £27,000 to £9,900 reducing the total by £17,100. Please note that the higher figure was reported in the 2011-2012 report, and then reduced in the 2012-2013 report.

Table 4: Average fine levels in England and Wales

Year	Average fine imposed
2014-2015	£18,078
2013-2014	£10,254
2012-2013	£7,801 ⁶
2011-2012	£9,976
2010-2011	£10,883

Figure 13: SEPA and Environment Agency average fines comparison 2010-2011 to 2014-2015



⁶ The average fines have been calculated using the total number of cases in which fines were imposed and do not include convictions where no fine was imposed. The average fines figure for the Environment Agency excludes rod and line offences under the Salmon and Freshwater Fisheries Act 1975 and does not include any costs order made in favour of the Environment Agency. It should be noted that the legal systems under which SEPA and the EA operate are different, and that the EA and SEPA have differing powers and responsibilities.

Since the establishment of Natural Resources Wales in 2013, The Environment Agency only report figures for England, not England and Wales combined – Source – Environment Agency.

Table 5: Convictions by Sheriff Court in 2014-2015

Sheriff court name	Waste conviction	Water conviction	Overall convictions
Airdrie	1	-	1
Alloa	-	1	1
Dunfermline	1	-	1
Edinburgh	1	1	2
Falkirk	1	-	1
Glasgow	-	1	1
Hamilton	4	-	4
Lanark	1	-	1
Perth	1	3	4
Stirling	1	1	2

Table 5, above, provides a breakdown of the courts that have handed out convictions, and under which regulatory regime, in 2014-2015.

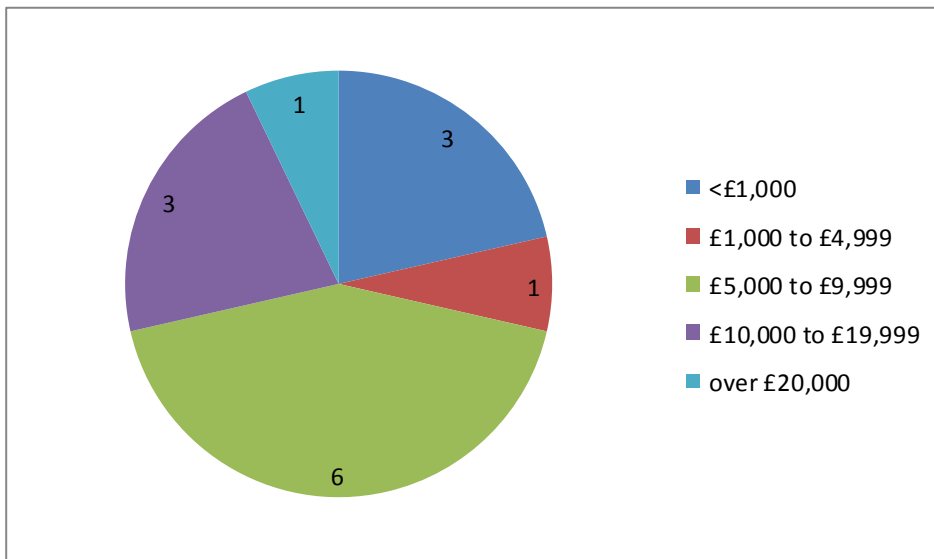
1.3.3 Range of fines

Table 6 shows the range of fines imposed in the 14 SEPA instigated cases in 2014-2015:

Table 6: Range of fines imposed in 2014-2015

Fine Range	No. of fines	Detail of fine
<£1,000	3	2 x £150 1 x £450
£1,000 to £4,999	1	1 x £4,000
£5,000 and £9,999	6	2 x £6,000 1 x £6,500 1 x £7,150 2 x £8,000
£10,000 and £19,999	3	1 x £12,000 1 x £15,000 1 x £16,000
£20,000 or over	1	1 x £195,000

Figure 14: Fines imposed in 2014-2015



1.3.4 Fine levels by regime

The total fines in 2014-2015 handed down in relation to eight cases under the waste regime were £236,750; in relation to six cases under the water regime were £47,650.

Figure 15: Breakdown of SEPA fines by regime 2014-2015

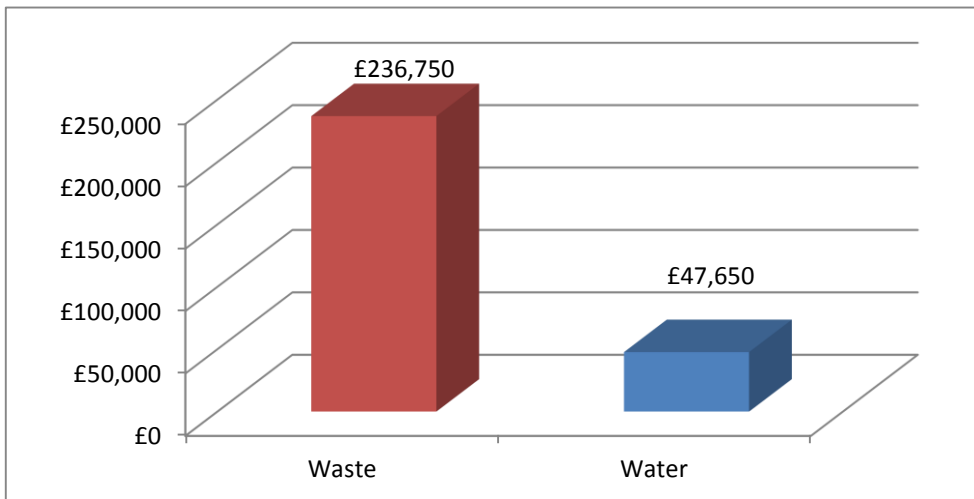


Figure 16: Comparison of SEPA fines by regime, 2010-2011 to 2014-2015

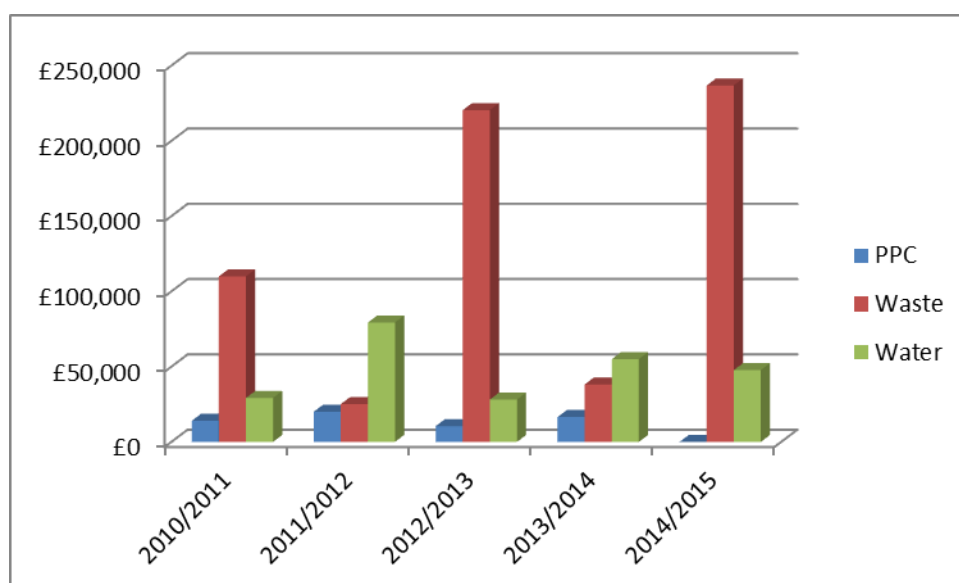


Table 4: SEPA fines by regime from 2010-2011 to 2014-2015

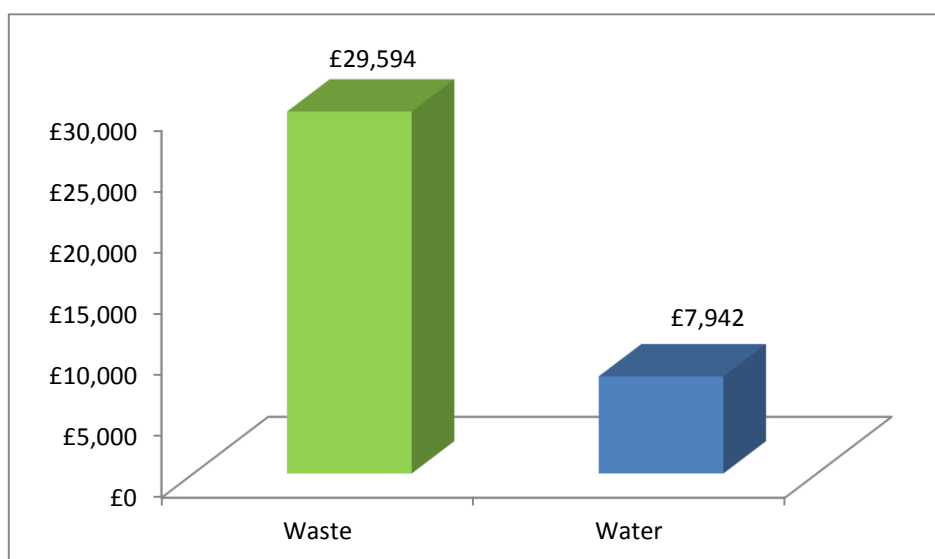
	PPC	Waste	Water	Total
2010/2011	£14,000	£109,930	£29,200	£153,130
2011/2012	£20,000	£25,150 ⁷	£79,300	£124,450*
2012/2013	£10,500	£220,400	£28,110	£259,010
2013/2014	£16,500	£38,200	£54,950	£109,650
2014/2015	0	£236,750	£47,650	£284,400
Total	£61,000	£630,430	£239,210	£930,640

The average fines⁸ in 2014-2015 were £29,594 for the waste regime (eight fines,) and £7,942 for the water regime (six fines).

⁷ In 2011-2012 report this was shown as waste totals £42,250 with the overall total of £141,550. However, in May 2012 a waste case was appealed, and on appeal, the fine was reduced from £27,000 to £9,900 reducing the total by £17,100. Please note that the higher figure was reported in the 2011-2012 report, and then reduced in the 2012-2013 report.

⁸ Calculated using the total number of cases in which fines were imposed, and the total fines imposed in those cases.

Figure 17: Breakdown of averages of SEPA fines by regime 2014-2015



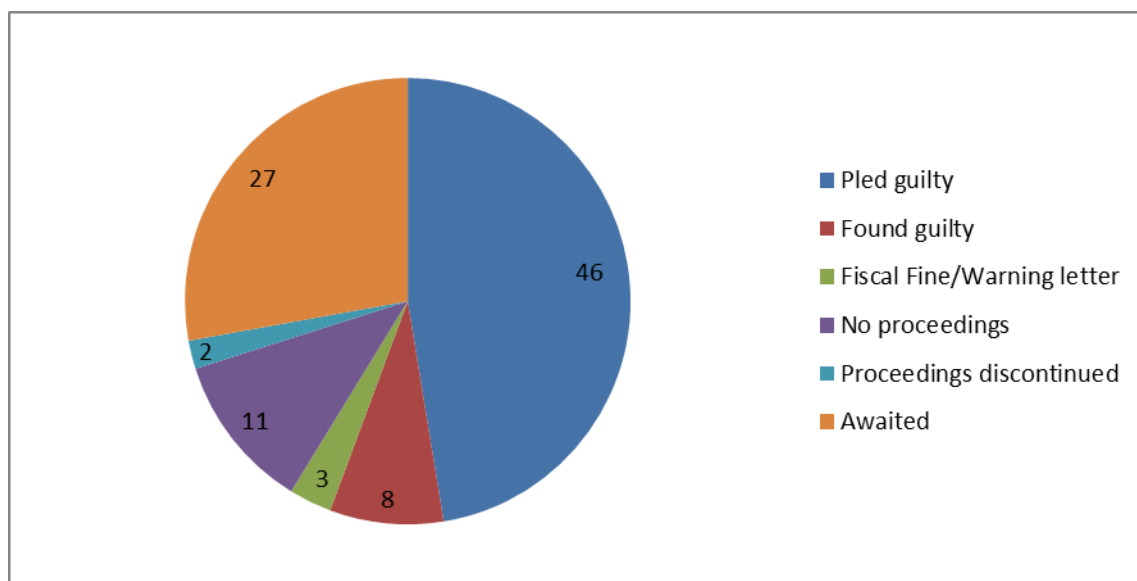
1.3.5 Status of cases reported by SEPA to the PF in the previous three years (as at October 2015)

In the three financial years prior to 2014-2015 (2011-2012, 2012-2013 and 2013-2014), we reported 97 cases to the PF. Of these 97:

- 54 (56%) resulted in convictions, with 46 guilty pleas and 8 being found guilty⁹;
- 3 (3%) resulted in a non-court disposal (PF fine or PF warning letter);
- 11 (11%) resulted in the PF deciding not to raise proceedings;
- 2 (2%) resulted in proceedings being raised and then discontinued;
- 27 (28%) of these cases remain in the court system.

⁹ Some cases submitted by us as separate cases may have been conjoined by the PF into one case. Where this has occurred, the outcomes of the submitted cases have been taken as the outcome of the conjoined case.

Figure 18: Status of SEPA's cases which were reported to the PF in 2011-2012, 2012-2013 and 2013-2014 (as at October 2015)



Of the 54 convictions, fines overall totalled **£449,450**¹⁰. The breakdown of outcomes is as follows:

- 42 cases resulted in only fines totalling **£218,950**;
- one company was fined **£23,500** and received a confiscation order for £41,131 under the Proceeds of Crime (Scotland) Act 2002;
- one case resulted in a fine imposed on the company of **£12,000** and prison sentence imposed on an individual;
- one case resulted in a fine imposed on the company of **£195,000** and prison sentence imposed on an individual;
- three cases resulted in community service/ Payback Orders totalling 360 hours;
- one individual was sentenced to a community service/ Payback Order of 260 hours and a four month restriction of liberty order between the hours of 7pm and 7am;
- one individual was sentenced to community payback order of 150 hours and received a confiscation order for £2,356 under the Proceeds of Crime (Scotland) Act 2002;
- one individual was sentenced to a six month restriction of liberty order between the hours of 9pm to 5am, and received a confiscation order of £15,000 under the Proceeds of Crime (Scotland) Act 2002;

¹⁰ The overall fine total for the three year period is £449,450. This figure is acquired by calculating all the fine totals from the cases which were reported to the PF in 2011-2012, 2012-2013 and 2013-2014 and were concluded up to October 2015. This figure cannot be compared to the cumulative totals for the outcomes in 2011-2012, 2012-2013 and 2013-2014.

- two cases resulted in admonishment¹¹;
- one case has been deferred for sentencing at a later date.

¹¹ Admonishment or admonition is where the accused is convicted, but no fine or other sentence is imposed by the courts.

Figure 19: Outcomes of cases which were reported by SEPA to the PF in 2011-2012, 2012-2013, and 2013-2014 (as at October 2015)

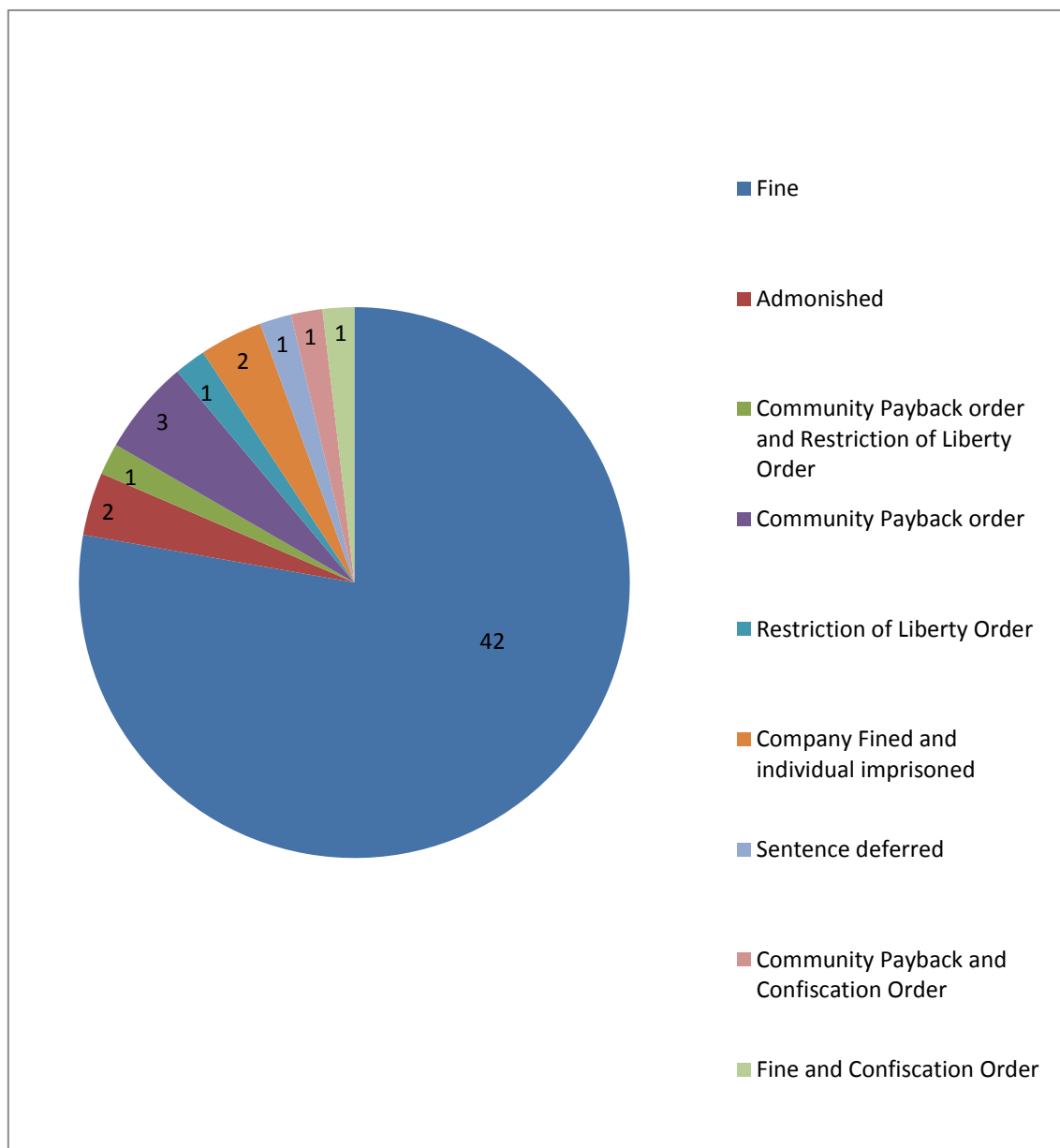
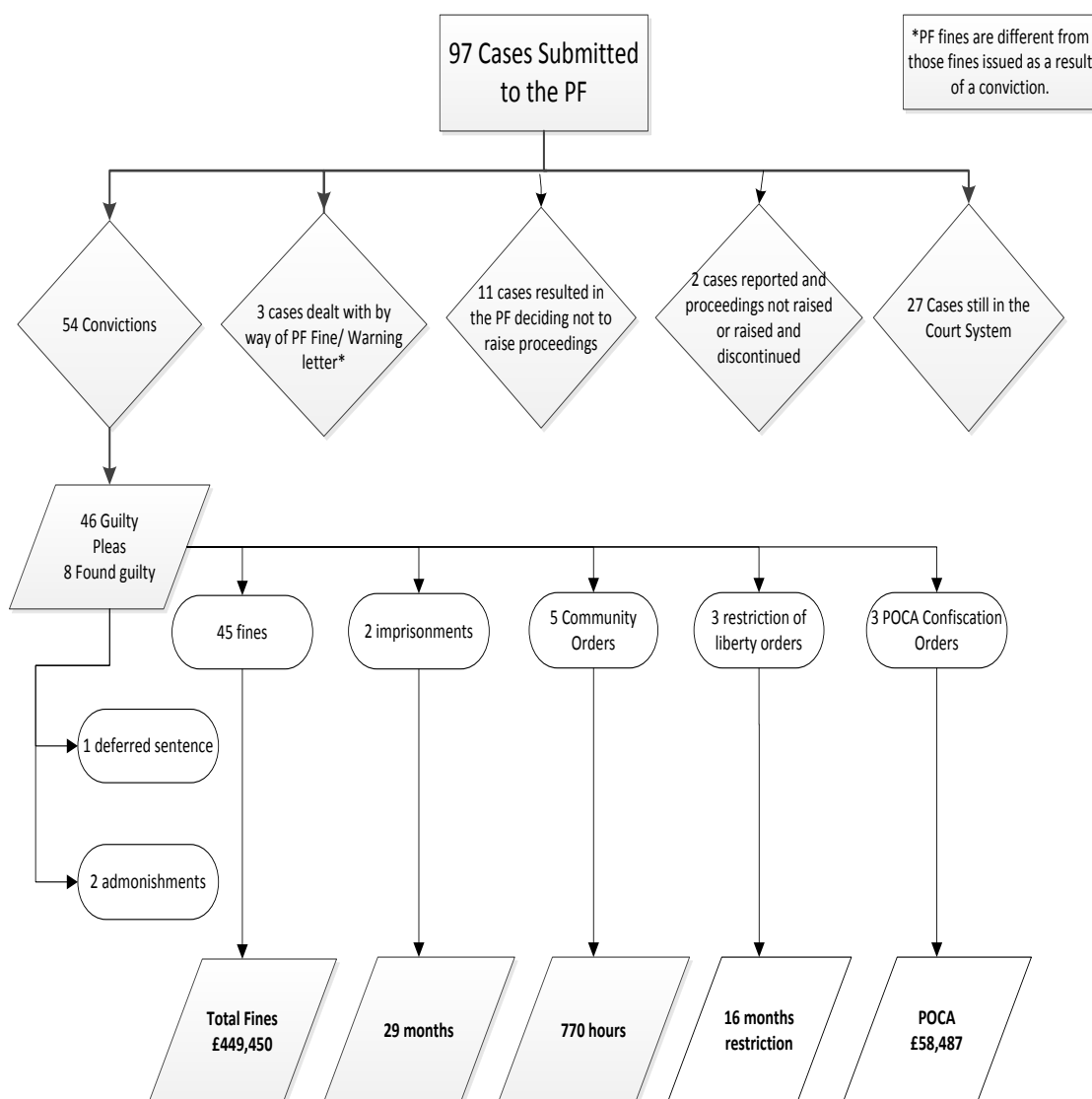


Figure 20 provides a breakdown of the outcomes where convictions have occurred. The one case awaiting an outcome is still a conviction, but sentencing has been deferred to a later date.

Figure 20: Summary of outcomes from submitted PF cases in 2011-2012, 2012-2013 and 2013-2014¹²



As can be seen in Figure 20, of the 97 cases we reported to the PF in the three financial years prior to 2014-2015, 70 have now concluded and 27 are still in the court system.

Of the 70 concluded cases, 54 resulted in conviction. Therefore, 77% of the concluded cases submitted by SEPA to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of prosecution resulted in criminal convictions.

¹² Some sentences received more than one penalty. This figure shows a breakdown of the penalty type. Fuller details of sentences passed are in 1.3.5.

2. 2014-2015 outcomes – case examples

2.1 Cases resulting in imprisonment, restriction of liberty or community payback orders

On 27 February 2015 at Hamilton Sheriff Court, an individual was sentenced, having pled guilty on 6 February to two charges - one under Section 33(1)(a) of the Environmental Protection Act 1990 (EPA 1990) of depositing and knowingly causing or permitting waste to be deposited without the authority of a waste management licence, and one charge under Section 33(1)(b) EPA 1990 of keeping waste, other than in accordance with a waste management licence. The individual was sentenced to 9 months imprisonment for charge one and 14 month's imprisonment for charge 2, which sentences were to run concurrently. The company was fined £195,000 in total, £75,000 for charge one and £120,000 for charge two. The accused had deposited and kept a vast quantity of tyres (approximately 114,000), tyre bales, tyre crumb, plastic containers, liquid and solid waste and other miscellaneous controlled waste. Tyres were stacked haphazardly, there were insufficient fire breaks meaning that there was insufficient access to the site for fire trucks, tyres were stacked too high and too close together.

The site was located close to a hospital, rail line, numerous industrial premises and several densely populated residential areas, including schools, a nursery and care homes. SEPA used statutory powers to remove the majority of the 114,000 tyres and chemicals from the site in order to reduce the potential impact in the event of a fire.

On 14 May 2014, at Dunfermline Sheriff Court, an individual was sentenced to a 6 month restriction of liberty order (the order stipulated that the individual must be at their home between the hours of 9pm and 5am). The individual had pled guilty to a charge under s33(1)(b) of the Environmental Protection Act 1990, relating to the keeping of household, industrial and commercial waste over a number of years.

On 17 April 2014, at Perth Sheriff Court, following a deferred sentence period, an individual was sentenced to a 100 hour community payback order having pled guilty to two charges following a part heard trial on a previous date. The charges related to the discharge of sewage to the Middleton Burn, and carrying and disposing of waste and failure to prevent the escape of the waste.

On 23 October 2014, at Livingston Sheriff Court an individual was sentenced to a community payback order of 250 hours to be completed within one year from that date¹³. This was in connection with a conviction by a jury of keeping controlled waste in a manner likely to cause pollution of the environment or harm to human health and keeping waste otherwise than in accordance with a waste management licence.

On 23 February 2015 at Perth Sheriff Court, an individual was sentenced to a 260 hours community payback order and a 4 month restriction of liberty order between the hours of 7pm and 7am. On 26 January 2015, the individual pled guilty to a charge of storing soil, rubble, plastics, wheels, tyres, carpets, rugs, blankets and mattresses out with the 3 month time limit which was agreed under the site's Waste Management Licence, between June and September 2012.

Additionally, the individual pled guilty to breaching Section 33 of the Environmental Protection Act 1990, by depositing, and allowing others to deposit, skips containing plastic guttering, wood, bathroom fittings and other associated waste on an area of land between 10 April 2013 and 29 April 2013. Site inspections were carried out by SEPA officers extending back to 2010, in an effort to bring the site into compliance. When these efforts were exhausted the decision was taken to report matters to the Procurator Fiscal.

2.2 Fines in excess of £7,500, excluding cases referred to in section 2.1

On 30 May 2014, at Glasgow Sheriff Court, Scottish Water was fined £12,000. They pled guilty to one charge under Regulation 44(1)(a) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 of discharging raw sewage into the Purgatory Burn, a tributary of the River Kelvin between 6 March and 25 June 2013.

The Purgatory Burn is a tributary of the River Kelvin in Kirkintilloch. Raw sewage was discharged into the burn due to blockages in the sewerage network. Inspections by SEPA staff recorded that a significant length of the burn was discoloured, along with sewage debris & fungal evidence. SEPA collected samples from several visits and ecology surveys were completed, indicating gross pollution. It was noted from an ecology survey that due to the sustained nature of the pollution, the burn may struggle to fully recover when the pollution had stopped.

¹³ This outcome is not included in the conviction statistics at sections 1.2 and 1.3 because the conviction was secured in 2012.

On 12 June 2014, at Edinburgh Sheriff Court, an individual was fined £8,000 having pled guilty to one charge under Regulation 44(1)(a) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 of discharging oil via an oil interceptor to an unnamed tributary of the River Almond between 17 and 24 January 2012.

On 30 December 2014, at Airdrie Sheriff Court, CMI Demolition Limited was fined £16,000 after the company failed to ensure the proper disposal of waste between March and June 2011. The company, which operates a waste transfer station on Clydeholm Road, Glasgow, knowingly allowed unlicensed contractors from OTL Plant & Haulage to transport and dispose of waste materials produced from CMI Demolition's transfer station, over the 4 month period in 2011. SEPA was alerted to the breach in regulation following a prolonged investigation into the discovery of illegally dumped waste at a site on Avonhead Road near Longriggend, in North Lanarkshire. Official documents which were salvaged from the waste stockpiles allowed SEPA officers to trace the original owners of the refuse, who subsequently identified CMI Demolition Ltd as their waste management provider.

On 11 February 2015, at Lanark Sheriff Court, an individual was sentenced and fined a total of £15,000 in respect of a charge under Section 33(1)(b) of the Environmental Protection Act 1990 (EPA 1990) of keeping controlled waste, (including building rubble, soil, foundry sand, demolition material and wood) and a charge under Section 34(1)(b) and (6) EPA 1990 of failure to prevent the escape of waste which was burned on land occupied by him. The offences were committed between September 2008 and February 2012. Inspections by SEPA officers in June and November 2014 confirmed that the waste had been removed from the site.

On 24 February 2015 at Perth Sheriff Court, Scottish Water pled guilty to one charge under Regulation 44(1)(a) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011; Scottish Water was fined £8,000, reduced from £12,000 for an early plea. On 13 and 14 May 2014 at Glenfarg Water Treatment works, Aluminium Sulphate was discharged into the River Farg, a tributary of the River Earn, and the River Tay, resulting in the death of approximately 4,900 fish and other organisms. SEPA's investigation revealed a water valve had accidentally been left open overnight, storage tanks had overflowed and the chemical had entered the River Farg via a surface water drain on site. The discharge caused the almost complete removal of trout, and possibly salmon, together with the complete removal of all fry from the preceding spawning season along the 3km stretch of the River Farg, in addition to impacting on lamprey, eels and stickleback populations.

2.3 Civil penalties

In addition to the fines imposed by criminal courts referred to elsewhere in this report, in some circumstances we have the ability to impose civil penalties, and in some cases there is an obligation to do so. At present, civil penalty notices can be served under the Greenhouse Gas Emissions Trading Scheme Regulations 2005 and 2012, or the Carbon Reduction Commitment (CRC) and Energy Efficiency Scheme Orders 2010 and 2013. The scope for SEPA to impose monetary penalties will be increased under the Regulatory Reform (Scotland) Act 2014, one of main aims of which is to give us a more proportionate range of enforcement tools. No civil penalties were imposed by us during the 2014-2015 period.