



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.

Section 1

Details of person making this Offer			
Full name of person making offer:			
Scottish Water			
Are you:			
An individual		A partnership	
A limited company		A limited liability partnership	
Public Body	✓	Other	
If 'Other', please specify:			
Address and full Postcode: Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, FIFE KY11 8GG			
Registered office Address (if different from above):			
Registration Number (if a company or an LLP):			
Contact Telephone Number: 0800 0778 778			
Email Address: help@scottishwater.co.uk			
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: ██████████			
Address (if different from above):			
Contact Telephone Number: 0800 0778 778			
Email address: ██████████@scottishwater.co.uk			

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.

What happened or failed to happen? How did it happen? When did it happen?

2.1 Friday 15th May 2020:

At around 16:55 our customer contact centre received a customer report of a burst water main within their garden in Maryburgh near Dingwall.

The call was assigned to the Operative on standby who attended site and confirmed a burst on a 16" trunk main. Resources were organised to enable a start on site with trees cut down and fencing removed at the customer's property to allow access.

At the same time work started to plan the re-zoning of the distribution network to ensure maintenance of supply. Re-zoning of a trunk main network is a critical piece of work requiring careful thought and planning to operate the valves across the network in the right order to manage water pressures correctly and avoid further network bursts or interruptions to supply. The planning of this task took around 4 hours to complete.

It became clear that the re-zoning and repair of the trunk main could not be safely carried out with fading light and without enough resources to complete all the work and a decision was taken to defer the repair until the following day, Saturday.

During this time, all flows from the burst trunk main were entering road gullies and discharging to the Ussie Burn via the surface water sewer at NH 53923 56625.

2.2 Saturday 16th May 2020:

Early on Saturday morning work commenced to re-zone the network and by around 13:00 the main was isolated. A scour valve on the trunk main was partially opened to take pressure off the main at the burst point and to support a safe system of work for the repair.

The scour valve pipework discharges directly to the Ussie Burn at NH 53805 56561.

Repairs were completed and the main re-charged, with the scour valve closed around 23:00 on Saturday evening. During this time, it is estimated that 108m³ of potable water was discharged from the scour valve, with overnight losses from the burst estimated at 900m³.

2.3 Sunday 17th May 2020:

At around 02:10 on Sunday morning, our customer contact centre received a report from the same customer of a further burst on the main within his garden. The call was passed to the Operative on standby and at around 03:00 the scour valve mentioned in 2.2 above was partially opened to relieve pressure on the main, to prevent flooding of the customer's property and to avoid any structural damage. Flows from the burst also entered the Ussie Burn via the road gullies and the surface water sewer.

The scour valve was opened to around 25% flow to depressurise the main to enable repairs to be affected. However, having excavated and inspected the main, it became apparent that a standard repair could not be undertaken - it should be noted that this was in a separate location on the main, but close to the original repair which had held fast – and a decision was taken to defer repairs until the Monday.

A further 150m³ is estimated to have been discharged via the scour valve and 227m³ from the surface water sewer.

At around 13:30 hours the scour valve was returned to a partially open position.

2.4 Monday 18th May 2020:

At 11:27 a call was received from SEPA (direct from a member of SEPA's Compliance and Beyond Team in Dingwall to one of our Environmental Regulation Team in Inverness)

advising of a reported fish kill in the Ussie Burn.

At this point repair, teams had been in attendance for several hours and repairs to the trunk main were completed by a specialist welding contractor engaged to weld a steel plate to the main while it was under pressure. The scour valve mentioned previously was closed and re-zoning of the network commenced at around 14:00 and continued for several hours until normal configuration of the network was achieved.

It is estimated that overnight losses from the main were 648m³ with a further 216m³ discharged from the scour valve.

In total, approximately 474m³ of potable water was discharged from the scour valve, and approximately 1,775m³ via the surface water sewer.

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.

There is no authorisation for discharges from this water network. Such discharges are covered by the provisions of the Water (Scotland) Act 1980, the Water Supply Hygiene Code of Practice, and SEPA Policy WAT-RM-12 Discharges from Water Treatment Works. The specific consideration within these provisions is the requirement to ensure any discharge is subject to de-chlorination, and this was not carried out during this 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 (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 discharges from our networks resulted in a fish kill event in the Ussie Burn.

We believe that this was as a result of the following factors:

- the discharge of water from the trunk main to the burn via the road gullies and surface water sewer resulted in sediment within the gullies and sewer being flushed into the burn (it is noted that there were social media reports of discolouration in the burn downstream from the point where the surface water sewer discharges);
- the discharge from the scour valve opened to relieve pressure on the trunk main was not dechlorinated in accordance with Scottish Water's standard operating procedures contained in the Water Hygiene Code of Practice (HCoP) and reflected in SEPA Policy WAT-RM-12.

Section 6

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

At the time the incident took place, the Scottish Government had placed a duty on Scottish Water to ensure that everything must be done to maintain public water supplies to support public hygiene measures as part of the overall Scottish response to Covid-19. In response to the burst our Operations Team was singularly focussed on doing this. A small incident team was set up and worked late into the night on 15th May to identify necessary response measures and put in place a plan to implement them safely without further risk to the integrity of the network or to the supply of other customers. The Incident Team continued with the focus of maintaining supplies and effecting repairs throughout the course of the weekend. There were no direct costs avoided or financial benefit gained. The action which was not taken, and which was a contributory factor in the fish kill incident, was that of dechlorinating the effluent discharged from the scour valve. The cost of dichlorination tablets is only a few pounds.

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.

A number of measures have been identified:

7.1 Undertake a Root Cause Analysis of the circumstances resulting in the fish kill event to identify lessons that can be learned

[action complete. This subsequently informed the actions below]

7.2 Refresher training for EPI reporting (North Operational Area)

This refresher training will take the form of a Toolbox Talk; initially targeted at the Water Operations Team locally but rolled out across the North Operational Area.

[action complete. TBT rolled out to all Regional Operations Team Managers & Leaders (completed 17/9/20)]

7.3 Confirm Distribution Operation and Maintenance Strategy (DOMS) training is up to date

All personnel working on the water network for, or on behalf of Scottish Water are required to complete formal training in water supply hygiene practices and in Scottish Water's DOMS. This training is formally recorded and registered with Energy & Utility Skills (EU Skills) as part of the Water Industry Registration Scheme (WIRS) and an authorisation card is issued by EU Skills on behalf of Scottish Water for both water hygiene and Scottish Water DOMS procedures.

All personnel who carry out work on the water network must, as a minimum, have completed the following training:

- EUSR National Water Hygiene Scheme–'Blue Card';
- The relevant Scottish Water DOMS awareness training associated with their specific work activities –'DOMS Card'. This measure is intended to ensure everyone working on our water distribution networks has had the appropriate DOMS training and that it is up to date.

Once, and if any need for refresher training has been identified, this will be prioritised.

7.4 Reconfigure the scour valve to a hydrant arrangement

The configuration of the scour valve mentioned above has been assessed as being not fit for purpose as it does not easily allow for dechlorination to be carried out on the discharge. Scottish Water will reconfigure the valve arrangement to a hydrant. This will ensure that it is no longer possible to discharge directly to the burn and will enable compliance with DOMS/HCoP procedures.

Note that the scour valve has currently been isolated so it cannot be used, and it will remain so until remedial measures are undertaken. Scottish Water is currently investigating the opportunity for a mains diversion project that will re-route the trunk main around the village. Any future alterations to the scour valve will be considered in the context of this project.

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?

8.1 Deliver a recurring electro fishing survey to monitor the natural recovery of the Ussie Burn

The advice received from the Cromarty Firth Fishery Board (CFFB) was that it was more appropriate to allow natural recovery of the Ussie Burn rather than carry out re-stocking.

Scottish Water will pay for an initial electro fishing survey and subsequent surveys over a period of 5 years. CFFB have agreed to undertake this work and have advised it would be appropriate to monitor 10 sites (5 fully quantitative and 5 single pass sites). The costs identified are as follows:

Year 1: £3,712.82

Years 2- 5: £3,592.82 per year

Total cost: £18,154

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.

9.1 Contribute to the work of the Cromarty Firth Fisheries Trust (CFFT)

Scottish Water will make a financial donation of **£1,500** to support the CFFT Youth Angling Club (to be agreed with CFFT)

9.2 Reimburse the costs incurred by CFFB in investigating this incident/surveying the burn.

CFFB have advised that their survey and reporting costs are **£5,694.84** (including VAT)

Section 10

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

10.1 Support the removal of Invasive Non-native Species in the Ussie Burn catchment.

Scottish Water will support CFFB to appoint a Project Officer whose role will be to re-map INNS in the catchment. CFFB have advised that the Project Officer salary will be in the region of £12,000 for a fixed term contract. Scottish Water will contribute **£4,000** towards the Project Officer salary.

10.2 Investigate opportunities for tree planting in the CFFB river catchment area

Scottish Water will work with CFFB and local landowners to identify opportunities for beneficial planting in the riparian strip. The extent of this work is still to be fully scoped in consultation with CFFB and landowners and may take some time to conclude.

Planting of up to 10ha of native species is likely to cost in the region of **£20,000** over a 6 year period, with the bulk being in Year 1 for planting, with a further 5 years of maintenance. This assumes that landowners will also receive grant funding to support the initiative. Costs would be lower for a smaller area of planting. The extent of planting will be agreed in discussion with CFFB and landowners. A budgetary allowance of this sum has been made.

The planting of native species could capture ~10 tCO₂e per year, meaning 10ha could capture 100 tCO₂e per year (estimates for carbon capture for native species are in the range 7-12 tCO₂e/yr depending on species and planting density).

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

The CCFB have been identified as the impacted party for this fish kill incident, and they have been consulted on the measures contained within this Enforcement Undertaking

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.

Scottish Water have requested this information from SEPA once SEPA have concluded necessary investigations for this incident. However, a budgetary allowance of **£4,450** has been made (equivalent to 50 hours @ £89 per hour)

Known Amount:

Date for payment:

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

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>