



## 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:			
Are you:			
An individual		A partnership	
A limited company		A limited liability partnership	
Public Body		Other	
If 'Other', please specify:			
Address and full Postcode:			
Registered office Address (if different from above):			
Registration Number (if a company or an LLP):			
Contact Telephone Number:			
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>			
Full Name:			
Address (if different from above):			
Contact Telephone Number:			
Email address:			

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?

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.**

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.**

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)?**

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Section 6

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

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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.**

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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?**

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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.**

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Section 10

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

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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

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.***

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**

Signature: \_\_\_\_\_ Full Name: \_\_\_\_\_

Date: \_\_\_\_\_

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>