The Scottish Environment Protection Agency’s (SEPA) Enforcement Report is an annual publication. The Enforcement Report provides an overview of enforcement action taken by us, summarising how we have deployed the enforcement tools which are available to us to deal with those who have failed to comply with the environmental legislation, which exists to protect Scotland’s environment, local communities and our economy. The enforcement tools available to us have assisted us in delivering a number of successful actions over recent years.

This report will be the final report in its current format, which focuses largely on the deployment of Statutory Notices, Final Warning Letters and Reports to the Procurator Fiscal. This is because the range of enforcement tools available to us changed on 1 June 2016, when our new Enforcement Policy came into effect. Our next report will also include details of the way in which SEPA has deployed Fixed Monetary Penalties, Variable Monetary Penalties, Enforcement Undertakings and Non-Compliance Penalties, all of which are now available to us to achieve our outcomes.

In comparison to 2014- 2015, SEPA utilised its formal enforcement tools less frequently. You will see more detail of this in Section 1.1.1. During this time, the rates of compliance of those we regulate improved.

Section 1.3.2 of the report shows a reduction in the average level of fine imposed by the Scottish Criminal Courts for environmental offences over the last year as well as exploring some background to this, and illustrates the dramatic effect in England of the introduction of Sentencing Guidelines for environmental offences by the English Sentencing Council.

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1 This report covers the period from 1 April 2015 until 31 March 2016. References in this paper are to financial years running from 1 April to 31 March
Figure 20\(^2\) demonstrates the increasing use by the Scottish criminal courts of significant sentences, other than fines in environmental cases, such as custodial sentences amounting to 29 months imprisonment, restriction of liberty orders totalling 12 months and community payback orders of 770 hours. 2015-16 also saw the largest confiscation order to date for environmental offences in Scotland, amounting to over £345,000.

There remains, however, a need for significant effort in order to meet the commitments of One Planet Prosperity: Our Regulatory Strategy. We will continue to support those we regulate to enable them to meet their legal and environmental obligations, achieve compliance quickly and help them to move ‘beyond compliance’, and continue strongly tackling non-compliance and criminal activity. Non-compliance is not up for discussion as we transform SEPA into a world class Environment Protection Agency.

Calum MacDonald  
Executive Director

\(^2\) Figure 20 shows the outcome of cases reported to the PF by SEPA in 2012-2013 to 2014-2015 which resulted in a conviction, as of 14 September 2016
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1. **Formal enforcement action**

During the financial year 2015-2016, SEPA had a number of enforcement options in its toolkit. These ranged from informal verbal advice, guidance and advice letters, to the use of more formal enforcement tools, including final warning letters, statutory notices and reports prepared and submitted to the Procurator Fiscal (PF) requesting consideration of prosecution.

Enforcement action is only one tool in a package of measures which SEPA can deploy, often in partnership with others, to achieve positive outcomes for Scotland's environment, economy and communities. Where there is non-compliance our experience is that most of those we regulate respond to our advice and guidance and come into compliance. Many are also increasingly recognising the value of compliance and good environmental practice in delivering outcomes not just for the environment but for their business and the communities they operate in. Whilst advice and guidance will therefore continue to be our main route to securing compliance, there will be circumstances where it is appropriate for us to take formal enforcement action, indeed depending on the circumstances we may refer a matter directly to the Procurator Fiscal without utilising other enforcement tools first. This report focusses largely on SEPA’s use of formal enforcement tools.
1.1 Overview of enforcement activity in 2015-2016

1.1.1 Formal enforcement action

In 2015-2016, we:

- referred 21 cases to the Procurator Fiscal (PF);
- served 76 statutory notices (does not include information notices);
- issued 111 final warning letters.

Figure 1: Enforcement actions taken by SEPA in 2015-2016

SEPA’s formal enforcement actions taken since 2011-2012 to 2015-2016 are set out in table 1 & figure 2 below.

Table 1 Enforcement Action taken by SEPA

<table>
<thead>
<tr>
<th>Type of enforcement action</th>
<th>Total for 2011-12</th>
<th>Total for 2012-13</th>
<th>Total for 2013-14</th>
<th>Total for 2014-15</th>
<th>Total for 2015-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referrals to PF</td>
<td>37</td>
<td>33</td>
<td>27</td>
<td>36</td>
<td>21</td>
</tr>
<tr>
<td>Statutory notices</td>
<td>124</td>
<td>93</td>
<td>93</td>
<td>116</td>
<td>76</td>
</tr>
<tr>
<td>Final warning letters</td>
<td>160</td>
<td>93</td>
<td>137</td>
<td>141</td>
<td>111</td>
</tr>
</tbody>
</table>
Table 1 and Figure 2 above show a reduction in the level of formal enforcement action undertaken by SEPA in comparison to the previous year. Whilst it is difficult to be definitive over the reasons behind increases or decreases in the level of formal enforcement action undertaken in different years, the Compliance Assessment Scheme (CAS) operated by SEPA is a useful tool to consider when looking at such data. CAS outlines how well permitted operators in Scotland have met the conditions of their licences on a calendar year basis.

In 2014, of the 5305 licensed activities assessed as part of the scheme, 88% (4666) were assessed under CAS as compliant and 12% (639) were assessed as non-compliant.

In 2015, of the 5470 licensed activities assessed as part of the scheme, 90.4% (4944) were assessed under CAS as compliant and 9.6% (526) were assessed as non-compliant. There was, therefore, a 20% reduction in the percentage of operators assessed as non-compliant in 2015 as compared to 2014.

3 Calculated by dividing the 9.6% non-compliance figure in 2015 by the 12% non-compliance figure in 2014
The reduction in non-compliance is likely to be a significant factor behind the drop in the number of formal enforcement activities undertaken by SEPA in the 2015-16 financial year, when compared to the 2014-15 financial year. Although difficult to give exact reasons behind the 20% reduction in the number of sites assessed as non-compliant in 2015 compared to 2014, it should be noted that in 2014/2015, significant resource was invested by SEPA in targeting non-compliant sites. For example, page 9 of the SEPA Enforcement Report 2014-2015 included information regarding a specific initiative undertaken to address non-compliance in respect of the End Of Life Vehicle sector, which traditionally had a poor compliance record. The resource invested in 2014-2015 in trying to improve non-compliance appears to have worked to an extent, either in terms of operators improving their performance, or non-compliant operators ceasing to operate. Such improvements appear to have fed through into a reduction in the need to utilise formal enforcement tools in 2015-16. That much of the formal enforcement action undertaken during 2015-2016 related to the waste regime is also consistent with the 2015 CAS results, as activities licensed under the waste regime experienced lower rates of compliance than the other regulatory regimes.

Further information on Compliance Assessment Scheme can be found here.

1.1.2 Referrals to PF under each regime

In 2015-2016, we referred 21 cases to the PF. Of these referrals:

- 9 (43%) were under the waste regime;
- 3 (14%) were under the water regime;
- 5 (24%) were under Section 110 of the Environment Act 1995; and
- 4 (19%) were under TFS
Figure 3: SEPA cases referred to the PF by regime in 2015-2016

Figure 3 highlights that in 2015-2016, more cases were referred to the Procurator Fiscal (PF) under the waste regime compared with other regimes. The five cases referred under Section 110 of the Environment Act 1995 related to SEPA officers attempting to carry out their powers or duties during the course of an investigation. All five of these cases related to incidents arising during the course of waste investigations.

Figure 4 highlights that since 2011-2012, more cases have been referred to the PF under the Waste Regime, compared with any other regulatory regimes.

Figure 4: SEPA cases referred to the PF by regime, 2011-2012 to 2015-2016

*2011-12 One combined waste and PPC case
*2012-13 one combined CAR and COMAH case, one combined PPC and waste case
and one combined water and waste case
2013-14 one combined PPC and water case and one combined waste and water case
2014-15 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)
2015-16 One combined PPC and waste case

1.1.3 **Statutory notices served under each regime**

During 2015-2016, we served 76 statutory notices for non-compliance. Of these notices:

- 28 (37%) were under the waste regime;
- 24 (32%) were under the water regime;
- 13 (17%) were under the Pollution Prevention and Control regime;
- 10 (13%) were related to the carbon reduction commitment;
- 1 (1%) were served relating to Transfrontier Shipment of waste.

**Figure 5: Statutory notices served by SEPA in 2015-2016**

The statutory notices issued during 2015-2016 under each regulatory regime are shown in **Figure 5**. More statutory notices were served under the waste regime, compared with any other. A greater number of notices issued under waste has been a consistent trend over the last five years, which is shown in Figure 6.
1.1.4 Final warning letters served under each regime in 2015-2016

During 2015-2016, we served a total of 111 final warning letters. Of these:

- 52 (47%) were under the waste regime;
- 43 (39%) were under the water regime;
- 9 (8%) were under the Pollution Prevention and Control regime;
- 3 (2.5%) were under the Transfrontier shipment of waste regime;
- 3 (2.5%) were under the Emissions Trading Scheme;
- 1 (1%) was under the radioactive substances regime.

Figure 7: Final warning letters issued in 2015-2016
The Final Warning Letters (FWLs) issued under each regulatory regime are shown in Figure 7. It is evident that there was more enforcement action taken under waste, in 2015-2016 which is consistent with previous years, see Figure 8 below.

Figure 8: Final warning letters issued by SEPA, 2011-2012 to 2015-2016

1.2 Convictions secured in 2015-2016

1.2.1 Total number of convictions secured in 2015-2016

The number of cases instigated by us, which resulted in a conviction in 2015-2016, was 11. Of these 11 cases resulting in convictions, the sentences given were:

- 8 cases resulted in a fine alone totalling £60,400;
- one case resulted in fines totalling £8,000 and 240 hours community payback order;
- one community payback order of 180 hours;
- one 8 month restriction of liberty order where the person had to be at home between the hours of 10pm and 5am.

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.
1.2.2 Convictions secured in 2015-2016 by regime

Of the 11 cases resulting in convictions secured in 2015-2016:

- 6 (55%) were under the waste regime;
- 1 (9%) was under the Producer Responsibility Obligations regime;
- 1 (9%) was under the PPC regime;
- 2 (18%) were under Section 110 Environment Act 1995; and
- 1 (9%) was under a combined case under the waste regime and PPC regime.

Figure 9: Total convictions secured in 2015-2016 by regime

Figure 10: Percentage of convictions secured in 2015-2016 by regime

The number of convictions, by regulatory regime, which have resulted from cases instigated by us since 2010-11 is shown in Table 2.
Table 2 Total convictions secured between 2011-2012 and 2015-2016

<table>
<thead>
<tr>
<th>Year</th>
<th>Total of convictions</th>
<th>Waste</th>
<th>Water</th>
<th>PPC</th>
<th>PR</th>
<th>PPC &amp; WML</th>
<th>Section 110</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-2012</td>
<td>21</td>
<td>11</td>
<td>9</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2012-2013</td>
<td>16</td>
<td>7</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2013-2014</td>
<td>14</td>
<td>8</td>
<td>5</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2014-2015</td>
<td>18</td>
<td>11</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>2015-2016</td>
<td>11</td>
<td>6</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

The highest number of convictions secured has related 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 2011-2012 to 2015-2016 by regime

1.3 Fine levels

1.3.1 Total fine levels

Of the 11 cases which resulted in convictions in 2015-2016, 9 fines were imposed, totalling £68,400. Figure 12 shows the total fines imposed since 2011-2012, which shows that 2014-15 has the highest total fines and 2015-2016 has the lowest fines over the last five years.
1.3.2 Average fine levels where fines imposed by criminal courts

The average fine imposed by the criminal courts in SEPA instigated cases are shown in table 3, below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Average fine imposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>£7,600</td>
</tr>
<tr>
<td>2014-2015</td>
<td>£20,314</td>
</tr>
<tr>
<td>2013-2014</td>
<td>£10,965</td>
</tr>
<tr>
<td>2012-2013</td>
<td>£16,188</td>
</tr>
<tr>
<td>2011-2012</td>
<td>£5,926*</td>
</tr>
</tbody>
</table>

The average fines imposed annually, since 2011-2012, are shown in table 3. The average fine awarded against bodies corporate, as opposed to individuals, in 2015-2016 was £11,920.

By comparison, the average fine in England in Environment Agency cases was £44,546. See table 4 for further information.

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* In 2011-12 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 2011-12 report, and then reduced in the 2012-13 report.
Table 4 Average fine levels in England

<table>
<thead>
<tr>
<th>Year</th>
<th>Average fine imposed£</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-2016</td>
<td>£44,546</td>
</tr>
<tr>
<td>2014-2015</td>
<td>£18,078</td>
</tr>
<tr>
<td>2013-2014</td>
<td>£10,254</td>
</tr>
<tr>
<td>2012-2013</td>
<td>£7,801</td>
</tr>
<tr>
<td>2011-2012</td>
<td>£9,336</td>
</tr>
</tbody>
</table>

Figure 13: SEPA and Environment Agency average fines comparison 2011-2012 to 2015-2016

One reason behind the reduction in average level of fine in Scotland in 2015-16 appears to be the increasing number of offences reported by SEPA under section 110 of the Environment Act 1995. The Regulatory Reform (Scotland) Act 2014 extended the circumstances to which the section 110(1) offence could apply, to include intentionally assaulting or hindering a SEPA officer, as well as obstructing them. As may be seen from figure 17, the average level of fine for offences under section 110 was £175, significantly less than the average level of other fines referred to in that table. In relation to the dramatic increase in the average level of fines in England, the Environmental Offences Definitive Guideline was introduced by the English Sentencing Council and took effect

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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.

from 1 July 2014. The prediction at the time these guidelines were introduced, that they would be likely to result in larger fines for serious offences, appears borne out by Figure 13. Further information regarding the English sentencing guidelines is available at https://www.sentencingcouncil.org.uk/news/item/new-sentencing-guideline-for-environmental-crimes-brings-higher-sentences-for-serious-offenders/.

Table 5: Convictions by Sheriff Court in 2015-2016

<table>
<thead>
<tr>
<th>Sheriff court</th>
<th>Waste</th>
<th>Water</th>
<th>PPC &amp; WML</th>
<th>PPC</th>
<th>PR</th>
<th>S110 EA 1995</th>
<th>Overall convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airdrie</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Alloa</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Glasgow</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Kilmarnock</td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Kirkcaldy</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Paisley</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Perth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

Table 5 above provides a breakdown of the courts that have handed out convictions, under which regulatory regime, in 2015-2016.

1.3.3 Range of fines
The fines handed out in the 9 SEPA instigated cases in which fines were imposed in 2015-2016 are shown in Table 6.

Table 6: Range of fines imposed in 2015-2016

<table>
<thead>
<tr>
<th>Fine Range</th>
<th>No. of fines</th>
<th>Detail of fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>£1,000 or under</td>
<td>3</td>
<td>1 x £100</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 x £250</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 x £700</td>
</tr>
<tr>
<td>£1,000 to £4,999</td>
<td>1</td>
<td>1 x £1,750</td>
</tr>
<tr>
<td>£5,000 and £9,999</td>
<td>2</td>
<td>1 x £8,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 x £8,600</td>
</tr>
<tr>
<td>£10,000 and £19,999</td>
<td>2</td>
<td>1 x £12,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1 x £17,000</td>
</tr>
<tr>
<td>£20,000 or over</td>
<td>1</td>
<td>1 x £20,000</td>
</tr>
</tbody>
</table>

Total £68,400
1.3.4 Fine levels by regime

The total fines in 2015-2016 handed down in relation to 4 cases under the waste regime were £22,450; in relation to 2 cases under Section 110 Environment Act 1995 were £350; in relation to the one case under PPC was £20,000; in relation to the case under Producer Responsibility was £8,600; and in relation to the case under the combined PPC and waste case was £17,000.
Figure 15: Breakdown of fines by regime 2015-2016

![Bar chart showing fines by regime 2015-2016]

Figure 16: Comparison of fines by regime, 2011-2012 to 2015-2016

![Bar chart showing fines comparison by regime 2011-2012 to 2015-2016]
Table 4: Fines by regime from 2011-2012 to 2015-2016

<table>
<thead>
<tr>
<th></th>
<th>PPC</th>
<th>Waste</th>
<th>Water</th>
<th>PR</th>
<th>PPC &amp; WML</th>
<th>S110</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-2012</td>
<td>£20,000</td>
<td>£25,150</td>
<td>£79,300</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£124,450*</td>
</tr>
<tr>
<td>2012-2013</td>
<td>£10,500</td>
<td>£220,400</td>
<td>£28,110</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£259,010</td>
</tr>
<tr>
<td>2013-2014</td>
<td>£16,500</td>
<td>£38,200</td>
<td>£54,950</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£109,650</td>
</tr>
<tr>
<td>2014-2015</td>
<td>0</td>
<td>£236,750</td>
<td>£47,650</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>£284,400</td>
</tr>
<tr>
<td>2015-2016</td>
<td>£20,000</td>
<td>£22,450</td>
<td>0</td>
<td>£8,600</td>
<td>£17,000</td>
<td>£350</td>
<td>£68,400</td>
</tr>
<tr>
<td>Total</td>
<td>£67,000</td>
<td>£542,950</td>
<td>£210,010</td>
<td>£8,600</td>
<td>£17,000</td>
<td>£350</td>
<td>£845,910</td>
</tr>
</tbody>
</table>

The average fines in 2015-2016 were £5,613 for the waste regime (four fines), £20,000 for the PPC regime (one fine), £8,600 for the Producer Responsibility Obligations regime (one fine), £17,000 for the combined PPC and Waste case (one fine) and £175 for offences under Section 110 of the Environment Act 1995 (two fines).

In 2011-12 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 2011-12 report, and then reduced in the 2012-13 report.

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

Figure 17: Breakdown of average fines by regime 2015-2016
1.3.5 Status of cases reported by SEPA to the PF in the previous three years (as at 14 September 2016)

In the three financial years prior to 2015-2016 (2012-13, 2013-14 and 2014-2015) we reported 96 cases to the PF. Two cases were rolled together in the court system so of these 95 cases:

- 36 (38%) of these cases remain in the court system;
- 3 (3%) resulted in a non-court disposal (PF fine or PF warning letter);
- 16 (17%) resulted in the PF deciding not to raise proceedings;
- 1 (1%) resulted in proceedings being raised and then discontinued;
- 38 (40%) resulted in convictions with 34 guilty pleas and 4 being found guilty;
- 1 (1%) resulted in a not guilty plea being accepted by the Crown.

Figure 18: Status of SEPA’s cases which were reported to the PF in 2012-2013, 2013-2014 and 2014-2015 as at 14 September 2016
Of the 38 convictions, fines overall totalled £413,950. The breakdown of the case outcomes are:

- 23 cases resulted in only fines totalling £146,850;
- One individual was sentenced to a community payback order of 150 hours and a confiscation order for £2,356 under the Proceeds of Crime (Scotland) Act 2002;
- One individual was sentenced to a community payback order of 180 hours;
- One individual was sentenced to a community payback order of 260 hours and a four month restriction of liberty order between the hours of 7pm and 7am;
- 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 of 6 months was imposed on a Director of the Company;
- One case resulted in a fine imposed on the company of £195,000 and prison sentence totalling 23 months imposed on a Director of the Company;
- One individual was sentenced a eight month restriction of liberty order between the hours of 10pm and 5am;
- Three cases has been deferred for sentencing at a later date;
- One company was fined £8,600 and received a confiscation order for £28,538 under the Proceeds of Crime (Scotland) Act 2002;
- One company was fined £12,000 received a confiscation order for £345,558.43 under the Proceeds of Crime (Scotland) Act 2002;
- One company was fined £16,000 and an individual receiving a community payback order of 180 hours;
- Two cases resulted in admonishment.

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9 The overall fine total for the three year period is £413,950. This figure is calculated by adding all the fine totals from the cases which were reported to the PF in 2012-2013, 2013-2014 and 2014-2015 and were concluded up to 21 September 2016. This figure cannot be compared to the cumulative totals for the outcomes in 2012-2013, 2013-2014 and 2014-2015.

10 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 2012-2013, 2013-2014, and 2014-2015 as at 14 September 2016 which resulted in conviction

- Fine
- Admonished
- Community Payback order and Restriction of Liberty Order
- Community Payback order
- Restriction of Liberty Order
- Company Fined and Director imprisoned
- Sentence deferred
- Community Payback and Confiscation Order
- Fine and Confiscation Order
- Fine and Community Payback Order

Figure 20 provides a breakdown of the outcomes where convictions have occurred. The three cases awaiting outcome are still convictions, but sentencing has been deferred to a later date.
Figure 20: Summary of outcomes from submitted PF cases in 2012-2013, 2013-2014 and 2014-2015 as at 14 September 2016

Of the 96 cases we reported to the PF in the three financial years prior to 2015-2016, two of these cases were rolled together by the Crown Office and Procurator Fiscal Service, resulting in 95 cases. Of these 95 cases, 59 of have now concluded and 36 are still in the court system. Figure 20 above shows the outcomes of these cases. Of the 59 concluded cases, 38 resulted in conviction. Therefore, 64% of the concluded cases submitted by SEPA to the Crown Office and Procurator Fiscal Service for consideration of prosecution resulted in criminal convictions, with a further 5% resulting in non-court disposals such as a PF warning letter or fiscal fine.

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. **2015-2016 outcomes – case examples**

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

On 29 April 2015 at Airdrie Sheriff Court, Douglas Milby was fined £6,000 and sentenced to 240 hours of community payback and Southern Tyre Recycling Limited was fined £2,000. The offences related to keeping and depositing waste tyres on land at Brownsburn Industrial Estate, Airdrie; Woodilee Industrial Estate, Kirkintilloch; and Malletsheugh Farm, Newton Mearns without an appropriate waste management licence in place. Media release can be found at [http://media.sepa.org.uk/media-releases/2015/tyre-recycling-company-and-director-fined-a-total-of-8-000-for-waste-offences-at-three-sites-in-the-west-of-scotland/](http://media.sepa.org.uk/media-releases/2015/tyre-recycling-company-and-director-fined-a-total-of-8-000-for-waste-offences-at-three-sites-in-the-west-of-scotland/)

On 18 June 2015 at Kirkcaldy Sheriff Court, Alan Blyth received a restriction of liberty order for eight months with the condition that he remain within his dwelling address between the hours of 10pm and 5am the following morning. The individual had previously pled guilty on 10 April 2015 to keeping controlled waste at his site in Leven without a Waste Management Licence. The offences occurred between September and October 2012 and the waste types were plasterboard with wall coverings, soil mixed with construction/demolition waste including bricks, concrete and rubble, tiles, metal (paint tins), plastic and piles of waste wood. SEPA’s media release relating to the case can be found at [http://media.sepa.org.uk/media-releases/2015/illegal-waste-burning-results-in-restriction-of-liberty-order-for-unlicensed-waste-operator-in-fife/](http://media.sepa.org.uk/media-releases/2015/illegal-waste-burning-results-in-restriction-of-liberty-order-for-unlicensed-waste-operator-in-fife/).

On 16 September 2015 at Edinburgh Sheriff Court, James Cunningham pled guilty to two charges relating to the deposit of various household, commercial and industrial wastes and the keeping of mixed construction and demolition waste at Clippens Yard, Straiton Road, Loanhead, Midlothian without a waste management licence. The offences had occurred between November 2010 and December 2011. The individual was sentenced to a community payback order of 180 hours on 14 October 2015. Further information is available at [http://media.sepa.org.uk/media-releases/2015/lothian-man-sentenced-to-community-payback-order-for-illegal-waste-activity/](http://media.sepa.org.uk/media-releases/2015/lothian-man-sentenced-to-community-payback-order-for-illegal-waste-activity/).

On 9 December 2015 at Airdrie Sheriff Court Carlo Rea was sentenced to a community payback order of 180 hours, after pleading guilty to knowingly permitting the illegal deposit

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12 This outcome, which occurred during 2015-2016, has not been included within the figures at section 1.2.1 of this report, given it arose out of the same case in which a company was fined which had already been included within section 1.2.1 of the 2014-15 report. As in this instance, it is possible for the outcomes resulting from one case to occur in different years.
2.2 Cases involving obstruction of SEPA officers and failure to attend to give a witness statement

On 7 December 2015, at Airdrie Sheriff Court, William Fallon was found guilty of assaulting, hindering and obstructing SEPA officers in the exercise of their duties and fined £250. SEPA officers visited the site on 11 February 2015 to assess whether or not vehicles on site were waste, and therefore whether a waste management licence was required. The individual raised his voice, swore at officers, made physical contact with the SEPA officers who had to defuse the situation and leave; the matter was then reported to the Procurator Fiscal. Further information is available in SEPA’s press release available at http://media.sepa.org.uk/media-releases/2015/coatbridge-man-fined-for-threatening-and-assaulting-sepa-officers/.

On 15 January 2016, at Edinburgh Sheriff Court, Martin Forrest was fined £100 having pled guilty to failing to attend SEPA’s Edinburgh office to answer questions in connection with an investigation. SEPA officers had received information in October 2014 indicating that the individual would be able to assist with an investigation relating to substantial waste deposits near Edinburgh Airport. Further information is available in SEPA’s press release at http://media.sepa.org.uk/media-releases/2016/edinburgh-man-fined-for-failing-to-attend-witness-interview/.

2.3 Fines in excess of £10,000, excluding cases referred to in section 2.4 below

On 30 April 2015 at Perth Sheriff Court, SITA UK Ltd pled guilty to two charges under the Pollution Prevention and Control (Scotland) Regulations 2000. The company was fined £20,000 for breaches of their permit for Binn Landfill (Glenfarg). The company had pled guilty to breaching licensed conditions on leachate volume at times between 18 December 2012 to 12 June 2013, and to failing to report breaches to SEPA between 9 January 2012 and 8 March 2013. The media release can be found at http://media.sepa.org.uk/media-releases/2015/perthshire-landfill-operator-fined-20-000-for-licence-breaches/.

On 15 June 2015 at Kilmarnock Sheriff Court, Billy Bowie Special Projects Limited was fined £17,000. The company pled guilty to failing to comply with a condition of their environmental permit for the site at Moorfield Industrial Estate, Kilmarnock, that provided that all emissions to air shall be free from offensive odour – offensive odour was detected over a three month period in 2013. The company also pled guilty to keeping and managing waste including fish waste in a manner likely to cause pollution of the environment or harm to human health between July and December 2013 in that they failed to carry out adequate checks to, and maintain, the biofilter (which controls odour);
failed to take adequate measures to ensure that a roller door was closed, which enabled odour to escape; and increased the quantities of fish waste received on site without taking adequate measures to account for the increased odour production. SEPA’s media release relating to the case can be found at http://media.sepa.org.uk/media-releases/2015/ayrshire-composting-firm-fined-17-000-for-offensive-odours/.

2.4 Cases resulting in confiscation orders

On 15 February 2016, at Alloa Sheriff Court, Oran Environmental Solutions Ltd was fined £12,000 and received a confiscation order under the Proceeds of Crime Act 2002 of £345,558.43. The confiscation order is the highest to date for environmental offences in Scotland. The company had pled guilty to a number of offences under the Environmental Protection Act 1990 in February 2015 and sentence had been deferred to February 2016. The offences occurred between December 2012 and August 2013 and related to the company’s failure to remove waste materials from their Kilbagie Mill site, storing controlled waste on land not covered by a waste management licence and failing to carry out adequate pest control measures at the facility. Further information is available in SEPA’s media release at http://media.sepa.org.uk/media-releases/2016/waste-recycling-firm-given-highest-confiscation-order-for-environmental-offences-in-scotland/.

On 7 March 2016, at Glasgow Sheriff Court, Walter Black Foods Ltd was fined £8,600 and received a confiscation order under the Proceeds of Crime Act 2002 of £28,538. The company had pled guilty to failing to comply with regulations designed to reduce the impact of packaging and packaging waste on the environment. Further information is available in SEPA’s media release at http://media.sepa.org.uk/media-releases/2016/glasgow-food-manufacturer-fined-for-failing-to-comply-with-packaging-waste-regulations/.

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 penalties can be imposed under the Greenhouse Gas Emissions Trading Scheme Regulations 2005 and 2012, the CRC Energy Efficiency Scheme Orders 2010 and 2013 and the Energy Savings Opportunity Scheme Regulations 2014. There were 19 civil penalties imposed by SEPA during 2015-2016. Seventeen of those penalties were imposed under the Greenhouse Gas Emissions Trading Scheme Regulations 2012 for breaching an emissions target. Under Schedule 5
paragraph 5 of the Regulations, an operator of an installation participating in the small emitters and hospital opt-out scheme (“an excluded installation”) is required not to exceed an annual emissions target. If an operator of an excluded installation exceeds their emissions target they are liable to a civil penalty (regulation 55). The amount of the civil penalty is calculated in accordance with the formula in regulation 55 and reflects the cost that the operator would have incurred if it had been required to surrender allowances equal to the difference between the emissions of the installation and its target, if it participated in the full EU ETS. It is therefore an ‘equivalent measure’, as required by the Directive. It does not contain any further punitive element.

**Civil Penalties**

All Civil Penalties imposed in 2015-2016 were under the Greenhouse Gas Emissions Trading Scheme Regulations 2012.

**Table 5: Civil Penalties Imposed in 2015- 2016**

<table>
<thead>
<tr>
<th>Company</th>
<th>Reason</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Aggregate Industries UK Ltd</td>
<td>the operator failed to submit a verified report by 31 March 2014 and submitted an inaccurate report.</td>
<td>£2,812.00</td>
</tr>
<tr>
<td>2 Talisman Sinopec Energy (UK) Ltd</td>
<td>the operator failed to surrender allowances for the scheme year 2013 by the relevant date of 30 April 2014</td>
<td>£40,804.00</td>
</tr>
<tr>
<td>3 Breedon Aggregates Ltd</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
<td>£68.32</td>
</tr>
<tr>
<td>4 Dundas Chemicals (Mosspark) Ltd</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
<td>£24,662.70</td>
</tr>
<tr>
<td>5 Dundas Chemicals (Mosspark) Ltd</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
<td>£20,837.60</td>
</tr>
<tr>
<td>6 Edinburgh Royal</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
<td>£2,211.00</td>
</tr>
<tr>
<td></td>
<td>Company</td>
<td>Reason</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>7</td>
<td>Forth Valley Royal Hospital</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>8</td>
<td>Forth Valley Royal Hospital</td>
<td>the operator exceeded the emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>9</td>
<td>Fourstones Paper Mill Co Ltd</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>10</td>
<td>Fourstones Paper Mill Co Ltd</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>11</td>
<td>NHS Lothian</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>12</td>
<td>NHS Lothian</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>13</td>
<td>Scottish and Southern Energy</td>
<td>the operator exceeded their emissions target for 2013 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>14</td>
<td>Scottish and Southern Energy</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55</td>
</tr>
<tr>
<td>15</td>
<td>Scottish and Southern Energy</td>
<td>the operator exceeded the emission target for 2013 for an excluded installation, contrary to regulation 55.</td>
</tr>
<tr>
<td>16</td>
<td>Scottish and Southern Energy</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55.</td>
</tr>
<tr>
<td>17</td>
<td>Tennent Caledonian Breweries UK Ltd</td>
<td>the operator exceeded their emissions target for 2014 for an excluded installation, contrary to regulation 55.</td>
</tr>
<tr>
<td>18</td>
<td>University of Aberdeen</td>
<td>the operator exceeded their emissions target for 2013 for an excluded</td>
</tr>
<tr>
<td>Company</td>
<td>Reason</td>
<td>Penalty</td>
</tr>
<tr>
<td>------------------</td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>19 University of</td>
<td>the operator exceeded their emissions target for 2014 for an excluded</td>
<td>£7,656.11</td>
</tr>
<tr>
<td>Aberdeen</td>
<td>installation, contrary to regulation 55</td>
<td></td>
</tr>
</tbody>
</table>