

# Offer of variable monetary penalty undertaking

November 2021



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## 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 10, 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 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.

### Data Protection

Under the Data Protection Act 2018, we must have a lawful basis for processing your information – processing is carried out under the Data Protection Act 2018, Part 3, Section 35(2)(b) – **Law Enforcement purposes**.

The personal data in this form will be processed by SEPA in connection with this undertaking, including any subsequent investigation and action. It 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 in accordance with our Policy for Communicating Penalties and Undertakings.

Where we share your personal information with other organisations, sharing will be carried out lawfully and securely in accordance with our Privacy Policy.

For more information on how SEPA handles personal information, please refer to our general Privacy Policy at <https://www.sepa.org.uk/help/privacy-policy/>

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

## Section 1

Details of Notice of Intent to which undertaking relates
NOI Reference Number:
Date of Notice of Intent:

## Section 2

**Details of the act or omission giving rise to the relevant offence to which the Notice of Intent relates**

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

## Section 3

**Details of person making this Offer**

Full name of person making offer:

Are you:

An individual

A partnership

A limited company

A limited liability partnership

A 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:

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:

Email address:

## Section 4

**How are you going to ensure the offence does not continue or recur? Please add a new table for each action.**

Action to be taken:	
Date action will be taken by:	
How and when the action will be considered to have been fulfilled:	

## Section 5

**What are you going to do to restore the environment to the state it was in prior to the offence having occurred? What are you going to do to go beyond the minimum required to restore the environment? Please add a new table for each action.**

Action to be taken:	
Date action will be taken by:	
How and when the action will be considered to have been fulfilled:	

## Section 6

**What actions are you going to take to benefit or improve the environment or provide benefits to the local community/recreational users of the environment/other businesses including steps to introduce more sustainable business practices? Please add a new table for each action.**

Action to be taken:	
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Date action will be taken by:	
How and when the action will be considered to have been fulfilled:	

**Section 7**

<p><b>What are you going to do to ensure that no financial benefit arising from the commission of the offence accrues to you? This should not simply equate to the financial advantage gained by the offending.</b></p> <p><b>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. Please add a new table for each action.</b></p>	
Action to be taken:	
Date action will be taken by:	
How and when the action will be	

considered to have been fulfilled:	
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## Section 8

<b>Why was the offer of an Enforcement Undertaking not made before SEPA issued a Notice of Intent?</b>

## Section 9

<b>Has the offending behaviour had an impact on the local community? YES / NO</b>
<b>If YES, have you consulted with them regarding this offer? YES / NO</b>  If so, please provide details of any consultations:

## Section 10

<b>If you are offering to pay SEPA's costs for investigating the offence, considering the undertaking, the costs of any subsequent compliance monitoring and other activities to be carried out by us to assess compliance with the undertaking, tell us the amount and the date you propose to make the payment.</b>
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An indication of the costs incurred up until the service of the Notice of Intent can be found in that Notice.

***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.***

Amount:

Proposed date for payment:

**Statement:**

**I confirm that any financial donation to a third party mentioned in Section 7 is a donation that I will receive no benefit from.**

**This offer of undertaking is made in accordance with Schedule 2 of the Order.**

Signature: \_\_\_\_\_

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

Position:

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 have downloaded this form in Pdf format and cannot fit all of the details into any section, please continue on a separate sheet and submit that to us with the offer form and authenticate the separate sheet.*

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**

We will not consider an offer to be appropriate where either:

- the responsible person has failed to comply with the mandatory requirements of a statutory notice;
- the offer includes a clause denying liability;
- we believe the responsible person, for any reason, might not comply with the undertaking offered;
- it appears to us that the undertaking might be used as a way to delay taking action;
- it appears to us, at our entire discretion, that there is not a valid reason for failing to offer an Enforcement Undertaking prior to the VMP notice of intent.

Section 7 – 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 we accept your offer and you fail to comply with its terms, we can issue a Non-Compliance Penalty by notice. A Non-compliance Penalty will usually be the amount of proposed VMP (in pounds sterling) stated in the acceptance of the VMP undertaking - together with an additional 40% uplift.

**Further guidance on making a suitable offer can be found in Guidance on the use of Enforcement Action Revised 2021**

<http://www.sepa.org.uk/media/219242/enforcement-guidance.pdf>

For information on accessing this document in an alternative format or language please either contact SEPA by telephone on 03000 99 66 99 or by email to [equalities@sepa.org.uk](mailto:equalities@sepa.org.uk)

If you are a user of British Sign Language (BSL) the Contact Scotland BSL service gives you access to an online interpreter enabling you to communicate with us using sign language.

<http://contactscotland-bsl.org/>

[www.sepa.org.uk](http://www.sepa.org.uk)

Strathallan House, Castle Business Park, Stirling, FK9 4TZ