



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: Chivas Brothers Ltd			
Are you:			
An individual		A partnership	
A limited company	X	A limited liability partnership	
Public Body		Other	
If 'Other', please specify:			
Address and full Postcode:		Glenkeith Distillery Station Road Keith Banffshire AB55 5BU	
Registered office Address (if different from above):		111-113 Renfrew Road Paisley Renfrewshire PA3 4DY	
Registration Number (if a company or an LLP): 268758			
Contact Telephone Number: 0141 531 1801			
Email Address: [REDACTED]@pernod-ricard.com			
<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:		[REDACTED]	
Address (if different from above):		Miltoduff Distillery, Elgin, Morayshire IV30 8TQ	
Contact Telephone Number: 01343 554 120			
Email address: [REDACTED]@pernod-ricard.com			

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?

On the evening of 22nd November 2018 an unexpected delivery of fuel oil, despatched early in error, arrived from Liverpool to offload at Glenkeith Distillery (NJ 42756 51156). The site relies on oil during the winter months, due to limited gas availability, and was preparing for increased deliveries. The capacity in the tank was incorrectly deemed to be sufficient to accept the load, which was allowed to offload given the long distance travelled. During the filling operation the level probe and alarm on the tank (Endress + Hauser Micropilot M) failed and the automated alarm on the monitoring system did not activate. No oil was lost via the dedicated vent pipe, but instead found its way via a redundant dipping point under the cladding for the tank down into the bund, going undetected during the night. The bund is regularly checked after rainfall events to confirm its integrity at the base of the bund. The solid liner (a Sika product) placed over the block-brick bund as part of a refurbishment programme in 2012 had failed at a number of points above the base allowing up to 300 litres of oil to seep onto the roadway and via site drainage into the River Isla. The overflow alarm and containment measures in place should have prevented this from happening.

The monthly bund checks for October had been completed according to plan. The most recent bund risk assessment, a periodic review of standards and procedures, was completed on 14th November 2018.

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.

Glenkeith Distillery has CAR licences that allow the abstraction of water for use in the process and for cooling, plus the discharge of cooling water only (CAR/L/1011003). It does not have a licence for the discharge of effluent to the water environment from the site, which is discharged via a dedicated pipeline to the local sewage treatment works for treatment under a consent issued by Scottish Water (3260A/3/D).

The release of oil was not directly associated with these water use licences and was, therefore, an unauthorised discharge from the site.

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.

Regulation 44(1)(a) - carrying on a controlled activity without an appropriate authorisation from SEPA.

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 discharge of up to 300 litres of oil over a period of up to 12 hours resulted in a visible sheen in patches along the course of the River Isla over a distance of no more than 4 km.

The nature of the discharge did not result in the death of any fish over the stretch of river affected.

The impacts on invertebrates were assessed by SEPA and suggest these were limited in scale and showed a prompt recovery.

Section 6

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

No costs were avoided as a result of the incident.

All appropriate preventative systems, as required under GBR28 for the storage of oil, were in place at the site and had been inspected recently to confirm their operation. These should have prevented the primary container from being over-filled and contained any loss.

The material factors resulting in the incident did not result in or were not caused by any avoided fees or costs associated with statutory obligations.

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.

Chivas Brothers is committed to being a responsible and compliant operator. To help manage its operations consistently it has held an independently certified environmental management system to ISO14001 since 2007.

Considerable investment has been made over the last few years to upgrade and extend the range of site operations covered by containment and bunding systems at its distillery locations, in order to reducing the risks from a loss of containment more generally. The Glenkeith distillery was refurbished and expanded in 2012 with new or relined bunding for all bulk storage operations.

The following Immediate actions were taken during the weeks following the incident on 23rd November:

- The bund was emptied and cleaned
- The lagging was removed from the tank roof and inspected
- The tank was run to empty to allow modifications
- The bund was lined with a proprietary flexible liner
- The working level of the tank was reduced to 45,000 litres
- Additional tank capacity information was provided on the Scada system & tank

The following further actions will be taken by Chivas Brothers (CBL) in response to the incident in order to prevent the potential for recurrence at Glenkeith and elsewhere:

- ✓ Check integrity of Sika lined bunds at other locations (within 3 months of acceptance)
- ✓ Remove failing installations from service or install proprietary flexible liner (within 6 months of acceptance)
- ✓ Re-apply to gas supplier for increase to the maximum gas demand capacity available to Glen Keith (within 3 months of acceptance).

Feedback and evidence will be provided as part of the Annual Performance Review meeting with SEPA in February each year.

Chivas Brothers will also be working with other members of its trade body, the Scotch Whisky Association, to develop good practice standards for the inspection and testing of bunds and drainage & containment systems over the coming year.

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?

Chivas Brothers has been in consultation (17th April 2019) with the local fishery trust to discuss the opportunities for restoration or offsetting the impacts of the incident. Given the mainly aesthetic impact of the incident, potential measures were agreed to support the trust with local environmental improvement projects relating to the water environment.

We will therefore be contributing to the following local project:

- The Deveron, Bogie and Isla Rivers Charitable Trust is looking to take forward river restoration and improvement measures along the Crooksmill Burn (a tributary of the River Isla at Keith), which has suffered a range of morphological alterations in the past to assist
- To allow these improvement measures to proceed on one of the reaches a baseline fund will be provided to encourage contributions from other stakeholders and allow match funding to be sought. The fund would be available for use on this project over the course of 3 years from the acceptance of this offer, after which an alternative project will be taken forward if the scheme cannot be fully funded.
- The alternative project would fund a programme invasive species control (Giant Hogweed, Japanese Knotweed, Himalayan Balsam) in Priority 2 control areas within the catchments of the trust. The work would, therefore, be in addition to any control measures already funded by the Scottish Invasive Species Initiative, which are focussed on Priority 1 areas.

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.

The actions proposed in Section 8 and 10(ii) will be delivered by a local environmental charity, The Deveron, Bogie & Isla Rivers Charitable Trust. The values of the donations that will be made to the trust for three separate projects, are as follows:

- Crooksmill Burn Improvement Projects, Baseline Match Funding: £5,000
These actions will contribute to the restoration and improvement of a watercourse local to the incident. The value of the work is based on previously published information on the scale and impact of incidents of this type and has been pro-rated accordingly.
Payment will be made within 3 months of the acceptance letter date.
- Community Involvement & Environmental Education: £5,000
These two projects cover our commitment to go beyond compliance and support local projects to facilitate awareness and improvements to local watercourses. The value of the work was chosen to match that required for restoration above. The split of resources between the projects is as follows:
 - + Crooksmill Stakeholder event: £3,000
 - + Water Environment Education events: £2,000Payment will be made within 3 months of the acceptance letter date.

Section 10

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

Chivas Brothers intends to make the following two commitments to benefit or improve the environment around the Glenkeith Distillery. They were developed to make an additive contribution over and above an existing programme of measures already underway as part of our environmental strategy.

Chivas Brothers will:

- i. Fund a consultation event, to help the fishery trust engage with land-owners and managers, on the proposals for restoration of more natural river features and processes to the catchment of the Crooksmill Burn. The event will be delivered by independent third-parties on behalf of the fishery trust in order to gain support for the improvements required and discuss funding options. Payment would be made within 3 months of the date on the acceptance letter from SEPA.
- ii. Fund a programme of education events on the value of the water environment and fisheries, through the fishery trust to help ensure future awareness and appreciation of the water environment. These events would be delivered by the trust during the academic years of 2019/20 and 2020/21. Payment would be made within 3 months of the acceptance letter date.

Chivas Brothers has a longstanding commitment to produce whisky in a more sustainable manner and going beyond compliance at all its operations. Our environmental programme is well underway and cannot therefore contribute to the Enforcement Undertaking.

The following measures demonstrate our ongoing commitment, across a range of topics, to improve the sustainability of our operations more generally. Chivas Brothers:

- has signed up to the Scotch Whisky Industry Environmental Strategy
- actively participates in the Scotch Whisky Association and works with other industry members to establish good practice standards for the inspection of drainage systems at distilleries and bottling plants
- is committed to progressively reducing its environmental footprint. This is being delivered via:
 - i. a rolling investment programme to improve our energy efficiency using heat recovery and thermo-vapour compression technologies;
 - ii. a water mapping and reduction programme to demonstrate reasonable water use per litre of alcohol produced;
 - iii. the recovery of distillery by-products for use in the animal feed sector.
- has committed to a 100% Green Tariff for all its electrical needs and is investigating the feasibility of using electricity to decarbonise its processes as part of its plans to reduce reliance on fossil fuels. We will be investing to reduce our absolute carbon emissions by 30% between 2018 and 2030.
- is looking to address future risks, particularly around water resources and stewardship. It has installed a network of 32 water temperature gauges across its many water source types and is working with universities to support the development of novel resource recovery and land management techniques.

Section 11

Has the offending behaviour had an impact on the local community? 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. <i>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.</i>	
The investigation and monitoring costs towards which we will be making a contribution have been calculated as follows: 16 person days @ £600 per day = £9,600	
Known Amount:	Date for payment: 3 months from the date of the SEPA acceptance letter.

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: 10th May 2019

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>