

FMP Reference Number: FMP-2022-9015

SCOTTISH ENVIRONMENT PROTECTION AGENCY

THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND) ORDER 2015
("the Order")

FIXED MONETARY PENALTY NOTICE

To: The firm of Thomas Paul & Sons

[REDACTED]

[REDACTED]

Perth

PH1 [REDACTED]

The Scottish Environment Protection Agency ("SEPA"), hereby notifies you, that you are liable to a Fixed Monetary Penalty (FMP) because SEPA is satisfied on the balance of probabilities that you have committed a relevant offence prescribed under the Order, namely an offence under (Controlled Activities) (Scotland) Regulations 2011 ("CAR 2011"), in that you did cause and permit Hamilton Contracting Services Limited, a contractor, to fail to comply with or contravene a General Binding Rule, namely General Binding Rule 18(m) specified in column 2 of Part 1 of Schedule 3 of CAR 2011 in relation to the application of fertiliser on land, as more particularly described below.

Grounds for imposing the penalty:

In terms of Regulation 6 of CAR 2011, a controlled activity specified in column 1 of Part 1 of Schedule 3 of CAR 2011 is authorised if it is carried out in accordance with the rules of general application ("general binding rules"). General binding rules are detailed within column 2 of Part 1 of Schedule 3 of CAR 2011.

A 'controlled activity' is an activity referred to in Regulation 3 of CAR 2011. Regulation 3 specifies a number of activities, which includes 'activities liable to cause pollution of the water environment'.

General Binding Rule 18(m), as specified in column 2 of Part 1 of Schedule 3 of CAR 2011, relates to the controlled activities of the storage of fertiliser and the application of fertiliser. General Binding Rule 18(m) provides that 'fertiliser must be applied on land in such a way and at such times that the risk of pollution to the water environment is minimised'.

In terms of paragraph 1 of Part 2 of Schedule 3 of CAR 2011, 'fertiliser' means any substance containing nutrients which is utilised on land to enhance plant growth, but excludes forestry brash.

It is an offence under Regulation 44(1)(b) of CAR 2011 for a person to fail with or contravene a general binding rule.

On 11 August 2021 SEPA received a report that Anaerobic Digestate was flowing out of a field, across a single track road and into the Corral Burn [NGR **NO 0577 3690**]. Said field is located at [NGR **NO 0571 3683**] forms part of [REDACTED] ("the field"). Said farm, including the field, is managed and occupied by the firm of Thomas Paul & Sons, with an address of [REDACTED], Perth, PH1 [REDACTED].

With reference to paragraph 1 of Part 2 of Schedule 3 of CAR 2011, Anaerobic Digestate is a fertiliser when applied to fields.

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On the evening of 11 August 2021, SEPA officers attended to the entrance of the field, where they observed pools of black liquid, SEPA officers noted said liquid to be Anaerobic Digestate. SEPA officers also noted that the vegetation on the river bank of the Corral Burn NGR **NO 0577 3689** on the opposite side of the riad from the field entrance showed signs of a liquid having flowed past it.

On the same date of 11 August 2021, SEPA officers observed a pattern of fertiliser spreading across the field. SEPA officers observed that fertiliser had been spread up and down a sloping area of the field (“the slope”). SEPA officers noted that the ground was wet and the river was flowing fast indicating recent rainfall in the area. SEPA officers noted that the slope was steep, one section of the field was calculated to have a slope of 20° (degrees)

With reference to Farming & Water Scotland's Risk Assessment for Manure and Slurry (RAMS) Map (version 1/4/2020) (“RAMS Map”), the maximum gradient for spreading is 15° (degrees)

SEPA officers identified a discharge from an open drain, flowing to the Corral Burn (“the drain”). The drain is situated in an area of land at NGR **NO 0569 3694**, upstream of a road bridge over the Corral Burn. A witness stated to SEPA officers that the drain forms part of the field's drainage system.

The discharge appeared to be polluted with Anaerobic Digestate, with SEPA officers observing excessive foaming and a dark grey / black coloured liquid. SEPA Officers observed the watercourse of the Corral Burn to be dark grey in colour downstream of the drain, and light brown in colour upstream of the drain. The SEPA officers believed the light brown upstream of the discharge was as a result of rainfall in the catchment.

Samples were taken by the SEPA officers at the drain and at the Corral Burn (upstream and downstream of the drain). Samples taken at the drain and downstream of the drain contained elevated levels of Ammonia. The upstream sample had low levels of Ammonia, consistent with an unpolluted watercourse.

SEPA officers also took a sample from the Corral Burn at Preston Road, Bankfoot, which is approximately 2.6Km from the field. This sample also contained elevated levels of Ammonia.

SEPA officers observed pollution of the watercourse at the Corral Burn. They determined the pollutant discharge to be Anaerobic Digestate, the source of which was identified as the field, draining to the Corral Burn via the drain.

A witness advised SEPA that they had seen tankers on the single track road, near to the field, along with spreading equipment in the field on 11 August 2021. They also stated that there had been heavy rainfall at the field on the afternoon of 11 August 2021. They described the rain as “lashing down”

A witness stated to SEPA that [REDACTED] supplied the Anaerobic Digestate [REDACTED] [REDACTED] during the week of 9 August 2021 with [REDACTED] providing the transport.

[REDACTED] provided SEPA with a “Contract of Supply: For use of quality digestate and soil/field horticulture” That Supply of contract includes the Customer/Farm address as [REDACTED], PH1 [REDACTED]. The Customer/Company Name as Thomas Paul and Sons and is signed by [REDACTED] and is dated 6/2/2020

Another witness stated to SEPA that Anaerobic Digestate was delivered to [REDACTED] [REDACTED] on 11 August 2021 Said witness confirmed the Anaerobic Digestate was supplied by [REDACTED].

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A further witness, one of the Partners of The firm of Thomas Paul & Sons stated to SEPA that he had arranged for the spreading of Anaerobic Digestate on the field. He also stated that he had selected the field where the spreading took place. This witness confirmed to SEPA that rainfall had been forecast for 11 August 2021. That it was dry when the spreading began but described it as "torrential" later in that day. They further stated that around 20mm of rain fell that day at the farm.

They confirmed that on 10 August 2021, Hamilton Contracting Services Limited prepared the field for spreading, and then spread Anaerobic Digestate in the field on 11 August 2021.

SEPA is satisfied that on 11 August 2021, you did permit another, Hamilton Contracting Services Limited, to spread Anaerobic Digestate on a steeping slope within the field, at a time when rainfall was forecast. You did permit Hamilton Contracting Services Limited to apply fertiliser in such a way that risk of pollution to the water environment was not minimised. As such, Hamilton Contracting Services failed to comply with or contravene General Binding Rule 18(m), which amounts to an offence in terms of Regulation 44(1)(b) of CAR 2011, and so you did act contrary to Regulation 44(1)(o) of CAR 2011.

Date of offence: 11 August 2021

Location of offence: [REDACTED]

The amount of the FMP is £600

You are required to pay the sum in full within 56 days beginning with the day this notice is served on you.

Details of how to pay, what will happen if you do not pay and how to appeal against this Notice are provided overleaf.

Signed: [REDACTED]
Authorised to sign on behalf of
The Scottish Environment Protection Agency

Date: 20 September 2022

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Amount of Penalty and effect of payment

The penalty has been set in accordance with the Environmental Regulation (Enforcement Measures) (Scotland) Order 2015 (“the Order”).

How to Pay a Fixed Monetary Penalty

Acceptable payment methods are: Personal or Company Cheques, Debit Card, Credit Card, Postal Orders, and BACS.

Card payments can be made via the SEPA “Pay My Account” Service at www.sepa.org.uk/payments. You should quote the FMP Reference Number as detailed on the front of this Notice in all communications with SEPA.

To make a BACS payment please email invoices@sepa.org.uk or call 07388 371 621 for our bank account details or queries.

Cheques and Postal Orders should be made payable to: Scottish Environment Protection Agency and sent to FMP Unit, SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ

Late payment and Non-payment

If you do not pay the full amount owed within 56 days beginning with the day this notice is served on you, the amount due will be increased by 40% in accordance with the Order. SEPA can recover sums due but not paid in full as a civil debt.

Appeals

You can appeal against this Notice to the Scottish Land Court within 28 days beginning with the date of service of this Notice on the grounds that:

- The decision was based on an error of fact
- The decision was wrong in Law
- The decision was unreasonable
- any other reason, (with the exception that the Order states that it is not a valid ground of appeal that SEPA failed to comply with the Guidance issued to it by the Lord Advocate under the Act).

You should submit your Appeal to The Scottish Land Court, George House, 126 George Street, Edinburgh, EH2 4HH. An application form for an appeal can be obtained by contacting the Court on 0131 271 4360 or from the Court’s website at <http://www.scottish-land-court.org.uk/using/making-an-application>. It would be helpful if you also sent a copy of your appeal documentation to SEPA, The Registry Department, SEPA, Registry Department, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, North Lanarkshire, ML1 4WQ .

The bringing of an appeal will have the effect of suspending payment of the penalty until after the appeal has been determined or withdrawn.

Queries

Any queries about this Notice should be addressed to SEPA, The Registry Department, SEPA, Registry Department, Angus Smith Building, 6 Parklands Avenue, Eurocentral, Holytown, North Lanarkshire, ML1 4WQ or by email to registry@sepa.org.uk Please note that entering into correspondence does not alter the timescale for submission of an appeal or payment being due.

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The Data Protection Act 2018

Any personal data, provided in connection with this Notice, will be processed by the Scottish Environment Protection Agency for the purposes of publication and may be disclosed to Scottish Government and other public bodies. We may also pass it on to our agents/representatives to act on our behalf in connection with this Notice. Please address any questions, comments and requests regarding our data processing practices to dataprotection@sepa.org.uk

Additional information about how we use personal information in the context of monetary penalties is available in the relevant SEPA Privacy Notice, which can be accessed from our website www.sepa.org.uk/help/privacy-policy/privacy-notice

Information in relation to penalties will be published and publicised in accordance with SEPA's Policy on Communicating Penalties and Undertakings, which can be accessed from our website.

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