

FMP Reference Number: FMP-2022-9017

**SCOTTISH ENVIRONMENT PROTECTION AGENCY**

**THE ENVIRONMENTAL REGULATION (ENFORCEMENT MEASURES) (SCOTLAND)  
ORDER 2015 (“the Order”)**

**FIXED MONETARY PENALTY NOTICE**

**To: Hamilton Contracting Services Limited**

██████████  
**Hamilton**  
**South Lanarkshire**  
**ML3** ██████  
██████████

The Scottish Environment Protection Agency (“SEPA”) has considered the representations made by you in response to notice of intent with reference number **NOI/2022-9009**. SEPA’s response to those representations is contained in the attached schedule. SEPA has decided to impose a Fixed Monetary Penalty (FMP) on you.

SEPA hereby notifies you that you are liable to a 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 Regulation 44(1)(b) of the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (“CAR 2011”), in that you did 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.

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** and forms part of [REDACTED]. 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.

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 road from the field entrance, showed signs of a liquid having flowed over it.

On the same date of 11 August 2021, SEPA officers observed a pattern of fertiliser spreading within the field. SEPA officers observed that fertiliser had been spread up and down a sloping area of the field (“the slope”). The SEPA officers noted that although it was not raining at that time the ground was wet indicating recent rainfall. 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. 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 that [REDACTED] supplied the Anaerobic Digestate to [REDACTED] during the week of 9 August 2021.

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

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, and 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.

SEPA is satisfied that on 11 August 2021, you spread Anaerobic Digestate on a steep slope within the field, at a time when heavy rainfall had occurred and was likely to occur. On that date, you did apply fertiliser in such a way that the risk of pollution to the water environment was not minimised, contrary to General Binding Rule 18(m), and as such you did commit an offence in terms of Regulation 44(1)(b) of CAR 2011.

Date of offence: 11 August 2021

Location of offence: [REDACTED]

The amount of the proposed 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.

[REDACTED]

Signed .....

Date: 11 November 2022

Authorised to sign on behalf of  
The Scottish Environment Protection Agency

[REDACTED]

## 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](http://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](mailto: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, 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.