



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 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?

Breedon Northern Ltd is making this offer as a result of carrying out a controlled activity, except in so far as authorised by the Water Environment (Controlled Activities) (Scotland) Regulations 2011.

Polinar Dam is situated west of Inverurie (NGR NJ 74949 20745), approximately 2.8km from the location of the plant at Harlow Industrial Estate.

On Monday 10th June 2019 the company arranged for the opening of a valve in the Dam with the intention of reducing the water level which, in turn, would expose the outlet valve and allow debris to be cleared from the dam.

On Tuesday 11th June, the company was contacted by SEPA regarding a complaint of silty water in the burn into which the dam flows. SEPA attended the site that day and remedial measures were recommended by SEPA whereupon the valve was returned to its previous position allowing a moderate flow of water to the burn from the pipe outlet.

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.

N/A

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 4 and 44(1) (a) and (o).

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 action undertaken, as detailed in Section 2, caused an increase in the waterflow entering the adjacent burn to Polinar Dam. Further to SEPA attending the dam on 11th June as detailed, its Sampling and Testing Laboratory carried out an investigation into the incident on 12th June 2019. SEPA has provided the company with a copy of its Ecology Investigation Report (No.16 Don02 Issue1). This Report concluded that

- i) No evidence of fish kill was found by SEPA on 12th June 2019
- ii) The Don District Salmon Fishery Board (“DDSF”) recorded fish (trout) mortalities on 11th June 2019, of between 10 and 100.
- iii) Considering the DDSFB record, it is likely that trout were present in the burn at the point when the outlet valve was opened and were killed as a result of the lowering of the water level.
- iv) Spawning habitat was limited and, although present, alevins/eggs would not have been harmed
- v) The lack of baseline data for the burn prevented a judgment on how significant the impact has been, but based on the above, the impact was assessed as moderate.

Section 6

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

The original purpose of undertaking the works was to re-establish the supply of water to the concrete plant located at Harlow Way, Inverurie. The alternative to taking supply from Polinar Dam is to import water in tanks. The action described in Section 2 did not result in the supply of water being re-established from Polinar Dam.

With the prior approval of SEPA, a further attempt to return supply to the concrete plant were successful on the 3rd October 2019.

In this respect, it is not considered that the company received any financial benefit or avoided costs from undertaking the activities detailed in Section 2.

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.

The company operates from over one hundred sites in Scotland and Northern England with environmental performance an essential component in how we operate. This is emphasised within its Integrated Health, Safety, Environmental and Quality Policy which states that the company will conduct all activities in a manner to “Protect the environment, prevent pollution and improve sustainable development”.

While the activities undertaken, as described in Section 2, were absent in intent to cause harm to the environment, the company takes responsibility that, here, it has fallen short of one of its core values.

In relation to the incident at Polinar Dam, subsequent work was undertaken within the reservoir to establish the water supply to concrete works at Harlow Way, Inverurie. Prior to the commencement of the works, consultation was undertaken with SEPA with a method statement agreed. A prior risk assessment was prepared with contingencies incorporated in the event of a failure of the primary controls. The works were undertaken on the 3rd October 2019 without incident.

The above process will continue to be employed by the company when operating within or near to a watercourse.

To ensure on-going compliance, a guidance note has been prepared and a copy provided to all management within the company. A copy of this guidance note can be provided. In addition, the following actions will be completed by the end of January 2021 unless otherwise stated or as agreed with SEPA :

The company will ensure:

- (1) Dissemination of the guidance note to all Breedon Northern employees
- (2) Tool box talks are carried out at each operation site with the focus on environmental compliance and responsibility;
- (3) That a review of all of its sites is undertaken and, where appropriate, create an environmental risk assessment.

The company-wide review shall collate site specific details on water usage and identify where such usage is via an abstraction from a watercourse or borehole. Where the

abstraction is found to be from one of these sources, daily abstraction rates will be calculated (e.g. by analysing production rates of concrete) and where it is found the abstraction does not hold the appropriate level of authorisation, this will be rectified through an appropriate application if applicable.

The initial stage of the review will undertake a desk-based study on sites which currently hold either a Controlled Activity (CAR) Licence or Registration, following which, all remaining sites will be captured in the secondary stage of the review. The initial stage of the review will be completed by the end of December 2020 with the second stage completed by the end of January 2021.

On-going monitoring of abstraction rates will take place to ensure compliance with The Water Environment (Controlled Activities) (Scotland) Regulations 2011. Where the calculated rates of abstraction at a site exceeds a pre-determined threshold (6m³), a water meter will be installed to confirm consumption accurately. Where a site has a water meter installed, daily consumption records will be maintained when production is taking place.

The outcomes/actions of the site reviews will be reported to SEPA by the end of January 2021. This report will also identify the sites which will be subject to further licensing requirements.

A final completion report will be submitted to SEPA by the 30th June 2021 which will evidence that the licensing requirements have been complied with.

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?

With SEPA's assistance, restoration was achieved by 12th June 2019. Beyond that, and the measures that have been highlighted in Section 7, the company is in dialogue with DDSFB as detailed in Section 9.

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 company proposes to make a financial contribution to the DDSFB in relation to the project outlined below to the sum of £10,000.

Discussions with DDSFB have led to the identification of a project which is considered to benefit the fisheries environment through the physical restoration of habitat of the River Don catchment. Specifically, the donation will contribute significantly to costs to replace the Newe Weir fish pass on the River Don which is considered to be an obstacle to migratory fish passage.

Through undertaking this project, it is estimated that access to approximately 60km of habitat will be improved.

Further details on the proposed financial donation are contained in the Addendum which supplements this submission.

The donation to the DDSFB will be made following agreement of the Enforcement Undertaking with SEPA. BNL will continue to work with and assist DDSFB to ensure the delivery of the project and the subsequent desired outcomes within a suitable timescale.

To ensure the timely delivery of the project as described above, BNL will hold quarterly meetings with the DDSFB. Following each meeting, a report will be submitted to SEPA detailing progress of the project against the desired outcomes.

Section 10

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

Please refer to section 8 above.

Section 11

Has the offending behaviour had an impact on the local community? ~~YES~~ / NO

If YES, have you consulted with them regarding this offer? ~~YES~~ / NO

The company takes community engagement responsibilities seriously and understands the importance of communication with the local communities where it operates.

While the company likes to be proactive with community engagement, it will react positively in the event that it is made aware of any impact on the local community.

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.

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.

As agreed with SEPA, the company intends to make a contribution of £5,500 towards SEPA's reasonable costs in dealing with the Enforcement Undertaking. Any contribution will be made within 30 days of acceptance of the offer.

Known Amount:

Date for payment:

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: _____

2/12/20

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/enforcementguidance.pdf>