

SEPA supports Scottish business adapt to public health emergency

06 April 2020

Warning that “if you deliberately do the wrong thing, you’ll get the uncompromising regulator your behaviour deserves.”

- SEPA confirms next steps in its response to the “biggest public health emergency in living memory.”
- SEPA will play its role in helping Scotland get through this public health emergency.
- SEPA will partner with other regulators, public and private sector organisations and communities to respond.
- Supporting national focus on food security, the provision of clean water and the maintenance of critical infrastructure and the support services on which we all rely.
- SEPA helping Scottish businesses adapt to this next period.
- Clear, short-term regulatory positions which recognise that where businesses can continue to do so, they should continue to meet their license obligations.
- Recognising that many will be unable to do so, they should prioritise conditions which directly protect the environment over those of an administrative nature.
- They should contact SEPA, work closely with us and document the choices and actions they take.
- SEPA knows regulated businesses are operating under extraordinary pressures and constraints and will prioritise helping businesses work through their challenges.
- Clear message to Scottish business – “if you try to do the right thing in this next period, you will find a helpful and supportive agency. If you deliberately do the wrong thing, you’ll get the uncompromising regulator your behaviour deserves.”

The Scottish Environment Protection Agency (SEPA) today [6th April 2020] confirmed the next steps in its regulatory approach in response to the COVID-19 pandemic.

In a strategic statement from SEPA Chief Executive, Terry A’Hearn and Chairman, Bob Downes, the agency outlines the philosophy it will follow to supporting the 33 sectors of the economy it regulates, in addition to the 13 critical national infrastructure sectors identified by Scottish Government. A separate ‘over-arching’ approach document outlines the agency’s approach to compliance, enforcement, monitoring, permitting and regulatory position statements in the immediate period.

The response, outlined on a new SEPA Coronavirus (COVID-19) website, aims to support the national focus on food security, the provision of clean water and the maintenance of critical infrastructure and support services by helping

Scottish businesses adapt in this next period.

The site will also host temporary regulatory positions and guidance which will be published in the coming days in response to specific issues across sectors and regulated businesses.

Terry A'Hearn, Chief Executive, Scottish Environment Protection Agency, said:

“Scotland, as are many nations, is facing a public health emergency unprecedented in recent times. SEPA will play our role in working together with other regulators, public and private sector organisations and communities to help Scotland respond. With our statutory purpose focused on protecting and improving the environment and human health in ways that, as far as possible, create social and economic success, we will help Scottish businesses adapt to this next period.

“The Scottish Government has designated 13 critical national infrastructure sectors vital to the functioning of society. Many of these are sectors we regulate and we'll help that national focus on food security, the provision of clean water and the maintenance of critical infrastructure and the support services on which we all rely.

“We know that all businesses we regulate are trying to operate in extraordinary circumstances. We know they are trying to look after the health of their own workforces. We know they may have supply-chain and other challenges.”

“So, where businesses are unable to fully meet their compliance obligations, they should prioritise conditions which directly protect the environment over those of an administrative nature. They should contact SEPA, work closely with us and document the choices and actions they take.

“The positions are a direct response to circumstances no-one wanted to see. We ask Scottish businesses to adapt responsibly and we expect the majority will. Our message is clear: if you try to do the right thing in this next period, you will find a helpful and supportive regulator. If you deliberately do the wrong thing, you'll get the uncompromising regulator your behaviour deserves.”

Mr. A'Hearn added: “we will continue to use a variety of means of checking and assessing compliance, including phone calls, issuing written advice, remotely managed technologies such as drones, targeted site and field visits, and other forms of intelligence gathering.

“We will be proportionate in our approach to enforcement and monitoring by regulated businesses and where SEPA is not fully able to undertake its planned monitoring, we will maintain a field and laboratory standby position. This will enable us to respond to incidents with the highest environmental risk and impacts on the health and wellbeing of communities.”

The updates can be found in full on SEPA's [Coronavirus \(COVID-19\) Response hub](#).

ENDS

NOTES TO EDITORS:

Compliance

SEPA is clear we expect everyone we regulate to make their best endeavours to meet their environmental obligations. If a regulated business is unable to meet all its obligations under SEPA's licence, permit or other authorisations (hereafter referred to as Permit) because of these exceptional circumstances, we expect it to:

- prioritise compliance with conditions which directly protect the environment over those which are indirect controls or more administrative in nature;
- alert us as early as possible if it believes it will be unable to meet any obligations and work closely with us on making choices and finding solutions;
- document choices made and actions taken.

If a regulated business behaves in line with the above, SEPA will take a proportionate and reasonable approach to how we assess compliance during COVID-19.

We will continue to use a variety of means of checking and assessing compliance including phone calls, issuing written advice, remotely managed technologies (such as drones, targeted site and field visits) and other forms of intelligence gathering.

Where environmental harm may have been caused as a result of actions taken, we expect regulated businesses at the end of the emergency to assess the extent of any harm and take actions to restore.

At the end of the emergency, we also expect regulated businesses to work with us on lessons learned to improve resilience and environment management in future working.

Enforcement

Enforcement action may still be considered to be appropriate by SEPA in respect of non-compliance with Permits or other environmental regulatory requirements during or after COVID-19. However, we recognise the challenging circumstances faced by regulated businesses and where we become aware of non-compliance (either through self-reporting or by another means) we will take a proportionate approach.

In making enforcement decisions we will consider our [Enforcement Policy](#) and [Enforcement Guidance in the context of COVID-19](#) and we will in particular take account of whether any non-compliance was unavoidable and solely as a direct result of the impact of COVID-19 on operations and did not, or was not likely to lead to significant environmental harm.

We anticipate that the vast majority of regulated business will

use their best endeavours to look after Scotland's environment and meet their environmental obligations.

Any business which does the opposite and deliberately takes the opportunity to cause environmental harm or in any way seeks to exploit COVID-19 will feel the full force of SEPA's powers.

Compliance Assessment Scheme

SEPA will continue to check and assess compliance during this period. However, we have decided to cease applying the existing Compliance Assessment Scheme in the 2020 calendar year. This suspension is intended to recognise the practicalities of the current circumstances and that SEPA will not be in a position to carry out the systematic compliance work required by the scheme this year. We cannot guarantee therefore that we could apply the scheme fairly or accurately. This decision has been taken now to provide a clear position for all.

However, as set out above, SEPA will use a variety of means to continue to check and assess compliance over 2020 and will consider over the coming period what sort of reporting on compliance is appropriate.

Monitoring

Regulated businesses

Many regulated businesses will have monitoring requirements set out in their permit and it is important that regulated business understand the impact their activities have on the environment. However, given the current exceptional circumstances, it may not be possible for monitoring to be undertaken across all sites and activities. Therefore we expect regulated business to:

- prioritise compliance with monitoring conditions which is specifically intended to protect human health and the environment from harm;
- alert us as early as possible if it believes it will be unable to meet any obligations and work closely with us on making choices and finding solutions;
- document choices made and actions taken.

If a regulated business behaves in line with the above SEPA will take a proportionate and reasonable approach to how we assess compliance with monitoring conditions during COVID-19.

SEPA's monitoring

During COVID-19, when it is not possible to fully undertake SEPA's planned monitoring programme, we will maintain a field and laboratory standby position. This will enable us to respond to incidents which have highest environmental risk and impacts on the health and wellbeing of communities. In addition, it will allow us to carry out appropriate monitoring of sites with known significant impact and those which may emerge as this emergency situation evolves. The extent of monitoring undertaken will be regularly

reviewed to ensure it continues to support compliance and enforcement decision making for the duration of this crisis.

Permitting

We are expecting our overall capacity to determine new Permits to be affected by staff absences and work will need to be prioritised according to the Scottish Governments 13 Critical National Infrastructure Sectors. These sectors are identified as particularly important to keep society functioning in this period. These include some sectors that SEPA regulates, such as those involved in securing food supply, the provision of clean water and the maintenance of critical infrastructure and support services.

Under the current circumstances we will not be able to provide the complete level of service that would normally be expected and therefore it is important that our permitting staff focus on those applications from these 13 sectors that are critical to support the nation's health, wellbeing and economic future.

You can help us do this by only submitting applications for activities that will be starting on the ground prior to 30 June 2020.

If your application does not fall into any of these categories and you still consider the need to make an application, whether it is for a new or an existing activity, please contact us early to discuss. Please note that site visits to provide pre-application advice will not be undertaken. However, we will continue to provide this advice for urgent pre-application discussions via the phone.

Temporary regulatory position statements

Where compliance with the requirements of Permits is not possible for an individual site(s), a type of activity or for a sector, and where a regulated business requires something specific in addition to this overarching guidance, we may temporarily take a specific regulatory position that any failure to comply with those requirements will not be treated as a non-compliance for compliance assessment or enforcement purposes. This will be where that non-compliance is unavoidable and solely as a direct result of the impact of COVID-19 and will not lead to significant environmental harm.

Enquiries relating to SEPA's COVID-19 response and our regulation are being managed through our dedicated email mailbox, covid19.regpos@sepa.org.uk