



Welcome to the Soils, Stones and C&D Fines Webinar

**Hosted by
Davidson Chalmers Stewart
&
Albion Environmental Ltd**



Agenda



10.00	Welcome & Introduction	Jane Bond
10.00-10.05	Speaker Introductions	Andrew/Chala
10.05-10.25	Why Care about waste soil & aggregates?	Albion
10.25-10.30	Open Questions	All
10.30-10.50	Incoming Soil & Aggregates – Waste or Product?	Albion
10.50-10.55	Open Questions	All
10.55-11.00	Introduction to DCS topics	Jane Bond
11.00-11.20	Construction and Demolition Waste Fines	DCS
11.20-11.25.	Open Questions	All
11.25-11.45.	SEPA's Enforcement Landscape	DCS
11.45-11.50	Open Questions	All
11.50-12.00	General Questions and Webinar Close.	DCS



Introductions



Why Care about Waste Soil & Aggregates?

Andrew Howlett, Albion Environmental Ltd

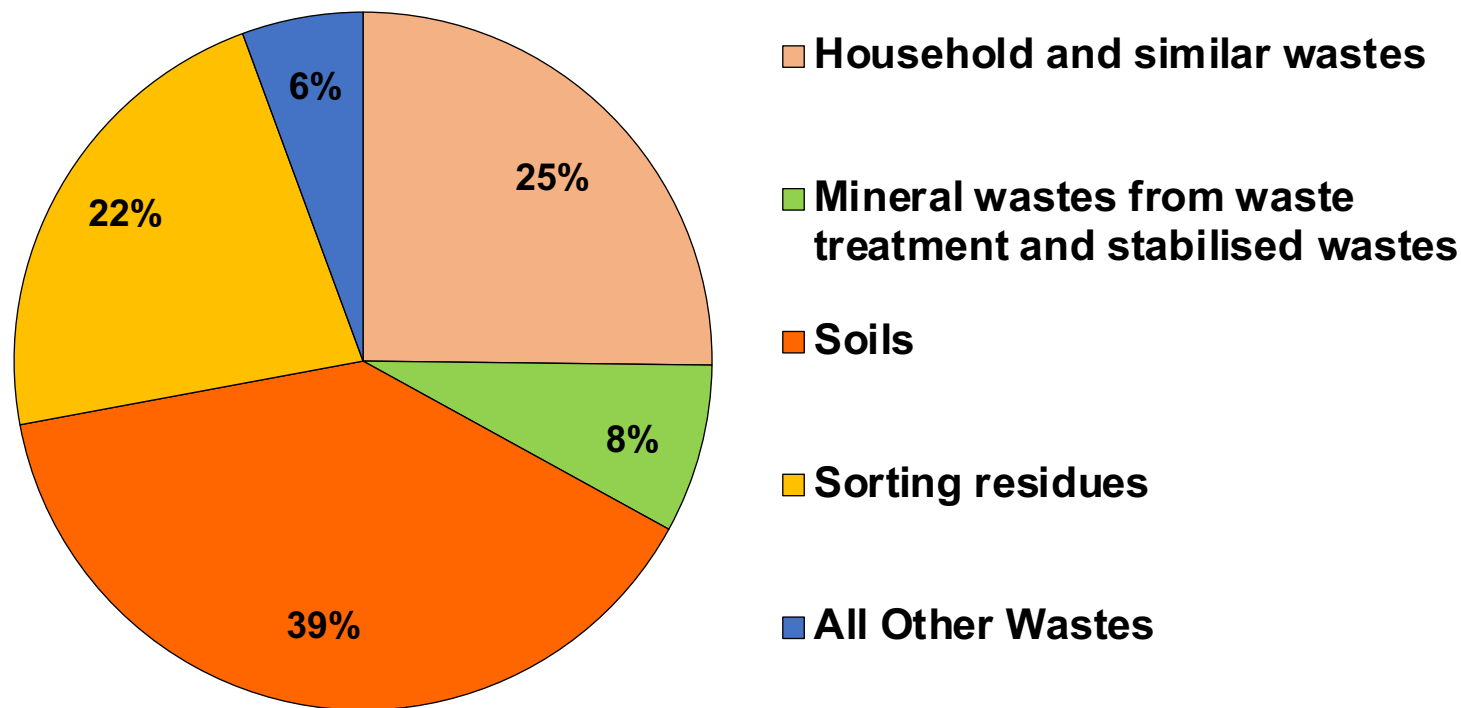


- 1. Why Care About Waste Soils & C&D Fines?**
- 2. Why Recycle Soils?**
- 3. So Why Does So Much Soil End up in Landfill?**
- 4. What Should we be Doing?**
- 5. How Can We Improve Soil Recycling Rates?**
- 6. Summary**



Why Care About Waste Soils and C&D Fines?

Waste Landfilled in Scotland - Summary Data 2019



Source: SEPA Waste Data, 20.09.2020



Why Recycle Soils?

- Soil is a non-renewable and limited natural resource.
- It holds 3 times as much carbon as the atmosphere.
- Reuse can reduce environmental impacts associated with importing soil and decrease CO₂ emissions by reducing transportation to disposal sites.
- The disposal cost for waste soils can amount to one of the most significant in-ground costs for brownfield developments.
- Reducing landfill capacity
- Responsibility under Duty of Care





So Why Does So Much Still End up in Landfill?

- Considered late in the design process
- Site investigations focus on risks to human health, water environment and foundation design etc.
- Paperwork required to achieve end of waste and/or to allow reuse on other sites.
- Space and time constraints
- Negative perception of recycled materials / inflexible specification





What Should we be Doing?

Step 1 – Compliance with legal requirements

- If a developer intends or is required to dispose of excavated soil and stones this material will likely be considered waste
- Therefore will be subject to Duty of Care - but what does this mean and do you currently comply?

Step 2 – Beyond compliance what can we do better?

- <https://www.sepa.org.uk/one-planet-prosperity/>



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Waste Producer

- Apply the Waste Hierarchy
- Prevent the escape of waste & prevent waste causing harm or pollution
- Complete a Waste Transfer Note/Consignment Note





Waste Producer

Describe the waste appropriately – “muck” is not an adequate description!



Duty of care: waste transfer note

Section A – Description of waste

A1 Description of the waste being transferred

MUCK AWAY

List of Waste Regulations code(s)

Section B – Current holder of the waste – T

By signing in Section D below I confirm that I have full
of the Waste (England and Wales) P

Apply the correct European Waste Catalogue (EWC) code. Refer to WM3 for guidance
landfill WAC must not be used for waste classification!

Only transfer waste to authorised persons



Waste Collector

- Apply waste hierarchy to waste that you collect
- Do not mix recyclable waste with other wastes
- Check transfer note is completed correctly
- Be registered to carry waste with SEPA
- Only transfer waste to authorised persons
- Take precautions to ensure waste does not cause pollution or harm to human health

Environmental Protection Act 1990 (as amended)
Waste Management Licensing (Scotland) Regulations 2011

Registration as a Professional Carrier of Waste

Please complete this form if you wish to register with SEPA as a professional carrier of waste under Schedule 4 of the Waste Management Licensing (Scotland) Regulations 2011

PLEASE COMPLETE AND RETURN THIS FORM TO:

Registry Department
Inverdee House
Baxter Street
Torry
Aberdeen
AB11 9QA

Tel: 01224 266600
Fax: 01224 896657
registryaberdeen@sepa.org.uk

Registry Department
Graesser House
Fodderty Way
Dingwall Business Park
Dingwall
IV15 9XB

Tel: 01349 862021
Fax: 01349 863987
registrydingwall@sepa.org.uk

Registry Department
Angus Smith Building
6 Parklands Avenue
Eurocentral
North Lanarkshire
ML1 4WQ

Tel: 01698 839000
Fax: 01698 738155
registryangussmith@sepa.org.uk

1. Contact Details of the Person, Company or Organisation that is the professional carrier or transporter

* designates mandatory fields

*Name:			
*Registered Office:			
Telephone:		*Postcode:	
E-mail address:			
Registered Charity Number (if applicable):			

2. Address of any other place at which you carry out your business

*Please give the address of any other place from which you carry out your business. If you have more than one site or office, please attach a list and tick here ☐.

*Address:			
		*Postcode:	



Waste Manager

- Apply waste hierarchy
- Do not mix recyclable waste with other wastes
- Ensure you hold appropriate permit, licence or exemption
- Manage waste safely without causing pollution of the environment or harm to human health
- Ensure transfer of waste into and out of your site has a waste transfer note and adequate description





How Can We Improve Soil Recycling Rates?

Where does responsibility lie for improving soil recycling rates?

- Government
- SEPA
- Local Authority
- Clients
- Designers, Architects, Engineers & Consultants
- House Builders
- Groundworkers
- Waste & Resource Management Industry
- All of the above???



Responsibility



How Can We Improve Soil Recycling Rates?

- Same recognition as other Sustainable Construction Practices
- Consider early on in the design process, include within site waste management plan
- Improve knowledge and understanding of onsite soils and their classification. Consider targeted soil waste/resource investigations





How Can We Improve Soil Recycling Rates?

- Incorporate time in development programme to segregate soils and consider soil treatment / improvement options
- Discuss disposal and reuse options with waste management contractors, remediation contractors and consultants specialising in waste soil classification and management





Summary

- Recycling of soils deserves more recognition in its importance in working towards more sustainable construction.
- As a minimum industry needs to comply with Duty of Care i.e. applying the waste hierarchy and ensuring wastes have been classified.
- All parties within construction and waste industry have a role to play in identifying opportunities to reuse soils and reduce waste.
- How can we within this sector better work together to achieve this?





Questions





Incoming Soils & Aggregates – Is it a Waste or a Product?

Andrew Howlett, Albion Environmental Ltd



1. Are Imported Materials a Waste or Product?

2. Does it Matter?

3. What Should be Requested / Provided?

4. If it is a Waste What Does the Receiving Site Need?

5. What to Watch for – Examples of Bad Practice?

6. Summary



Waste or Product?

Waste Materials

- A material is considered waste when the producer or holder discards it, intends to discard it, or is required to discard it.
- Excess soils and stone from development sites are generally regarded as waste and their use or disposal requires a waste management licence, permit or a registered exemption





Waste or Product?

Products / Not Covered by Waste Legislation

Examples include:

- **Aggregates** – If produced in line with the recycled aggregate quality protocol which sets out end of waste criteria for the production and use of aggregates from inert waste.
- **Greenfield Soils** – If handled in line with Regulatory Guidance – Promoting the Sustainable Reuse of Greenfield Soils in Construction
- **Successful End of Waste Case???**





Does it Matter?

- Unless you have an appropriate exemption or licence in place if you don't know the answer to this question you could be illegally depositing waste.
- Risk that imported materials are unsuitable for use
- Can result in fines, delays, loss of reputation etc.





What Should Developers be Requesting?

Aggregates

- If a recycled aggregate – Has it been produced in accordance with the Quality Protocol?
- Request confirmation and evidence, for example:
 - Recycling facilities permit / licence / exemption
 - Factory Control system, including a Statement of Production
 - Produced to an established specification or standard
 - Test records





What Should Developers be Requesting?

Greenfield Soils

- Has it come from a Greenfield site?
i.e. land that has not been previously developed and is uncontaminated.
- A site investigation must be undertaken to demonstrate that the soil is covered by this guidance. The onus is on the person excavating the soil to ensure that this is carried out.
- Request evidence e.g. a Phase 1 Desk Study





What Should Developers be Requesting?

Greenfield Soils

- Also need to consider whether your intended use complies with the guidance. For example:
 - Do you have planning permission?
 - Will its use be within upper limits included within this guidance i.e. 100-150mm for topsoil and 200-450mm for subsoil
- Has either supplier or receiver completed and submitted a SEPA Declaration of Compliance form prior to use?





What Should Developers be Requesting?

Soils – End of Waste???

- There is no quality protocol for soil
- An end of waste case could be submitted to SEPA for recycled soils. However, this is not a simple process!!





What Should Developers be Requesting?

As well as evidence to show they comply with waste legislation. The following should also be requested:

- Representative chemical testing. As a minimum speciated PAH, Speciated TPH, metals and Asbestos ID.
- Compliance with British Standards for Topsoil and Subsoil, where required.

Lab number	95079-1	95079-2	95079-3	95079-4	95079-5	95079-6
Sample id	A1	A1	A2	A3	A4	A4
Depth (m)	0.60	1.10	0.60	1.20	0.60	0.60
Date sampled	06/04/2021	06/04/2021	06/04/2021	06/04/2021	06/04/2021	06/04/2021
Text	Method	Units				
Arsenic (total)	CE127 ^h	mg/kg As	4.7	4.9	4.6	2.7
Boron (water soluble)	CE053	mg/kg B	1.6	0.5	0.9	0.7
Cadmium (total)	CE127 ^h	mg/kg Cd	1.6	<0.2	<0.2	<0.2
Chromium (total)	CE127 ^h	mg/kg Cr	73	70	72	68
Chromium (VI)	CE146	mg/kg CrVI	<1	-	<1	-
Copper (total)	CE127 ^h	mg/kg Cu	33	19	27	20
Lead (total)	CE127 ^h	mg/kg Pb	50	15	18	14
Mercury (total)	CE127 ^h	mg/kg Hg	<0.5	<0.5	<0.5	<0.5
Nickel (total)	CE127 ^h	mg/kg Ni	37	46	44	42
Selenium (total)	CE127 ^h	mg/kg Se	2.6	1.4	1.6	1.2
Vanadium (total)	CE127 ^h	mg/kg V	62	55	56	53
Zinc (total)	CE127 ^h	mg/kg Zn	865	66	58	49
pH	CE004 ^h	units	8.6	8.2	8.0	8.2
Cyanide (total)	CE077	mg/kg CN	<1	<1	<1	<1
Phenols (total)	CE078	mg/kg PhOH	<0.5	<0.5	<0.5	<0.5
Total Organic Carbon (TOC)	CE197	% w/w C	1.7	1.1	0.9	1.6
Estimate of OMC (calculated from TOC)	CE197	% w/w	2.9	1.8	1.5	2.8
PAH						
Naphthalene	CE087 ^h	mg/kg	0.24	<0.02	0.03	<0.02
Acenaphthylene	CE087 ^h	mg/kg	<0.02	<0.02	<0.02	<0.02
Acenaphthene	CE087 ^h	mg/kg	0.02	<0.02	<0.02	<0.02
Fluorene	CE087 ^h	mg/kg	0.02	<0.02	<0.02	<0.02
Phenanthrene	CE087 ^h	mg/kg	0.15	<0.02	<0.02	<0.02
Anthracene	CE087 ^h	mg/kg	0.06	<0.02	<0.02	<0.02
Fluoranthene	CE087 ^h	mg/kg	0.22	<0.02	<0.02	0.03
Pyrene	CE087 ^h	mg/kg	0.19	<0.02	<0.02	0.03
Benzo(a)anthracene	CE087 ^h	mg/kg	0.10	<0.02	<0.02	0.02
Chrysene	CE087 ^h	mg/kg	0.10	<0.03	<0.03	0.03
Benzo(b)fluoranthene	CE087 ^h	mg/kg	0.12	<0.02	<0.02	0.05
Benzo(k)fluoranthene	CE087 ^h	mg/kg	0.05	<0.03	<0.03	<0.03
Benzo(a)pyrene	CE087 ^h	mg/kg	0.08	<0.02	<0.02	<0.02
Indeno(1,2,3-cd)pyrene	CE087 ^h	mg/kg	0.05	<0.02	<0.02	<0.02
Dibenz(ghi)anthracene	CE087 ^h	mg/kg	<0.02	<0.02	<0.02	<0.02
Benzo(ghi)perylene	CE087 ^h	mg/kg	0.06	<0.02	<0.02	<0.02
PAH (total of USEPA 16)	CE087 ^h	mg/kg	1.46	<0.34	<0.34	<0.34
TPH						
VPH Aromatic (>EC5-EC7)	CE067	mg/kg	<0.01	<0.01	<0.01	<0.01
VPH Aromatic (>EC7-EC8)	CE067	mg/kg	<0.01	<0.01	<0.01	<0.01
VPH Aromatic (>EC8-EC10)	CE067	mg/kg	<0.01	<0.01	<0.01	<0.01
EPH Aromatic (>EC10-EC12)	CE068	mg/kg	<1	<1	<1	<1
EPH Aromatic (>EC12-EC16)	CE068	mg/kg	<1	<1	<1	<1



If it is a Waste what does Receiving Site Need?

Activities Exempt from licencing:

- Paragraph 7 - The treatment of land for agricultural benefit or ecological improvement
- Paragraph 9 - The reclamation or improvement of land
- **Paragraph 19 - Waste for construction and other “relevant work”.**

Exemption applies to the receiving site

- Application should be made at least 21 days before the works commence, registration lasts 12 months but can be renewed



Waste Management Licensing (Scotland) Regulations 2011
("the Regulations")

**Paragraph 19 - Form to register or renew an exemption
(Waste for construction and other 'relevant works')**

PLEASE RETURN THIS FORM TO YOUR NEAREST SEPA OFFICE (see list at end of form)

Please read the accompanying guidance note WMX-TG19 as it gives technical advice relating to paragraph 19 exemptions as well as SEPA's policy on certain topics. Please refer to the legislation for details of the exemption and your obligations. Other forms to give notice of separate exemptions under different paragraphs may be obtained from our website www.sepa.org.uk or from any SEPA office.

This notice **must** be received by SEPA at least 21 days before the activity is due to begin. A separate form must be filled out for each activity. SEPA will either:

- enter the particulars of the exempt activity on the register and confirm this in writing to you before the expiry of the 21 day period; OR
- serve on you a notice of refusal stating that registration is refused and giving reasons for that decision before the expiry of the 21 day period.



Exemption Criteria

- Soil must be suitable for use, assessed by site specific criteria.
Not just chemical contamination, but physical contaminants too.
May also have an engineering specification
- Soil must be non-hazardous, so WM3 assessment required
- Restrictions on timescales, volumes, depths and location of waste





What to Watch for – Common Issues

- Old test certificates or only one sample
- BS3882 analysis only
- WAC result – Not suitable for assessing suitability
- Supplier advises soil is from a Greenfield site but provides no evidence
- Supplier advises soil/aggregate is a product but provides no evidence



Summary

- Make sure you know whether the soil & aggregates you are selling or purchasing are a waste or a product.
- Ensure you have correct documentation on file and appropriate licence/exemption, if required
- If not sure seek further advice and support





Questions





Lawyers. For Business.

Chala McKenna, Senior Solicitor
Davidson Chalmers Stewart LLP



Construction and Demolition Waste Fines



What Are They?

**Why Are They
Problematic?**

**Relevant Legislation And
Guidance**

Risks





What Are They?

- Unavoidable residue of recycling and recovery process of C & D waste
- Disproportionately problematic
- Defined in the Qualifying Materials Order 2016 as ‘fractions of material produced by a waste treatment process that involves an element of mechanical treatment’



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Why Are They Problematic?

- Tarnished reputation. Regulator often associates them with criminal activity
- Composition and processes that generate them often poorly understood. Makes regulation strained and makes it difficult for regulators to support the industry with advice and guidance
- Subject to the lower tax rate if they qualify but many landfills unwilling to accept due to concern regarding the tax classification of the material they receive
- Currently no end of waste position on them. Circular economy - could be useful material if suitable



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Why Are They Problematic?

- Cost: Recovery processes often designed with aim that material is suitable for landfill at the lower tax rate
- No suitable alternative to landfill. The new tyres? Huge waste stream!
- Unscrupulous operators undermine legitimate business, stifle investment and creates an uneven playing field







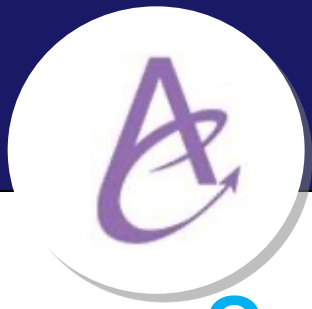
Relevant Legislation And Guidance

- Landfill Tax (Scotland) 2014 S14
- The Scottish Landfill Tax (Qualifying Material) Order 2016
- SLfT 2006 - Qualifying Material containing a small amount of non-qualifying material - Revenue Scotland Guidance Document (General guidance and the specific guidance on waste fines within that)
- Advice in relation to the particular circumstances should be sought



Qualifying Materials Containing A Small Amount Of Non-Qualifying Material

- Lower tax rate on certain material deemed non-hazardous and low polluting
- Applies to materials listed in and which meet the conditions listed in The Scottish Landfill Tax (Qualifying Material) Order 2016
- RS aware that some waste streams may arise with **small amounts of non-qualifying material** within them - Includes fines



Qualifying Materials Containing A Small Amount Of Non-Qualifying Material

Where:

- Unreasonable to have prevented contamination at source and
- Subsequently unreasonable/no practical way to remove contaminants whole load may be taxable at lower rate
- Any load which is hazardous waste must be taxed at standard rate



Qualifying Materials Containing A Small Amount Of Non-Qualifying Material

- Standard rate material must not have been added to lower rate material
- Only exceptions where:
 - Standard rate material needs to be used to contain lower rated waste **or**
 - Standard and lower rate materials are mixed at a Materials Recycling Facility are mixed prior to treatment to enable their treatment and segregation



Waste Fines

- **Qualifying fines**, which are chargeable at the lower rate of SLfT are defined to be either:
- Fines that consist entirely of qualifying material, **or**
- Fines that consist entirely of qualifying material **but for a small quantity of non-qualifying material**
- If entirely qualifying still requirements to LOI test first load and test again if waste stream changed, obtain and keep adequate WTN and issue pre-acceptance questionnaire and declaration



Waste Fines

- To qualify for the lower rate fines must:
- Meet conditions set out in the guidance and flowchart
- Fines originating from a producer that accepts both non-qualifying and qualifying mixed waste inputs may qualify if subject to satisfactory treatment process. Process must be detailed in questionnaire
- WM3 Classification - must be non hazardous (Article 3.2 of revised Waste Framework Directive (2008/98/EC))



Waste Fines

- Pre-acceptance checks:
 - Pre-acceptance questionnaire
 - Accurate WTNs
 - Visual inspection
 - LOI test
 - Keep the evidence





Risks Associated With Getting It Wrong

- ‘In cases of doubt the waste will be taxed at the standard rate unless it can be demonstrated that the waste qualifies for the lower rate of tax and that all practical measures have been taken to remove contaminants contained within the waste’

RS guidance SLfT 2006 Qualifying materials containing a small amount of non-qualifying material



Risks Associated With Getting It Wrong

- Operators of landfills liable for SLfT and cost is passed on to local authorities and businesses who dispose of waste at landfill sites
- Potential for landfill operators to look to businesses/local authorities who disposed of the waste at their site
- Potential for SEPA involvement if environmental harm/acceptance of waste in breach of permit conditions
 - enforcement and reputational damage



Take Home

- Waste fines are unavoidable residue
- Sometimes qualify for lower tax rate but strict procedures to be followed and evidence should be kept
- If there is any doubt, waste will be taxed at the standard rate unless can be demonstrated that waste qualifies for the lower rate



Questions





Lawyers. For Business.

Chala McKenna, Senior Solicitor



SEPA's New Enforcement Landscape





SEPA Enforcement Landscape

- Relevant Legislation and Policy Documents
- Tools now available
- Focus on the new tools



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Relevant Legislation and Policy Documents

- Regulatory Reform (Scotland) Act 2014
- Environmental Regulation (Enforcement Measures) (Scotland) Order 2015
- One Planet Prosperity - Our Regulatory Strategy
- SEPA's Enforcement Policy and Guidance
- Lord Advocate's Guidance to SEPA



Tools Now Available

- Advice and guidance
- FWL
- Statutory notices
- Vary authorisation conditions
- **FMP**
- **VMP**
- **Enforcement Undertaking**
- Report to the PF





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Key Features of New Tools Generally

- Monetary penalties are not a parking ticket type on the spot fine
- Different burden of proof - balance of probabilities rather than beyond reasonable doubt
- SEPA must carry out an appropriate investigation
- Issue of FMP or VMP precludes taking the case to the PF





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Monetary Penalties Procedure

- Notice of intent
- Written representations within 28 days
- Final notice and cost recovery notice if VMP
- Challengeable by way of appeal to Land Court





Fixed Monetary Penalties

- Appropriate for fairly minor offences specified in the order
- Where low level fine will suffice to change behaviour, no financial benefit and little/no environmental harm - e.g. administrative failures
- 3 levels of penalty for different offences prescribed in the order £300, £600 and £1,000



Variable Monetary Penalties

- Discretionary. Amount SEPA can impose for relevant offences set out in the order
- For more serious offences - upper end of scale but beneath level of offending for PF report
 - Where environmental harm has/is likely to be/likely to have been caused
 - No environmental harm but regulatory system undermined
 - Adverse impact on communities
 - Financial benefit - to remove this



Variable Monetary Penalties

- Minimum £1,000 and maximum of £40,000. Set out in the legislation creating the offence
- Weighting system: seriousness of the offence + aggravating factors – mitigating factors
- SEPA discretion
- Recovery of costs up to 30% of the fine level



Variable Monetary Penalties

- Offender can offer VMP undertaking
- Can appeal
 - the issue of the VMP
 - the level of the fine and
 - the cost recovery notice



Enforcement Undertaking

- For offences set out in the order only
- Responsible person voluntarily offers a solution
- Generally compliant persons/businesses. Must believe will comply
- Encourage positive behaviour, allowing businesses to use their resources to benefit the environment



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Enforcement Undertaking

- Tailored to the circumstances. Corporate responsibility
- 'Taking back control'
- SEPA discretion over whether to accept. No appeal
- If accepted the agreed actions become the terms of the undertaking
- Non compliance = other options back on table



Enforcement Undertaking

Not suitable if:

- significant environmental harm
- wider criminality
- includes a clause denying liability



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Enforcement Undertaking

- Should be offered as soon as possible. SEPA cannot accept if have already decided what enforcement action to take
- No 'protracted negotiations'
- If environmental harm/harm to human health this should be remedied wherever possible
- Must go 'beyond compliance'



Take Home

- SEPA have a lot more tools available to them
- Myriad of complicated legislation and guidance and SEPA has quite a bit of discretion
- Different burdens of proof and sometimes the option to offer a VMP undertaking/Enforcement undertaking
- Challengeable so seek help early



Questions





Lawyers. For Business.

Chala McKenna, Senior Solicitor
Davidson Chalmers Stewart LLP



Closing & Group Discussion





Thank You for Attending!

If you have further questions please don't hesitate to contact any of the team.



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