

# Scottish Environment LINK Response to SEPA's Consultation on Better Environmental Regulation



**14 February 2011**

## **Summary**

Scottish Environment LINK is the forum for Scotland's voluntary environment organisations, with over 30 member bodies representing a broad spectrum of environmental interests with the common goal of contributing to a more environmentally sustainable society.

LINK members welcome the opportunity to comment on this consultation on SEPA's Change Proposals for Better Environmental Regulation. We recognise the need for SEPA to adapt in response to its current budgetary pressures. However, we urge that changes to SEPA's services or operations do not compromise the protection and improvement of Scotland's environment. We sincerely hope that SEPA finds our comments constructive and we would be happy to meet to discuss these further.

Our responses to the consultation questions are detailed below but, in summary, Scottish Environment LINK:

- is extremely supportive of the proposals regarding tougher enforcement of environmental regulation and stronger sanctions for environmental crime. We agree that SEPA should be given powers to recoup costs from successful prosecutions.
- is concerned about proposals relating to the targeting of SEPA resources towards high-risk activities. This must not result in SEPA expending less resource on tackling environmental deterioration arising from activities that are considered to be low risk but that, cumulatively, have a detrimental environmental impact. We seek clarification from SEPA on how it intends to measure risk and how it will consider cumulative impacts.
- is concerned about proposals to reduce inspections and monitoring. This could reduce the detection of pollution incidents and environmental crime and, therefore, does not reconcile with SEPA's proposal regarding stronger enforcement.
- urges that SEPA ensures that the impact and success of any change to the regulatory regime is properly measured against environmental outcomes. It is crucial that any changes do not negatively affect biodiversity or the wider environment.

## Consultation Questions

### Question 1

**We believe that the current system of environmental regulation is unnecessarily complex and more costly to operate than it might be and that we should develop a world class, simplified and integrated, system of environmental regulation. Do you agree?**

Yes, it seems sensible to simplify and integrate the regulatory system. However, we could only support a system that enables SEPA to fulfil its duties to protect and improve Scotland's environment. We seek assurance as to how SEPA intends to assess the potential environmental implications of any changes to the system. We acknowledge that simplification and integration is likely to benefit SEPA's customers but improved customer service must not come at the expense of delivery of environmental outcomes. Furthermore, the simplification of bureaucracy must not reduce the likelihood of successful prosecutions and SEPA must ensure that the necessary audit trails are in place to support prosecutions.

### Question 2

**SEPA is proposing a new regulatory model. A risk assessment process will be used to assess which activities should be regulated at what level. The aim is to ensure that the level of regulatory control is allied to risk and operator compliance. Do you agree?**

We have concerns with the proposal to ally the level of regulatory control to risk as we are worried that this will mean that perceived low-risk activities that, cumulatively, can be considered high risk will not be subject to adequate regulatory control. It will be crucial for SEPA to ensure that 'risk' is adequately defined and assessed to overcome this and we urge that it takes into account factors such as cumulative impacts and operator performance when developing its risk framework. The issue of agricultural diffuse pollution, which has been identified as a significant pressure on Scotland's water environment<sup>1</sup>, illustrates this point. A single breach of a diffuse pollution regulation within an individual field on a farm could be considered low risk. However, the cumulative impact of such breaches at a catchment scale is clearly significant. We seek clarification from SEPA as to how it will judge whether activities are low or high risk and what steps will be taken to ensure that cumulative impacts are properly considered.

### Question 3

**SEPA believes that far greater use, where possible, could be made of statutory obligations (e.g. General Binding Rules), notifications and registrations for lower risk sites. We consider these to be more proportionate and that they can reduce costs. Do you agree with this approach?**

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<sup>1</sup> Scotland's River Basin Management Plan [http://www.sepa.org.uk/water/river\\_basin\\_planning.aspx](http://www.sepa.org.uk/water/river_basin_planning.aspx)



We are concerned that reliance upon statutory obligations, such as General Binding Rules, may not provide sufficient environmental protection. As outlined in our response to Question 2, we seek assurance from SEPA as to how it intends to measure risk and whether this will take cumulative impacts of perceived low risk activities into account.

In addition, we would like to stress the importance of ensuring that the various sectors and operators are aware of their requirement to meet the statutory obligations. SEPA's recent work in the priority catchments has identified a high level of breaches which generally appears to be due to poor awareness of the regulations rather than deliberately flouting the law. We are sure that SEPA will learn from this work on how best to raise awareness of, advise and enforce the regulations.

#### **Question 4**

**We intend to change our approach to site inspections, aligning more closely to the generally lower levels found across Europe, developing an audit based approach and retaining the flexibility to increase the frequency of inspections if we feel we need to. Do you agree?**

We are extremely concerned by the proposal to align more closely to the lower inspection rates associated with other European countries. A recent review<sup>2</sup> of how various European countries are implementing the Water Framework Directive indicates that Scotland is faring better than other countries. We are concerned that reducing the level of inspections across Scotland could result in weaker environmental protection, which could consequently contribute to failure to deliver WFD objectives. Importantly, we ask how SEPA would propose to monitor the environmental consequences of any reduced inspection rate and we would be worried that environmental degradation could be underway before it is detected.

#### **Question 5**

**We intend to explore the feasibility of more operator self monitoring, where this is appropriate. Initially this will focus on the water environment. Do you agree?**

We are generally supportive of SEPA exploring the feasibility of operator self-monitoring provided that any feasibility study fully considers the environmental consequences. We urge that any such process is transparent and that results are made publicly available.

#### **Question 6**

**Do you support our proposal to use risk assessment to inform how we use our monitoring resources, resulting in a better balance of effort, with less**

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<sup>2</sup> European Environmental Bureau (2010) 10 Years of the Water Framework Directive: A Toothless Tiger? - A Snapshot Assessment of EU Environmental Ambitions

## **water monitoring and, where appropriate, increased air, soil and climate change monitoring?**

We are extremely concerned that a reduction in water monitoring effort could compromise SEPA's ability to deliver WFD objectives. We seek clarification from SEPA on how it expects this proposal to affect identification of new pressures on water bodies and assessments of whether implemented River Basin Management Plan measures are effectively addressing existing pressures. Furthermore, it is of concern that a reduction in water monitoring would reduce the detection of aquatic invasive non-native species (INNS). Early detection and rapid response to INNS is far more cost-effective<sup>3</sup> than eradication once a species is already established. Therefore, in terms of INNS alone, it would most certainly be a false economy for SEPA to reduce water monitoring.

### **Question 7**

**SEPA is proposing to adopt a risk-based approach to regulation, featuring less intervention for high performing sites and operators, with reduced intensity of inspections for lower risk sites. We want to support this with enhancement of our enforcement activities and robust penalties for non-compliance. Do you support this approach?**

We strongly welcome the proposal for stronger enforcement. However, we do not see how it can be compatible with the proposal to reduce the intensity of inspections because, clearly, non-compliance cannot be addressed if it remains undetected. While we recognise that this proposal is only for low-risk sites, we reiterate our concerns about cumulative negative effects of 'low risk' activities.

We agree with SEPA that robust penalties are essential to deter and punish offenders and we feel that the Scottish judicial system must fully support SEPA in this by taking environmental crime seriously, imposing strong fines and ensuring full access to justice without prohibitive cost in line with the Aarhus Convention. We believe that it is crucial for Scottish Courts to have the necessary powers to force a person or company to remediate any damage to the environment if they are successfully prosecuted. Consideration should also be given to variable civil penalties linked to financial turnover, thereby allowing proportionate disincentives for larger businesses/operators. Finally, we urge that the necessary powers are in place to revoke both single site and operator licenses and that these are fully utilised by SEPA.

### **Question 8**

**SEPA's costs of enforcement are currently funded by grant-in-aid, whereas equivalent agencies in the UK can recover the costs of investigation from operators who have been successfully prosecuted. In addition, our work on developing cases for prosecution currently isn't chargeable. We consider that SEPA's costs for such work should be fully recoverable. Do you agree with this approach?**

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<sup>3</sup> <https://secure.fera.defra.gov.uk/nonnativespecies/downloadDocument.cfm?id=487>



Yes, we fully agree that SEPA should be able to recover costs from those who have been successfully prosecuted.

### **Question 9**

**SEPA wants to move towards integrated permissions. This would include the use of single site licences (e.g. for sites currently requiring multiple permits) and operator or network level licences. Do you agree with this approach?**

We agree that this approach seems sensible provided that it does not, in any way, affect the delivery of environmental objectives.

### **Question 10**

**Do you agree that, to cover these costs, an annual charge should continue to apply to all operators deemed low risk or subject to simpler types of permits?**

Yes, we agree with this and would support a proportionate system whereby charges reflected risk and past performance.

### **Question 11**

**Do you agree that we should offer and be able to charge for such services?**

We are concerned that the provision of, and charging for, such services would serve to place SEPA in the field of environmental consultancy. As a regulator, SEPA must be entirely objective and remain independent of the interests of operators.

### **Question 12**

**We want to be more flexible in the use of our monitoring resources in order to effectively monitor emerging issues and respond quickly to incidents. Do you agree?**

Yes, we support the proposal that SEPA will aim to improve its ability to detect emerging issues and respond rapidly to incidents. SEPA must ensure that, whatever regulatory framework is in place, it has the capacity to respond to concerns raised by the public regarding pollution incidents and other such matters. SEPA must investigate and report back to the public on such concerns as this will be critical in building public support and confidence and, thus, in helping to protect the environment.

### **Question 13**

**SEPA has a wide range of environmental expertise and we believe that we could charge for certain specialist and technical advisory services that are currently funded by grant-in-aid. Would you support SEPA charging for such services in the future?**

We have no strong views on the charging model but we urge SEPA to give full consideration to the potential consequences of introducing charges for specialist and technical advice. We would be concerned if this resulted in operators not seeking essential advice simply to avoid the charges.

#### **Question 14**

**We are proposing to apply SEPA's charges proportionately, depending on the level of environmental risk posed by the regulated activity, on operator performance and on the regulatory effort required. Do you agree?**

Yes, we would support a scaled system that reflects risk and past performance, in line with the 'polluter pays' principle. We suggest that charges should be applied so that operators who are securing environmental benefits would be charged less.

#### **Question 15**

**What are your views about the key features of a future funding model for SEPA?**

- 1. Charging based on risk and performance**
- 2. Flexible use of funding**
- 3. Cost recovery**

We recognise that SEPA need to develop a funding model to allow recovery of costs currently borne by Scottish Government. The proposal to introduce higher fees for the most hazardous activities and poorest performing sites seems sensible and we fully support recovery of costs from operators who have been successfully prosecuted. However, we urge that any changes to the current funding model are adequately monitored in terms of their impact on delivery of environmental outcomes to ensure that SEPA's environmental protection obligations are not undermined. We are concerned that the implication of this question might foreshadow a situation where SEPA has no grant-in-aid income. SEPA's wider role as environmental regulator and adviser to Government is one that will still require grant-in-aid funding, and we seek clarification that both Scottish Government and SEPA expect this wider public interest role to continue, and to be funded by general taxation.

#### **Question 16**

**Do you agree that SEPA should be able to cover its costs across its income streams to enable it to allocate effort on the basis of environmental harm, including tackling environmental crime such as 'freeloaders' (i.e. who operate illegally without a licence)?**

We have no strong views on how SEPA covers its costs provided that method(s) employed do not compromise environmental protection or improvement. As mentioned elsewhere in this response, we seek reassurance regarding the allocation of effort on the basis of environmental harm, particularly if this were to result in less effort being directed towards the enforcement of GBRs. Although

GBRs cover the activities that are considered lower risk, breaches of GBRs can still bring significant pressure on the environment, as is demonstrated by the issue of agricultural diffuse pollution.

### **Question 17**

**Do you think that there are additional routes to deliver better environmental regulation that SEPA can explore over and above the changes that we outline in this consultation?**

We are sure that SEPA will be exploring the ways in which it can deliver better environmental regulation with other SEARS partners. One of the advocated benefits of the SEARS approach is the integration of inspections by various agencies and thus an overall reduction in numbers of inspections required. Co-operation across SEARS should assist in reducing the number of inspections undertaken by each agency while not actually reducing the level of inspections taking place on the ground. Farm inspections to check compliance with General Binding Rules could also gain information on any cross-compliance breaches, and vice versa, and this sharing of information should be making resource savings for all SEARS partners.

As mentioned previously in our response, SEPA should explore ways in which civil penalties can be linked to financial turnover of operators in order to ensure proportional disincentives.

#### **This response is supported by:**

RSPB Scotland  
Soil Association Scotland  
Scottish Wildlife Trust  
WWF Scotland  
Friends of the Earth Scotland  
Rivers and Fisheries Trusts of Scotland  
Bumblebee Conservation Trust

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