

16 February 2011

Better Environmental Regulation Consultation
SEPA Corporate Office
Erskine Court
The Castle Business Park
Stirling
FK9 4TR

Dear Sir/ Madam

Better Environmental Regulation: SEPA's Change Proposals

The Scottish Council for Development and Industry (SCDI) is an independent membership network that strengthens Scotland's competitiveness by influencing policies to encourage sustainable economic prosperity. Its membership includes businesses, trades unions, local authorities, educational institutions, the voluntary sector and faith groups.

SCDI welcomes these proposals from the Scottish Environment Protection Agency (SEPA) for better regulation. SCDI recognises that SEPA faces significant challenges in fulfilling its role of protecting and enhancing Scotland's environment, for the benefit of Scotland's people and its economy. The Scottish Government's overarching purpose for Scotland's public services is increasing sustainable economic growth and, in the context of budgetary pressures, it is essential that SEPA is able to change the way it regulates to improve, simplify and better integrate the environmental protection services for Scotland.

SEPA's proposals to focus on activities with higher environmental risks, reduce effort on better performers and lower risk activities, and provide best value for Scottish taxpayers and charge payers, are widely endorsed. SEPA and Scottish industry currently operate within a plethora of environmental regulations which have accumulated over recent decades. This risk-based, proportionate approach, applied in a common sense manner, would reduce the regulatory burden for SEPA and the vast majority of businesses, while safeguarding and sustaining the great improvements achieved in Scotland's environment.

SEPA has strengthened its engagement with a number of sectors of the Scottish economy in recent years and the progress which has been made is appreciated by them. These proposals seek to build on this approach and SCDI warmly welcomes SEPA's commitment to better understand regulated customers and why they are compliant or not.

SCDI supports the view that education and sharing information widely is better and more effective for a large majority of non-compliant businesses. We welcome the greater emphasis on facilitating and enabling and not only policing. SCDI strongly supports SEPA's approach to recognising, rewarding and promoting best practice. Tougher enforcement powers should be made available for the criminal and genuinely negligent.

While welcoming these proposals, there is a concern that SEPA's permits do not always align with and are not always proportionate to environmental risk. SEPA's regulation, in such cases, may be based on the risk of operators breaching the permit requirements rather than the risk of negative environmental impact, and companies may devote significant resources in an effort to comply with their permit which they would more usefully spend in improving their environmental performance. SCDI has been informed by one multinational operator of its concerns that, because the challenges of compliance in Scotland are disproportionately higher than for their permits elsewhere in Europe and worldwide, the costs involved are making new investment in Scotland less competitive. In supporting the proposed changes, SCDI prefaces its answers by stating that SEPA should ensure that its regulation is based on the risk of negative environmental impact.

In response to SEPA's specific questions, SCDI makes the following comments:

Question 2

Yes, but see comments above on the need to ensure that regulation is focussed on the risk of negative environmental impact rather than simply operator compliance with a permit.

Question 3

Yes, far greater use of statutory obligations would be more proportionate. The scope of General Binding Rules could also be extended to cover more activities on low risk sites.

Question 7

Yes, but see comments above on the need to ensure that regulation is focussed on the risk of negative environmental impact rather than simply operator compliance with a permit.

SEPA's enforcement activities should be targeted on those rogue businesses which are genuinely "criminal" or "chancers", with more information, advice, guidance and support for those businesses which are serious about improving their environmental performance.

Question 8

SCDI would support the "polluter pays" principle of recovery of the costs of developing a case for prosecution if that prosecution has proved successful. SCDI would seek reassurances that the principle would be applied in a way which recognises the distinction between "criminal" or "chancer" and "confused" offenders. SCDI believes that this should be limited to recovery of SEPA's costs rather than all of a court imposed penalty.

Question 9

Yes, SCDI would strongly welcome a move towards integrated permissions for site.

Question 10

Yes, but there must be consultation on the level of the proposed annual charge and it should be made clearer how this might work in practice across regulated activities.

Question 13

Charging for SEPA services is accepted in principle, but the benefits across a range of regulated activities should be carefully considered. Charging should be assessed on a case-by-case basis. Where existing no-cost arrangements are working well and are benefiting both the industry sector and SEPA, it makes sense to continue on this basis.

Question 14

Yes, SCDI agrees that charges should be proportional to environmental risk. At the same time, it should be ensured that regulation is also focussed on the risk of negative environmental impact rather than simply the operators' compliance with their permit.

SEPA should consult on how it will assess risk and charges for regulatory effort. SEPA must be able to clearly identify the environmental risk posed by each regulated activity.

Question 15

Yes, but only after detailed consultation with business on the level of charges and the assessment of risk takes place. Charging and cost recovery by SEPA must be transparent.

Businesses seek reassurances that changes to the funding model are not simply designed to make businesses compensate for reductions in the Scottish Government's grant-in-aid.

Question 16

SCDI believes that the principle of cost recovery should be applied in a way which recognises the distinction between "criminal" or "chancer" and "confused" offenders.

A new, flexible funding model for SEPA is accepted as necessary, but explicit cross-subsidy of regulatory activity should seek to maintain the polluter pays principle.

Question 17

There may be a case for considering whether some of the duties and permits currently undertaken by other bodies should be integrated within SEPA to create a one-stop shop. SCDI has been supportive of an enhanced role for SEPA in flood prevention projects.

Conclusion

SCDI looks forward to the opportunity to provide detailed comments from members on more developed proposals and would be happy to facilitate SEPA's dialogue with them.

Yours sincerely

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