

OVERARCHING PRINCIPLES FOR TEMPORARY REGULATORY POSITION STATEMENTS

Background

SEPA has issued a [COVID-19 philosophy](#) that confirms that SEPA's focus will be to make our best contribution to helping our nation get through this public health emergency in a way that protects and improves Scotland's environment.

SEPA recognises that during a significant outbreak of COVID-19 the ability of operators to run their operations may be compromised by a lack of available staff, and/or the need to protect staff and minimise transmission of the COVID-19 virus.

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.

To help guide regulated businesses, SEPA has [published guidance](#) on what SEPA's COVID-19 philosophy means for the core parts of our regulatory business - compliance, enforcement, monitoring and licencing.

While this guidance will provide flexibility to manage many issues, there may be certain circumstances where a more specific temporary regulatory position may be needed. This document sets out the circumstances when we would consider this.

Temporary regulatory positions

Where compliance with the requirements of Permits or with other environmental regulatory requirements 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.

We are only likely to consider taking a temporary regulatory position where we are satisfied that:

1. they have made their best endeavours to meet their environmental obligations;
2. they will adequately manage any risks of harm to the environment or human health arising from the non-compliance.

Where we take a temporary regulatory position

If we take a temporary regulatory position we expect the business or individual to:

1. comply with conditions attached to a temporary regulatory position;
2. continue to meet all other Permit conditions or other environmental regulatory requirements not covered by a temporary regulatory position or by the [COVID-19 guidance on compliance, enforcement, monitoring and licencing](#) or any other guidance;

3. return to compliance with the conditions set out in Permits or other environmental regulatory requirements as quickly as possible, at the end of the emergency. Any regulatory position we take will be temporary and we expect the operator to return to compliance as quickly as possible.

Where we take a temporary regulatory position we reserve the right to depart from it and to take appropriate action to avoid any risk to human health and the environment.

The terms of any temporary regulatory position may be subject to periodical review and be varied or withdrawn, for example in light of changes in circumstances during the outbreak; technological, regulatory or legislative changes; future government guidance; or experience of its use.

SEPA reserves its discretion to depart from this position at any time, for example, in order to take appropriate action to avoid any risk of pollution or harm to human health or the environment.

SEPA will generally provide notice in advance of its intention to vary or withdraw any temporary regulatory positions, but on occasions may require to do so without providing notice.

We will normally publish temporary regulatory positions on [SEPA's COVID-19 hub](#) on our website.