

## SEPA'S CONSULTATION ON A REVISED DRAFT ENFORCEMENT POLICY

The Scottish Environmental Services Association ("SESA") is the sectoral trade association representing Scotland's managers of waste and secondary resources, a sector with an annual UK turnover of around £5 billion. SESA's Members seek to align economic and environmental sustainability through delivering compliance with relevant waste and environmental legislation.

SESA's Members aim to exceed the minimum requirements of the law. They are all, for example, subject to a binding Code of Conduct as Members of ESA and also report on environmental indicators developed by the Green Alliance. Our Members have invested in externally verified environmental management systems and, through published annual environmental reports and otherwise, are achieving much greater transparency in their environmental performance.

SESA believes that an effective regulatory regime is the single-most important driver for Scotland to develop a resource efficient economy. The sector is overwhelmingly driven by regulation which sets the standards for how waste should be managed and which sets sanctions for those who break the rules. To process and treat waste in different ways, major investment is required by our industry. To make that investment our industry requires a clear and precise legal framework and the certainty that there will be zero tolerance of environmental criminals who deliberately flout the rules. Without effective regulation and appropriate sanctions for environmental criminals there would be no market for waste management services.

In order for regulation to work effectively, regulated industry needs to know that the rules are being rigorously and consistently enforced to ensure a level playing field for all operators. Scotland's waste management industry needs a focused environmental regulator providing high quality and value for money regulatory services to industry on a nationally consistent basis. It is important that SEPA is properly resourced to enforce the rules and enforcement decisions must be consistent and transparent.

SESA's response to the specific consultation questions are as follows

### **Environmental Justice**

*Question 1- Do you have any comments on which aspects of environmental justice SEPA should consider as a priority?*

SESA welcomes a revision to the enforcement policy to incorporate environmental justice into SEPA's overall enforcement approach.

SESA believes that SEPA does have sufficient enforcement tools, but does not sufficiently focus resources on dealing with individuals and organisations deliberately committing environmental crimes for financial gain. As a priority, SEPA's enforcement policy must address this.

Currently, the overwhelming perception is that, rather than focus on illegal activity, inspectors have concentrated their efforts on the regulation of minor infringements by legitimate operators and it is still too often the case that SESA's Members are obliged to

operate to exacting technical standards while marginal operators working to much lower standards are unchallenged.

Considerable financial gains can be made by environmental criminals, which directly undermine the legitimate operations of responsible waste managers. The regulated industry SESA represents is among the many victims of environmental crime.

### **SEPA's Enforcement Philosophy**

*Question 2- Do you have any comments on SEPA's preferred enforcement style and overall approach?*

No comment.

### **SEPA's Enforcement Principles**

*Question 3- Do you have any comments on this section or the new sections included?*

*Question 4 - Do you have any comments on the importance of setting out enforcement positions alongside the introduction of new duties?*

In general terms SESA welcomes the principles: our major concern is that these broad statements of intent must be translated into practice which allows our sector to develop.

SESA's Members indicate that, unfortunately, SEPA is still some way off from providing a consistent and transparent regulatory service. In particular Members highlight continuing inconsistencies in enforcement activity.

Furthermore, SESA would welcome a stronger intent to have an enforcement position available at the time of introduction of a new regulatory regime. Timely implementation of regulations must be complemented by a clear and consistently applied enforcement position to provide SESA's Members with the confidence and certainty to invest in the provision of waste management solutions.

SESA welcomes SEPA's intention to adopt a stricter stance on enforcement action against the late or non-return of data. However, SEPA should ensure the requirements to submit data is aligned with the production of regulations and associated guidance. Furthermore, the collection of data should, where possible, make use of existing data returns of waste arising as duplication of requests for information places onerous demands on waste producers.

### **Referrals for prosecution**

*Question 5- Do you have any comments on this section, or in particular the circumstances set out under which SEPA would normally seek prosecution?*

SESA welcomes the emphasis within the enforcement policy to seek the prosecution of illegal sites and activities, for the reasons outlined in our response to question 1.

## **Improving Enforcement Outcomes**

*Question 6- Do you have any comments on these commitments?*

*Question 7- Do you have any views on the issues SEPA should be aware of in taking these commitments forward?*

Whilst using the powers of the courts to take action against companies is a powerful deterrent, this should not be at the expense of SEPA's normal administrative notices and powers. Resource-intensive court action could be avoided if the full extent of SEPA's current powers and administrative notices were adequately applied and enforced.

## **Improving the use of enforcement information**

*Question 8- Do you have any views on SEPA's current reporting of enforcement information and how it could be improved?*

SESA is disappointed that it appears that the balance of regulatory effort is concentrated on responsible operators rather than stamping out illegal activity. In order to ensure the wording of the enforcement policy is translated into deeds, SEPA should report on its progress in working to its enforcement principles on an annual basis and the Scottish Executive should carry out a regular audit of SEPA's operations against these principles.