

Response ID ANON-EEGJ-WV6U-K

Submitted to **Consultation on the revised guidance on the use of enforcement action**
Submitted on **2020-12-15 10:25:55**

Outline of proposed guidance to determining the level of VMP

1 What is your name?

Name:
Hamish Martin

2 What is your email address?

Email:
info@rmascotland.co.uk

3 What is your organisation and interest in our enforcement consultation?

Industry/trade representative body

Please specify organisation or other interest:
Resource Management Association Scotland (RMAS)

Previous consultation

1. Process

4 Are you satisfied the guidance clarifies how co-operation will be assessed?

Yes

Share your thoughts with us:

This point was made clearer at the workshops held by SEPA. This was down to a question and answer session where examples have been given. Self reporting, other than that required as a condition of a permit, does count as a mitigating factor. Cooperation should be a mitigating factor as this sort of behaviour should be rewarded. Otherwise, unless you have a defence where is the incentive to, for example, go to an interview under caution.

We believe that the present wording and position is a welcome departure from previous draft guidance suggesting delay in requests for information would be a deemed to be non-cooperative behaviour.

The guidance should state that this would not be considered non-cooperative as delay could be due to taking legal advice or advice from consultants or simply gathering documentation.

Any decisions made in this area could be shared at appropriate points to report practical experience of what worked and gain input from practitioners and experts to ensure the work is kept under fair review.

5 Do you agree with our approach to calculating weightings?

Yes

Share your thoughts with us:

The calculation for weighting seems fair and provides an element of a structure and methodology to the process. Again, the workshop explained an amount of this clearly and we requested information on how calculation will be made and requested regular input from sector representatives. It was stated that this would not be considered but we would respectfully request it is considered as an independent assessment and regular review for the process.

6 Are you satisfied the process to determine a VMP is fair, proportionate and that all relevant factors have been covered?

Yes

Share your views with us:

This process of consultation has been more engaging and helpful. I think it is also important to point out that reference should be made to the advice of the Lord Advocate on these matters.

2. Financial benefit

7 Are you content that financial benefit will be calculated fairly and that we will manage commercially sensitive documents appropriately?

Yes

Share your thoughts with us:

3. Governance

8 Do you agree our proposed process is addressing proportionality and consistency?

Yes

Share your thoughts with us:

SEPA have said verbally that there will be a higher management/ peer group which will oversee the process and decision making. It would be useful to have more detail of this in the guidance. If operators believe there is unfairness and inconsistency this will result in more appeals which is more time consuming for everyone.

The guidance and workshop suggests that there is a right to appeal in the land courts but this right may be negated if SEPAs powers are "too discretionary."

9 Do you have any comments on the other changes highlighted in our Guidance on the use of enforcement action?

Share your thoughts with us:

Providing as much advice and guidance on the process is helpful. Examples clarify the operation, review and methodology used to operate VMPs fairly and productively. The sector would like to see illegal operations and operations driven from the industry, but they also wish to see VMPs operated fairly and consistently and as much subjective decision making removed from the process. RMAS respects that there is a need for elements of confidentiality in the legal process or some technical aspects but still believes that independent review could be added into the process to ensure the points raised in the consultation are addressed by expert operators in the sector giving independent views on calculations and application of proportionate and fair decision making.

These comments are similar in respect of sharing the toolkit for calculating financial benefit. It is recognized that this could be difficult but it provides for an open and consultative regulatory process.