

SEPA'S REGULATORY APPROACH DURING COVID-19

REVIEW AND UPDATE

1. BACKGROUND

SEPA is committed to supporting everyone we regulate during COVID-19 in ways that maintain protection for 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.

To support businesses through the pandemic, SEPA published on 6 April 2020 a COVID-19 Philosophy alongside over-arching guidance on regulation during the pandemic. Together, these set out how SEPA would regulate during the pandemic and what was expected of regulated businesses. The philosophy and guidance were supported by 15 Temporary Regulatory Position Statements (TRPSs) that were prepared for specific circumstances where more detail was required.

In SEPA's COVID-19 Philosophy, we stated that we would keep all guidance and positions under review and that we would publish a report at the end of the pandemic setting out how they have been used and of the environmental outcomes of the crisis. We are not yet at the end of the pandemic and so this document is an update which sets out the changes that we are now making to our regulatory philosophy, guidance and positions in light of experience. A full report will be prepared once the public health emergency is over.

With the UK leaving the transition period with the EU on 31st December 2020, we are also using this review and update to bring our COVID-19 and EU exit regulatory approaches together.

In summary, SEPA's updated approach is:

SEPA expects people to have business continuity arrangements in place to ensure compliance with their SEPA permit or other environmental regulatory requirements during EU exit and COVID-19. We are clear we expect everyone we regulate to continue to comply with Scotland's environmental laws.

Where compliance with a SEPA Permit or other regulatory requirement is not possible for an individual site(s), a type of activity or for a sector, we may temporarily take a 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 EU Exit and/or COVID-19 and will not lead to significant environmental harm.

2. COVID-19 PHILOSOPHY, OVERARCHING GUIDANCE AND PRINCIPLES FOR ADOPTING TEMPORARY REGULATORY POSITION STATEMENTS

SEPA's COVID-19 Philosophy provided the context for all guidance and positions we adopted during the pandemic. The overarching guidance set out in more detail what the SEPA COVID-19 Philosophy meant for the core parts of our regulatory business: compliance, enforcement, monitoring and licencing.

Published alongside the philosophy and guidance was a set of principles of the circumstances when SEPA would consider the adoption of a TRPS. These principles ensured that TRPSs were only considered where we were satisfied that non-compliance with a SEPA authorisation was unavoidable and solely as a direct result of the impact of COVID-19 *and* where an operator had made best endeavours to meet their environmental obligations and was managing the risks of harm to the environment from the non-compliance.

In the philosophy and overarching guidance SEPA was clear what it expected of regulated businesses:

“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 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.*

If a regulated business behaves in line with the above, SEPA will take a proportionate and reasonable approach to how we assess compliance during COVID-19”.

Although we are still in the grips of the pandemic and restrictions still apply in many sectors of the economy, most of our regulated businesses have now very successfully adapted to the conditions and are operating differently, but in a way that enables them to ensure compliance with their environmental obligations. SEPA has also put in place arrangements to enable our staff to continue to work with operators remotely and to recommence site work in ways that meet the COVID-19 protocols.

We consider it appropriate therefore to revise the COVID-19 Philosophy and overarching guidance to reflect this adaptation and in recognition that they are no longer appropriate for the current stage of the pandemic. We also consider it the right time to set out our revised approach in the context of EU Exit, so that we are able to support businesses with regulatory issues they may encounter as the UK leaves the transition period with the European Union.

ACCORDINGLY, THE COVID-19 PHILOSOPHY, OVERARCHING GUIDANCE AND PRINCIPLES DOCUMENTS ARE ALL BEING WITHDRAWN.

They are being replaced by a new document: *“Principles for Regulatory Approach to EU Exit and COVID-19”*. This sets out an updated position:

“SEPA EXPECTS PEOPLE TO HAVE BUSINESS CONTINUITY ARRANGEMENTS IN PLACE TO ENSURE COMPLIANCE WITH THEIR SEPA PERMIT OR OTHER ENVIRONMENTAL REGULATORY REQUIREMENTS DURING EU EXIT AND COVID-19. WE ARE CLEAR WE EXPECT EVERYONE WE REGULATE TO CONTINUE TO COMPLY WITH SCOTLAND’S ENVIRONMENTAL LAWS.”

It also explains that we will continue to consider the need to adopt TRPSs for specific instances where compliance with a SEPA Permit or other regulatory requirement is not possible for an individual site(s), a type of activity or for a sector and where that non-compliance is unavoidable and solely as a direct result of the impact of EU Exit or COVID-19 and will not lead to significant environmental harm.

Many of the TRPSs adopted in the early days of the pandemic will remain in place, albeit with some changes to reflect the withdrawal and replacement of the philosophy and overarching guidance. Details of these changes are set out in 3. below.

3. COVID-19 TEMPORARY REGULATORY POSITION STATEMENTS AND REGULATORY GUIDANCE

15 Temporary Regulatory Position Statements and 3 guidance statements were adopted early in the pandemic. These were prepared where, as a result of the pandemic, certain activities within certain sectors that are regulated by SEPA were unable to be carried out in the normal way. In such cases, a temporary position that provides flexibility was adopted so that regulated businesses could continue to operate within the COVID-19 restrictions while also protecting the environment. In most cases, SEPA required to be informed when an operator planned to use the TRPS. Clear principles of the circumstances when SEPA would consider the adoption of a TRPS were published at the time.

Each TRPS has been reviewed with respect to its use and continued applicability. A brief summary of their use and our determination about continued application is provided:

TITLE	SUMMARY	CHANGES
TEMPORARY REGULATORY POSITION STATEMENTS		
1. FINFISH AQUACULTURE – MONITORING, FALLOW AND BIOMASS	<p>This TRPS set out positions relating to monitoring, biomass allowances and fallow periods with the sector.</p> <p>From 24 Mar – 16 Nov 2020, 82 sites indicated they had made use of the monitoring allowances of the position and 32 indicated they had made use of the biomass allowances. None had indicated they made use of the temporary position on fallow periods.</p> <p>The sector has told us it still experiencing market disruptions due to COVID-19 and we are maintaining the position for the time being.</p>	<p>THIS TRPS IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>
2. RADIOACTIVE SUBSTANCES - MANAGEMENT OF HIGH-ACTIVITY SEALED RADIOACTIVE SOURCES	<p>These TRPSs covering the management of radioactive substances are still actively being used.</p> <p>It is anticipated that nuclear sites may not be able to carry on with some work due to restrictions.</p> <p>The local tiering system may result in some travel restrictions that may prevent contractors from travelling for some purposes.</p>	<p>THESE TRPSS ARE MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p> <p>Note: The Shipment of Sealed Sources TRPS will be further updated on 31st December to reflect changes to legislation arising from EU exit.</p>
3. MANAGEMENT OF RADIOACTIVE SUBSTANCES AT NUCLEAR SITES	<p>Electronic signatures are still being used due to most workplaces implementing home working.</p>	
4. SHIPMENT OF SEALED SOURCES AND OTHER RELEVANT SOURCES		
5. VOLUME PRODUCTION OF HAND SANITISER	<p>This TRPS supported alternative routes for the production of hand sanitiser so that the unprecedented increase in demand caused by the pandemic could be met by other businesses such as distilleries.</p> <p>A number of operators used the TRPS for this purpose, many working on a contractual basis with the Scottish Government to provide certain quantities of supply.</p> <p>Production is still currently ongoing, but it is expected that this will reduce as demand and supply chains for sanitiser return to more normal levels.</p>	<p>THIS TRPS IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>
6. FINFISH AQUACULTURE – USE OF SEA LICE MEDICINES AT MARINE FINFISH FARMS	<p>This TRPS enabled the sector to control sea lice through the use of medicines more flexibly and in ways that protect against significant long-term harm to Scotland’s coastal waters and which keep any localised impacts to a minimum.</p> <p>Since April, SEPA has had 6 notifications of the use of the bath treatment medicine, azamethiphos, under the position and none relating to the use of the in-feed medicine, emamectin benzoate.</p> <p>The TRPS was time limited initially to 30th June and subsequently extended to 31st August 2020. It has now lapsed.</p>	<p>THIS TRPS LAPSED ON 31ST AUGUST 2020. IT IS WITHDRAWN.</p>
7. SCOTCH WHISKY SECTOR	<p>This TRPS is primarily focused on covering emergency shutdowns which would cause short term environmental</p>	<p>THIS TRPS IS MAINTAINED to act as a ‘safety net’ in the</p>

<p>– DISTILLERIES SHUTDOWN</p>	<p>impacts. It has not yet been used. The sector has adapted well to a 'new normal' way of working.</p> <p>Any shutdowns are likely to occur at a localised scale (e.g. distillery staff members displaying COVID-19 symptoms would result in the whole distillery closing for a short period to conduct a deep clean).</p>	<p>event of a shutdown. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>
<p>8. RESERVOIRS</p>	<p>This TRPS and guidance set out steps that should be taken if compliance with certain aspects of the Reservoirs (Scotland) Act (2011) is no longer possible, for example, scheduled site inspections.</p> <p>Reservoir managers and engineers have been operating using the TRPS. As the sector has adapted, its use has declined. A reminder of the need to act in accordance with the TRPS has been sent to reservoir managers and engineers.</p>	<p>THIS TRPS IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>
<p>9. PRODUCER RESPONSIBILITY - FEES</p>	<p>This TRPS extended the registration period by inviting producers to register and then pay later (instead of April). Registration is only complete after payment is made. The vast majority of producers have now registered and a small number are currently outstanding and being contacted.</p> <p>Industry feedback stated the TRPS was very helpful in allowing more flexibility. Feedback also indicated that the TRPS had done its job and was no longer needed.</p>	<p>THIS TRPS IS NO LONGER NEEDED AND IS WITHDRAWN.</p>
<p>10. CONTROL OF MAJOR ACCIDENT HAZARDS (COMAH) SITES</p>	<p>This TRPS set out how the joint Competent Authorities for COMAH would act during the pandemic.</p> <p>There has been very limited use of this TRPS. It was useful during the early stages in the pandemic as it enabled operators to temporarily increase holding capacity on site.</p> <p>One section of the TRPS relates to local authorities having a requirement to carry out mandatory emergency exercises at each site every three years. Due to COVID-19, all emergency exercises scheduled for 2020 have been postponed however, they will need to take place and some COVID-19 restrictions may still be in place when they do, and clearing the backlog of exercises is anticipated to take until March 2023.</p>	<p>THIS TRPS IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>
<p>11. WATER - STORAGE OF SEWAGE SLUDGE</p>	<p>The TRPS was a safeguard in the event landbank managers did not accept sludge, due to risks (real or perceived) of COVID-19 in the sludge. There is no indication the TRPS has been relied upon, as no concerns have been raised.</p> <p>We retain the ability to reinstate it if necessary.</p>	<p>THIS TRPS IS NO LONGER NEEDED AND IS WITHDRAWN. It will be reinstated if it proves necessary to do so.</p>
<p>12. PRODUCER RESPONSIBILITY – DATA RETURNS</p>	<p>This TRPS was to assist producers where COVID-19 restrictions were impacting their ability to bring data for reporting together. Producers have now adapted well and data returns are being made. This TRPS has therefore done its job and is no longer needed. The compliance year ends on 31st December and the TRPS will be withdrawn then.</p>	<p>THIS TRPS WILL BE WITHDRAWN ON 31ST DECEMBER 2020.</p>
<p>13. WASTE - RECYCLING CENTRES REOPENING</p>	<p>This TRPS was put into place to establish a co-ordinated approach to re-opening recycling centres.</p> <p>Overall, local authorities employed well managed approaches and no Councils approached SEPA to temporarily exceed waste storage limits. The use of booking systems for slots to ensure social distancing meant that flows of waste were well managed.</p>	<p>THIS TRPS IS MAINTAINED while COVID-19 restrictions still apply. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.</p>

14. WASTE - TEMPORARY HOUSEHOLD WASTE COLLECTION POINTS	<p>This TRPS managed the use of temporary pop up waste collection points to deal with increased demand following the closure of recycling centres during the lockdown. Around 5 sites were put in place, all of which were temporary and have now closed as recycling centres have returned to a more normal operation.</p> <p>We do not anticipate need for new pop up collection points as the tiered restrictions consider waste collection as an essential activity.</p>	THIS TRPS IS NO LONGER NEEDED AND IS WITHDRAWN.
15. WASTE - SPECIAL WASTE CONSIGNMENT NOTES	<p>This TRPS put in place alternative measures to avoid the physical handling and signing of Special Waste Consignment Notes. Until normal operations are fully reinstated or a more permanent “e-form” system established, this TRPS will continue to be needed.</p>	THIS TRPS IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.
TEMPORARY REGULATORY GUIDANCE		
1. WASTE GUIDANCE	<p>This guidance provides general advice on waste management through the pandemic. This guidance continues to be used by the sector during this phase of the pandemic.</p>	THIS GUIDANCE IS MAINTAINED. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.
2. MILK DISPOSAL	<p>This guidance was directed at the beginning of the lockdown to farmers that were not able to get their milk lifted and transported. The sector quickly moved to put in place measures to prevent milk being lost.</p> <p>Milk processing plants may be susceptible to COVID-19 outbreaks due to cold conditions and if such an outbreak occurred, this would result in temporary closure of plants which could have a knock-on effect for farms, particularly if a larger facility.</p> <p>Milk collections occur daily across numerous tiers which may cause some impacts, although test and trace processes not in place at the start of the pandemic should highlight any issues quickly.</p>	THIS GUIDANCE IS MAINTAINED, primarily to act as a ‘safety net’ in the event of a shutdown at a processing facility. Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.
3. DISPOSAL OF ALCOHOLIC BEVERAGES	<p>This guidance was in response to licensed premises having excess alcohol due to the lockdown. It intended to give these premises flexibility on what to do with products that could no longer be sold. Waste alcohol can only be directly discharged into the sewer in certain conditions.</p> <p>It is likely that the guidance has been used and the tiered system means that some licenced premises in different regions may not be able to operate and therefore that the guidance continues to be applicable.</p>	THIS GUIDANCE IS MAINTAINED Changes have been made to the introductory paragraphs to reflect the replacement of the COVID-19 philosophy and overarching guidance.

SEPA will continue to consider whether and where there may be a need to adopt a TRPS as a result of either COVID-19 or EU Exit. The “*Principles for Regulatory Approach to EU Exit and COVID-19*” sets out the principles that will guide us. It states that

“Where compliance with a SEPA Permit or other regulatory requirement is not possible for an individual site(s), a type of activity or for a sector, we may temporarily take a 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 EU Exit and/or COVID-19 and will not lead to significant environmental harm.

We are only likely to consider taking a temporary regulatory position if the person contacts us at an early stage to advise us of a non-compliance or potential non-compliance, and we are satisfied that:

- 1. they have taken all reasonable steps to try and maintain compliance;**
- 2. they will adequately manage any risks of harm to the environment or human health arising from the non-compliance”.**