

14th February 2011

Dear Sir

Better Environmental Legislation – SEPA’s Change Proposals

The Commission has reviewed with interest SEPA’s consultation on ‘Better Environmental Regulation’. There are a number of important issues raised in the Consultation and much that the Commission would support. Our response on these points is provided below and in the attached response document. There are others issues on which the Commission, as economic regulator of Scottish Water, would have no particular view and are matters for other industry participants. We have not commented in these areas.

As a general comment, we support SEPA’s drive to realign its internal processes to meet current and future environmental, social and economic challenges. You will be aware, through the involvement of SEPA staff, that the Commission is also currently looking at the mechanisms by which we regulate Scottish Water. This review, termed the ‘Incentives, Innovation and Involvement’ project (the I³ project), is seeking to ensure that our regulatory processes remain relevant and appropriate for the next regulatory period 2015-20. The next 10 years will bring significant change to the water industry, particularly in response to the challenges of meeting financial, environmental and customer service requirements. It is essential that the regulatory mechanisms are in good shape to meet these challenges.

We also support SEPA’s drive for simpler and more effective regulation. This aligns with the aims of the I³ project. We recognise the behaviours of regulated entities set out in SEPA’s ‘Compliance and engagement spectrum’ and support the range of measures available to address these different behaviours, from enforcement to engagement. However, we would note that the incentives provided through engagement activities should not be underestimated and we would wish to be assured that SEPA’s focus on

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addressing the poorest performing areas will not materially reduce the incentives that currently exist on Scottish Water to deliver the required environmental improvements.

As a practical example of this, we believe that the increased involvement in recent years of SEPA (and DWQR) in the 'sign off' of outputs has contributed significantly to Scottish Water's improved delivery of Ministerial outputs. We would wish to see SEPA continue to resource this important work. Similarly, the Commission sees the work of the Output Monitoring Group as essential in maintaining a focus on delivery of Scottish Water's major environmental programme and we welcome SEPA's continued close involvement in this forum.

We welcome the focus on more risk based and targeted regulation and would comment that we believe this will assist with identifying more cost-effective solutions. To maximise the environmental benefits arising from Scottish Water's investment programme we believe it will be necessary to move away from traditional environmental regulation, based on simple compliance with universal standards, to a more focussed view of environmental risk which takes proper account of overall costs and benefits. We welcome the inclusion in the Water Framework Directive of a 'disproportionate cost' test and will continue to work with SEPA as it clarifies the interpretation of disproportionate cost.

As requested in the Consultation document, we have completed the response form for the fifteen specific questions and I attach our response. We have not responded in all the areas related to charging as we do not have a particular view on these matters other than that charges should be cost reflective and be fairly allocated to all parties – avoiding any perception that Scottish Water is seen as an 'easy target'.

We are particularly keen to work with SEPA in future to develop ideas and practical mechanisms by which alternative, lower cost and more sustainable solutions to delivering environmental benefits can be secured.

I hope these comments are helpful. We would be happy to discuss any of these areas in more detail if required.

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Yours Sincerely



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