



Amy Holmes
Director: Better Regulation, EU and International
Department for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
London SW1P 3JR

22 May 2014

Dear Ms Holmes,

Introduction of Enforcement Undertakings for Environmental Permitting Offences

I am writing in my capacity as Chair of the United Kingdom Environmental Law Association (UKELA). UKELA is the UK forum that aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of environmental law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA has followed closely the government's work over the years to introduce a scheme of civil sanctions under the Regulatory Enforcement and Sanctions Act 2008 ('RES Act'). Our environmental litigation working party provided written responses to the series of consultations associated with this project, and commented at stakeholder events and other meetings. UKELA welcomed the introduction of civil sanctions, and is keen to see them made available for a wider range of offences including breaches of the Environmental Permitting Regulations. We were, therefore, disappointed by the policy announcement in November 2012 that any extension of civil sanctions to new areas would exempt SMEs from monetary penalties and restoration notices. I wrote to the then Minister for Business and Enterprise, Rt Hon Michael Fallon MP, in December 2013 setting out our concerns. I attach copies of that correspondence.

We understand that whilst the Coalition Government has no present plans to introduce the full suite of RES Act civil sanctions for environmental permitting offences, it is contemplating making enforcement undertakings available for these offences. I would like to take this opportunity to express UKELA's support, in principle, for such a move. On the basis of our experience of enforcement undertakings to date, we see them as offering significant potential

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benefits to businesses, regulators and the environment more generally. These benefits include:

- **fostering a culture of voluntary compliance**, whereby businesses voluntarily report breaches and voluntarily undertake to put things right;
- **improvements to the environment** because businesses can undertake to take steps to prevent the breach continuing or recurring, to restore the prior position, or to deliver equivalent environmental benefit, for example through funding environmental projects run by local wildlife trusts and NGOs. You will no doubt be aware of the substantial sums that have been pledged so far, principally in relation to breaches of the Packaging Regulations;
- **facilitating 'light-touch' regulation in appropriate cases with significant savings for regulators and businesses alike**, as enforcement undertakings avoid the need for costly, resource-intensive legal proceedings.

Our members' experience is that businesses have shown considerable interest in enforcement undertakings as a quick means of resolving an issue without having to go to court. As you of course know, undertakings cannot be imposed on businesses by regulators; rather, the offer of an undertaking comes from the businesses themselves.

If enforcement undertakings were to be made available for environmental permitting offences, a number of practical issues would naturally have to be addressed, such as their relationship with other available sanctions, powers and guidance documents. **We would welcome an opportunity to meet Defra policy officials to talk these issues through.**

Yours sincerely,

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enc. Letter to Rt Hon Michael Fallon MP, 20 December 2012
Michael Fallon's response, 7 February 2013

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