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Your ref:
Our ref:
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Dear Sir/Madam

Amendment to extend enforcement undertakings to flood risk activities

For your information, I am writing to let you know that we are planning to take forward an amendment to the Environmental Permitting (England and Wales) (EP) Regulations 2016 (the 2016 Regulations) to extend enforcement undertakings to flood risk activities. Full details of the specific legal change are given below.

At present, the Environment Agency can use enforcement undertakings as an alternative tool under the EP Framework for a number of other environmental permitting activities, including waste management, water quality (discharges of sewerage to rivers and groundwater) and installations for industrial processes.

Enforcement undertakings are currently unavailable for flood risk activities. Making this amendment will therefore ensure consistency and provide more flexibility in dealing with problems created by inappropriate works.

Some examples of (non-flood risk) enforcement undertakings in current EPR can be located here <https://www.gov.uk/government/publications/enforcement-undertakings-accepted-by-the-environment-agency>

Enforcement undertakings

An enforcement undertaking will only impact on a person (business, landowner, public body) if they fail to comply with a flood risk permit or if a person undertakes work when they should have had a permit.

In such cases, it means the Environment Agency as regulator may accept offers from offenders to carry out (or fund others to carry out) enforcement undertakings (informal

corrections on the part of the offender) to restore and remediate any damage to the environment without the need for criminal proceedings. They introduce greater flexibility in the way in which the Environment Agency secures compliance with environmental permits, allowing businesses that are generally compliant to offer enforcement undertakings and reserving criminal prosecution for the most serious offences. Cases that might not have reached courts due to their scale, and that could otherwise have been dropped, can now be addressed through this mechanism and ensure action is taken.

Enforcement undertakings are typically quicker to resolve than prosecutions. Often an undertaking can be agreed and, depending on its precise nature, concluded on the ground, within three to six months. Prosecutions on the other hand may take a year or more to conclude, partly as a result of factors outside the parties' control, such as available court time.

Legal change

In April 2016, we integrated flood defence consents into the EP framework through the Water Act 2014, powers which mirror those setting up the other schemes within the EP framework through the Pollution Prevention and Control Act 1999. At the time, however, we were unable to make a consequential change to Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008 to include a reference to section 61 of the Water Act 2014, so we were unable to include enforcement undertakings for our flood risk activities scheme. This conflicts with the duty on ministers, set out in section 61(3) of the Water Act 2014, to ensure that the flood risk scheme is consistent with the existing schemes in the EP framework.

The amendment to extend the enforcement undertakings to flood risk activities is only being taken forward now since a Statutory Instrument - *The Water Act 2014 (Consequential Amendments etc.) Order 2017* came into force in April 2017 which added section 61 of the Water Act 2014 to the list of legislation in Schedule 7 to the Regulatory Enforcement and Sanctions Act 2008. This now allows us the opportunity to make the amendment to the 2016 Regulations.

We will therefore revoke paragraph 1(2) of Schedule 26 to the 2016 Regulations - *But paragraph (1) does not apply to an offence in relation to a flood risk activity* so that enforcement undertakings will become available in the case of offences relating to flood risk activities in England only. See at link: <http://www.legislation.gov.uk/ukxi/2016/1154/schedule/26/made>

Timeline

The amendment to extend the enforcement undertakings to flood risk activities will be made by 19 December 2017, so they will become available as a tool to the Environment Agency for flood risk activities from next year.

For organisations that operate in both England and Wales, please note that this change is limited to apply in England only.

If this information is no longer appropriate to you please could you forward it on to other relevant contacts for their information.

Yours faithfully

A handwritten signature in black ink that reads "C. A. Tidmarsh". The signature is written in a cursive style with a large initial 'C'.

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