

SPSO decision report



Case: 202005040, Scottish Environment Protection Agency
Sector: Scottish Government and Devolved Administration
Subject: Policy / administration
Decision: upheld, recommendations

Summary

C complained on behalf of their clients about a decision made by the Scottish Environmental Protection Agency (SEPA) not to renew a 'Paragraph 19 Exemption' (the exemption) for a land re-engineering project. Normally, waste management requires a licence, however an exemption can be applied which allows for the use of waste for the construction, maintenance or improvements of a building, road, railway, airport, dock or other transport facility; recreational facilities; drainage; or certain engineering works. C's clients had been granted an exemption for four consecutive years but their fifth renewal application was declined by SEPA.

We confirmed that we would not be considering the professional judgement of SEPA, but could look at whether they provided a reasonable explanation for their decision not to renew the exemption.

We noted that the original reason SEPA gave for refusing the application was that the proposed infill of the upcoming phase was of a depth exceeding the dimension of the final cross sections shown on the plans. Additionally, SEPA said that when their officers inspected the site, they observed that waste had been deposited onto waterlogged land. This is not permitted under the terms of an exempt activity.

In the correspondence with C that followed, we found that SEPA gave a number of differing reasons for their decision not to renew the exemption. When C advised SEPA they had referred to the wrong plans in reaching their decision, rather than provide an explanation or apology, SEPA gave a different reason for declining the renewal application. We found that SEPA did not adequately address a number of matters raised by C in relation to their decision. As such, we upheld this complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing to provide a reasonable explanation for the decision not to renew C's clients' Paragraph 19 Exemption. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/information-leaflets.
- Consider what we have said in our decision and assess whether it is appropriate to reassess the Paragraph 19 Exemption on the basis of our findings. If SEPA do not consider that reassessment is warranted, or if they reassess and decline the application, they should write out to the applicant providing clear and justifiable reasons for their decision.

What we said should change to put things right in future:

- Appropriate and clear reasons should be provided for decisions in relation to waste management exemptions.

In relation to complaints handling, we recommended:

- Complaints should be accurately identified as such and dealt with through the correct procedure.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.