

## Medium Combustion Plant Directive Enforcement Action

Standard Rules permit applications for existing MCPs 5-20MWth should have been made before the 30<sup>th</sup> September 2023 to allow the Environment Agency (EA) the statutory time to determine them and issue a permit before the regulatory deadline of the 1<sup>st</sup> January 2024.

Applications made after this date cannot be guaranteed to be permitted by the 1<sup>st</sup> January 2024. Operations which continue to operate without the necessary permit after the 1<sup>st</sup> January 2024 may be subject to enforcement action. We recommend putting in a permit application as soon as possible to avoid this.

### Enforcement Action

The enforcement action and determination of penalty is governed by Annex 1: RES Act – the Environment Agency's approach to applying civil sanctions and accepting enforcement undertakings.

The starting point for the most serious, deliberate offence by a large organisation is £1 million (within a range of between £450,000 and £3 million) – that is the top of the tariff scale.

Before 11<sup>th</sup> December 2023 the maximum penalty the EA could impose using a variable monetary penalty was £250,000, which was the statutory cap.

From the 11<sup>th</sup> December 2023 the EA may impose a variable monetary penalty up to the same level of sanction as the maximum fine for a Crown Court case – an unlimited fine.

The EA will choose a starting point by referring to the factors in the guidelines and the size of the defendant's company (or individuals, as appropriate). The EA will follow a stepped approach in calculating the appropriate variable monetary penalty.

### How the Environment Agency Sets the Penalty Level

When they can apply their discretion, the EA will carry out the following steps to make their decisions:

*Step 1: Compensation – The EA will take account of compensation paid to third parties and victims for:*

- *Personal injury*
- *Loss or damage resulting from an offence*

*The EA will use their discretion to reduce the amount of a variable monetary penalty if compensation has been paid.*

*Step 2: Confiscation - This is not relevant to variable monetary penalties. The proceeds of a crime can only be confiscated following a conviction.*

*Step 3: Determining the Offence Category – The EA will use culpability (blame) and harm factors when they work out the offence category. The EA will use the definitions in the guidelines to assess culpability.*

*Step 4: Starting point and category range - When they calculate a variable monetary penalty they will assess the:*

- *Size of the organisation, by turnover or equivalent*
- *Financial circumstances of an individual*

*The guidelines include a summary of aggravating and mitigating factors.*

The EA will identify if any combination of these or other relevant factors should result in adjusting the starting point penalty up or down.

## **Failure to Comply with an Enforcement Undertaking**

If an offeror fails to comply, either fully or in part, with an enforcement undertaking, the EA are likely to do one of the following:

- Serve a variable monetary penalty, compliance notice or restoration notice on the offer or prosecute for the original offence
- Vary or extend the time for complying with an enforcement undertaking

## **Outcome Focused Enforcement**

The four outcomes the EA want to achieve are to:

- Stop illegal activity from occurring or continuing
- Put right environmental harm or damage, also known as restoration or remediation
- Bring illegal activity under regulatory control, and so in compliance with the law
- Punish an offender and deter future offending by the offender and others

To get the best outcome for the environment and for people, the EA will use the full range of enforcement and sanctioning options available to them.