

Enforcement Undertaking (EU) Offer form

**Regulatory Enforcement and Sanctions Act 2008, Section 50
Environmental Civil Sanctions (England) Order 2010, Article 3 & Schedule 4**

For Environment Agency use only	
Name of Offeror:	
Date received (DD/MM/YYYY):	
Enforcement Once reference number:	
CMS reference number:	
EU Offer version:	

How to complete this form: Please complete Parts 1, 2, 3 and 4 of this form including the Declaration in Part 5. Please refer to Schedule 1 'Further Information on Making Your Offer' for advice on completing this form and our criteria for accepting and rejecting Enforcement Undertaking offers.

Note: If necessary, please complete your offer on a separate sheet and attach to this form when submitting your offer to us.

Once complete, submit your offer by sending it to:

- By post: Environment Agency, Enforcement Once, PO Box 786, Warrington, WA4 1WW
- By email: CSEO@environment-agency.gov.uk

Advice and guidance: If requested, we will provide you with advice and guidance on making an offer, however, we will not enter into negotiations with you, as the actions you wish to offer are a matter for you. You may also wish to seek your own independent legal advice.

Important! The Environment Agency can accept or reject your offer.

Further assistance: If you require any help or assistance with completing this form and/or wish to discuss your offer before submitting it, please contact us:

- By telephone: 03708 506 506 (Mon-Fri, 8am – 6pm)
- By email: CSEO@environment-agency.gov.uk

Our standards: We will normally acknowledge our receipt of your offer within 3 calendar days. The officer who has been assigned your offer will then contact you within 28 calendar days, with their name and contact details and to provide initial feedback on any omissions or deficiencies with your offer. Once we are in receipt of an offer which meets the basic requirements of an EU, we will then aim to make a formal assessment of your offer within 60 calendar days, however this may take longer depending on factors such as whether the offer is proactive or reactive, the nature, number and complexity of the offences in question or if further information has been requested. We will update you on the progress of your offer at appropriate times.

Part 1 - Proposer

This Enforcement Undertaking is being offered by:

Title (Mr, Mrs, Miss or other – please specify)				
First Name & Last Name				
Name of business or organisation (if applicable)				
Type of business or organisation (Please place a 'X' in the relevant box)	Registered company (or similar)	Private Individual or Sole Trader	Partnership or Group of individuals	Public Body (e.g. Local Authority)
Company registration number (if applicable)				
Address (including postcode)				
Contact numbers (including the area code)	Phone:	Fax:	Mobile:	
Email (if applicable)				

Main contact (This is the person who we can contact about the offer). Only complete if different from above.	Name:
	Job Title/Position:
	Contact number:

Part 2 – Type of offer (please tick the appropriate box)

Proactive	For example, where you are self-reporting a relevant offence prior to the Environment Agency commencing investigations.	
Reactive	For example, where you are offering an EU for a relevant offence which the Environment Agency has already started investigating.	
Investigation Number (if known):		
Lead Investigator (if known):		

Part 3 – Description of act or omission which constitutes the alleged offence(s) for which this offer is being made:

3.1 Please place a 'X' in the relevant box indicating the relevant offence(s) for which you are offering an EU (please refer to our 'Offence Response Options' on www.gov.uk/environment-agency for details of the relevant offences for which you can offer an EU). You may also wish to seek your own independent legal advice:		
The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (as amended)	Regulation 40(1)(a)	
	Regulation 40(1)(b)	

customer service line
03708 506 506

incident hotline
0800 80 70 60

floodline
0845 988 1188

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The Environmental Permitting (England and Wales) Regulations 2010 (as amended)	Regulation 38(1)	
	Regulation 38(2)	
	Regulation 38(4)(a)	
	Regulation 38(5)(a)	
	Regulation 38(6)	
Other (Please specify the relevant offence(s) below):		
3.2 Date(s) of relevant offence(s) (Note: Please specify the exact date or on or around/between dates).		
3.3 Location of relevant offence(s) (Note: Please specify full postal address and include national grid reference, if possible).		
3.4 Do you hold an environmental permit, registration or other authorisation issued by the Environment Agency at this site or location? If yes, please specify the type and number.		
3.5 In your own words, please describe what happened?		
3.6 What impact did the relevant offence(s) have on the environment (water, land, and air), human health and local amenity?		
3.7 Were any third parties (e.g. local residents, other businesses, those with fishing interests in the case of water pollution) affected by the relevant offence(s)? If so, how, and what attempts have you made to remedy this?		
3.8 If you are not offering any actions to benefit those third parties affected, please explain why?		

Part 4 – Enforcement Undertaking Offer

Important! You must complete the columns marked * in full for each action being offered. If any action being offered does not contain clear and relevant actions, clear completion criteria or clear completion dates, it will be returned to you and may even be rejected if you fail to provide it within a further specified time. Each action should also be sequentially numbered and entered onto a separate line. Please refer to the guidance notes in Schedule 1 below.

*ACTIONS BEING OFFERED	*COMPLETION DATES	*COMPLETION CRITERIA	COSTS OF COMPLETING ACTIONS (£)
Box 1	Action(s) to secure that the alleged offence(s) does not continue or recur		
Box 2	Action(s) to secure that the position is, so far as possible, restored to what it would have been if the alleged offence(s) had not been committed		
Box 3	Action(s) to identify and consult with any person affected by the alleged offence(s)		
Box 4	Action(s) (including the payment of a sum of money) to benefit any person affected by the alleged offence(s)		
Box 5	Where restoration of the harm arising from the alleged offence(s) is not possible, action that will secure equivalent benefit or improvement to the environment		

*ACTIONS BEING OFFERED	*COMPLETION DATES	*COMPLETION CRITERIA	COSTS OF COMPLETING ACTIONS (£)
Box 6	Reimbursement of the Environment Agency's costs necessarily incurred until the time this offer may be accepted (Please note we normally expect payment to be made within 28 calendar days of formal acceptance of your offer)		
Box 7	Contribution to cover the Environment Agency's costs we subsequently necessarily incur checking your compliance with the offer and issuing an EU Completion Certificate (Please note we normally expect payment to be made within 28 calendar days of formal acceptance of your offer)		
Box 8	Aspects of your offer or supporting documents that are not already made on this form (Please include the relevant title, date and reference number of any supporting documents).		

Important! Acceptance of an Enforcement Undertaking by the Environment Agency which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the Enforcement Undertaking has been offered.

Part 5 – Declaration

Please read the following points carefully and ensure the appropriate person completes and signs the declaration box below. We will return your form if it has not been completed in full and/or signed by the correct person.

- I understand that making this offer does not constitute an admission of guilt for any alleged offence(s) to which it relates;
- I understand that you may accept or reject this offer;
- I understand that I do not have a statutory right of appeal against your decision to reject this offer but can request an independent internal review of your decision to reject this offer, which we expect to make within 14 days;
- I understand that unless I fail to comply with it, if you accept my offer of an Enforcement Undertaking as shown in Part 4 of this form, I may not at any time be convicted of the alleged offence(s) to which this offer relates or have a Fixed Monetary Penalty, Variable Monetary Penalty, Compliance Notice, Restoration Notice or Stop Notice imposed on me;
- I understand that if I fail to comply with the undertaking or any part of it, I may be prosecuted for the alleged offence(s) or have an alternative sanction imposed on me;
- I understand that I may be required to provide you with sufficient information to determine that the undertaking has been complied with;

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- I understand that if at any time I am found to have given inaccurate, misleading or incomplete information in relation to this undertaking, it will be rejected or if previously accepted, I will be regarded as not having complied with it and any Completion Certificate will be revoked;
- I understand that if my Enforcement Undertaking offer is accepted, as set out in this form (as amended/completed following further correspondence), the Environment Agency may publish information in the offer in whatever manner it sees fit, including on www.gov.uk/environment-agency, unless we consider it inappropriate to do so. Publication will be for a period of not less than 3 months or more than 12 months, including the name of the Offeror, the relevant offence(s) for which the EU was accepted, whether the offer was proactive or reactive and the actions being offered to stop offending, restore/remediate, come into compliance, benefit any person affected by the offence(s) or to secure equivalent benefit or improvement to the environment;
- I understand that the information provided as part of this offer will be processed by the Environment Agency to fulfil its regulatory and monitoring functions and may also be used and/or disclosed in connection with:
 - offering/providing you with its literature/services relating to environmental matters;
 - consulting with the public, public bodies and other organisations (e.g. Health and Safety Executive, local authorities, emergency services) on environmental issues;
 - carrying out statistical analysis, research and development on environmental issues;
 - investigating possible breaches of environmental law and taking any resulting action;
 - preventing breaches of environmental law;
 - assessing customer service satisfaction and improving its service; or
 - Freedom of Information Act/Environmental Information Regulations requests.

The Environment Agency may pass it on to its agents/representatives to do these things on its behalf. You should ensure that any persons named on this form are informed of these purposes;

- I understand that this Enforcement Undertaking will remain in force until such a time as the Environment Agency has issued me with a Completion Certificate or I have been notified in writing that I have failed to comply with it;
- I understand that acceptance of an Enforcement Undertaking by the Environment Agency which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the Enforcement Undertaking has been offered;
- I understand that any third party payment offered as part of this Enforcement Undertaking, must be an unrestricted donation from which I will derive no benefit of any type; and
- I understand that the Environment Agency's acceptance of this Enforcement Undertaking does not affect its power to investigate a contravention arising from future conduct or pursue a criminal prosecution, or to lay charges or exercise other civil or regulatory powers, for matters not expressly dealt with by this undertaking.

Date **Full Name**.....
Signed
Position

Part 6 – Submitting your offer

This pro-forma is not prescribed by law and you may submit your offer in an alternative written form (which must include the full Declaration from this offer form), however, it would help us to assess your offer more promptly if it is made using this form. Please submit your offer by sending it to:

✉ By post: Environment Agency, Enforcement Once, PO Box 786, Warrington, WA4 1WW

✉ By email: CSEO@environment-agency.gov.uk

Please note that we are unable to receive emails larger than **5mb** in size, so please reduce the file size, send supporting documents as separate email(s) or send by post if you are likely to exceed this limit.

Please **do not** send your offer directly to the lead investigator (if known), as this may cause delay.

For Environment Agency Use Only:

Part 7 – Accepting or rejecting the offer (Please place a 'X' in the appropriate box)

Box A – Only complete this box if the offer has been agreed for **acceptance**

We have accepted your offer
The Environment Agency has reasonable grounds to suspect that you have committed the following relevant offence(s) and hereby accepts this Enforcement Undertaking in relation to those offence(s):
<i>[Please specify the relevant legislation, section/regulation number and brief particulars – delete before returning]:</i>

Box B – Only complete this box if the offer has been agreed for **rejection**

We have rejected your offer
The Environment Agency has carefully considered your offer in accordance with our published guidance and hereby rejects your offer for the following reasons:
<i>[Please specify why the offer has been rejected e.g. Prosecution is more appropriate for this offence etc – delete before returning]:</i>

Date..... Signature.....
Name of NFSoD Signatory.....
Title of NFSoD Signatory.....

Schedule 1 – Further information on making your offer

Guidance note on completing Part 4 of the Enforcement Undertaking Offer form.

Box 1: Action(s) to secure that the alleged offence(s) does not continue or recur

This is a legislative requirement, we will not accept an offer that does not address this. We would normally expect that offending has ceased entirely or where this is not possible, that it will within a period of time which is clearly set out in the offer.

We expect an offer to go beyond the minimum that an offender would need to do to simply comply. In the case of corporate legal entities, we will be unlikely to accept an offer where it is not clear that senior management (i.e. those who represent the “mind” of the company) have signed up to undertaking and to achieving and maintaining environmental compliance within the company.

Examples of what could be included in an internal compliance program:

- details of any monitoring and reporting mechanisms to be adopted;
- management action plans including the assignment of responsibility for the compliance program to a named senior manager of the person;
- infrastructure upgrades;
- the identification of compliance issues and operating procedures for compliance;
- the development and dissemination throughout the organisation of a clear compliance policy;
- the development and delivery of a compliance training program to key personnel groups within the organisation;
- the establishment of permanent procedural checking and monitoring mechanisms, such as nominating a compliance officer and procedures to prevent future breaches and to ensure that any potential breaches are not only averted but also reported to senior management;
- joining any relevant accredited compliance scheme;
- a requirement to report to us at a specified time on the steps taken to implement the compliance program.

However, these cannot be open ended commitments and proposals need to have clear implementation dates so your offer can be assessed for “completion” and discharged.

Box 2: Action(s) to secure that the position is, so far as possible, restored to what it would have been if the alleged offence(s) had not been committed

This is a legislative requirement, we will not accept an offer that does not address this. In cases where there has been damage to the environment the offer must include actions to restore the environment and repair damage as far as is reasonably possible. This action should relate directly to the impact of the offence.

An Enforcement Undertaking enables an offender to address the offending in a constructive way and avoid the stigma and reputational damage of criminal conviction and the legal costs. Given these advantages, the Environment Agency does not consider that payments to be made as part of an Enforcement Undertaking should simply equate to the financial advantage gained by offending.

In cases which are predominantly financial in nature, i.e. where costs have been avoided (such as permit fees or costs associated with registration for a scheme) we would expect, as a minimum any Enforcement Undertaking to include actions that remove the financial gain arising from the offending.

In light of the benefits of offering an Enforcement Undertaking, we expect the total cost of any actions (e.g. payments, restoration works, donations etc.) to go beyond the simple estimated financial gain or advantage, and equate to what might be expected if the case had been prosecuted.

This does not include actions that you would normally need to do to comply with your permit or the law.

As a guide, in cases which are typified by financial gain or cost avoidance (i.e. where environmental damage is not a factor such as cases involving technical offences including failure to register in a scheme), courts remove the financial advantage gained from the offence and then typically add a 'penalty element'. This penalty element is frequently in excess of a third of the financial advantage but may be higher where there are aggravating factors, such as the offender had prior knowledge of the requirements, or did not co-operate with the investigation. Similarly, where there are strong mitigating factors, such as the offence was unknown to the regulator and was self reported promptly by the offender, the additional penalty element can be lower. You should consider these factors when making an offer and will be considered on a case by case basis. As a general rule, the expected penalty element for Packaging Waste offences is an increase of 10% of the total avoid costs/savings for Proactive EUs and 30% for Reactive EUs.

For more information on actions to restore the position, as far as possible, to what it would have been if the alleged offence(s) had not been committed for cases typified by financial gain or cost avoidance (i.e. where environmental damage is not a factor such as cases involving technical offences) please see Box 5 below.

Box 3: Action(s) to identify and consult with any person affected by the alleged offence(s)

Where third parties have been impacted by the offending, such as other users of an environment that has been damaged (e.g. anglers, neighbours), the offer should contain actions to be taken to identify them and assess the impact on them. Where agreements have been reached with regard to e.g. compensation (see Box 4 below) this should be evidenced to us in writing at the time your offer is made. Then evidence of payment or other satisfaction should be supplied before the proposed completion date of this action in order for us to consider an application for a Completion Certificate for the Enforcement Undertaking.

Box 4: Action(s) (including the payment of a sum of money) to benefit any person affected by the alleged offence(s)

This is a legislative requirement and we will not accept an offer that does not address this. Where, for instance in relation to Box 3 above, impacted third parties have been identified, if there are actions (including payments to them) to be made then the completion date for this must be clearly set out in Part 4. We will require evidence of these in writing before we will consider an application for a Completion Certificate for the Enforcement Undertaking.

Important! Acceptance of an Enforcement Undertaking by the Environment Agency which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the Enforcement Undertaking has been offered.

Box 5: Where restoration of the harm arising from the alleged offence(s) is not possible, action that will secure equivalent benefit or improvement to the environment

This is a legislative requirement and we will not accept an offer that does not address this. This applies where there has been damage to the environment arising from the offence and actions could include the funding of a complimentary scheme, restoration of an equivalent piece of the environment or undertaking of other environmental works. We are unlikely to accept an offer where the action does not restore the damaged environment simply because it would be cheaper or easier to restore an equivalent.

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Important! Where an Enforcement Undertaking includes payments to a third party (where those affected by the offence cannot be identified and compensated (see Box 3 above), the payments must meet the objectives that the breached legislation is trying to achieve i.e. any charity identified must have clear links to environmental improvement, preferably related to the legislation that was breached or the type of environmental impact that resulted.

Where an offer proposes a donation or the carrying out of works for a third party the offeror must communicate to the recipients that the donation is the result of an Enforcement Undertaking which has been offered in response to environmental offending. We suggest that offerors may wish to use the following wording:

“We are making this donation [or doing these works] as a result of an Enforcement Undertaking which we have given to the Environment Agency, and on the basis of which the Environment Agency has decided not to pursue any possible prosecution or other sanction for an environmental offence we may have committed”

Such offers must clearly state that the payment is an unrestricted donation from which the offender derives no benefit e.g. offset against a carbon scheme, tax offset etc.

Donations to a publicly funded body (e.g. Local Authority) must not be for any activity which is already core funded.

Also, donations cannot be made to an organisation with whom the donor has a personal or family relationship, or with the trustees or management of that organisation.

Box 6: Contribution towards the Environment Agency’s costs necessarily incurred until the time this offer may be accepted

In accordance with the ‘Polluter Pays Principle’ and the aim of the legislation that the costs of offending fall on the least compliant, levelling the playing field for those that have complied, we are unlikely to accept an offer which leaves either the tax payer or legitimate business effectively subsidising the cost we have incurred in dealing with an offender.

We are unlikely therefore to accept an offer if it does not address the costs we have or will (see below) incur in investigating the offence. These costs however will invariably be less than those which would be expected should the matter proceed to court. Where you are already in contact with your local office, they will be able to give you an indication of the likely costs. Any contribution to our costs should be made directly to us and not to a third party.

Important! Where you are making an offer proactively you should still include an element for our costs as, before we can accept an offer, the legislation requires that we must have ‘reasonable suspicion that an offence has been committed’. This means we must have confidence that an offer addresses the entirety of the offending and that the assessment of any avoided costs is accurate. We will usually conduct a brief investigation when we receive an offer, this also enables us to ensure that alternative sanctions can be pursued should an undertaking not be completed.

Box 7: Contribution towards the Environment Agency’s costs necessarily incurred for subsequent compliance monitoring and discharge of this Enforcement Undertaking

As in the guidance note to Box 6, above, we are unlikely to accept an offer which does not address the costs we will incur in monitoring the compliance and discharge of an offer.

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These costs will depend on the specific proposals of the offer, where you are already in contact with your local office, they will be able to give you an indication of them, where you are making the offer proactively you should factor in a reasonable cost for monitoring and assessment for completion of the actions you are proposing.

Box 8: Aspects of your offer or supporting documents that are not already made on this form.

In order for us to take into account all the parts of your offer, it must be clear what is and is not included. If there are parts of the offer, e.g. technical procedures or works, that are not in the schedule because they are contained in other documents, then they should be referenced here. Those other documents should also be signed and dated along with this offer form.

General principles – Accepting or rejecting Enforcement Undertaking offers

- We will only consider accepting an Enforcement Undertaking offer when:
 - we believe that a breach of relevant legislation has occurred; and
 - we consider the Enforcement Undertaking to be an appropriate regulatory outcome having regard to the significance of the issues concerned to the environment and the community.

- We will not normally accept an offer:
 - for a Category 1 offence or where we have commenced legal proceedings;
 - in cases involving intent or of the most severe environmental impact (but we do not rule it out, as discretion will always apply);
 - where we have already determined that a prosecution is appropriate in the public interest;
 - which is made after representations (negotiations) over the amount of a Variable Monetary Penalty following a Notice of Intent (this is to prevent attempts to negotiate an assessed Variable Monetary Penalty down and then to have it replaced at the last minute by an Enforcement Undertaking).

Factors in favour of accepting an Enforcement Undertaking offer

- Factors we will consider when deciding whether acceptance of an Enforcement Undertaking is an appropriate regulatory outcome include:
 - whether we feel the person is likely to comply with it in the light of their compliance history;
 - the nature of the offence and the regulatory impact of the undertaking compared to that of other forms of enforcement remedy;
 - the prospects of securing a timely and satisfactory environmental outcome where this is in the public interest.

- We will seek to ensure that Enforcement Undertakings and their development, implementation and monitoring are cost neutral to the Environment Agency.

Important! Where the relevant offence to which your offer relates, involves pollution of the environment or harm to human health, we would expect and look more favourably upon your offer, if you can demonstrate that any necessary remediation or restoration work commenced at the earliest opportunity.

Factors in favour of rejecting an Enforcement Undertaking offer

- We will not accept an Enforcement Undertaking offer if it:
 - contains a clause denying liability;
 - contains any clause that sets up defences for possible non-compliance with an Enforcement Undertaking;
 - does not contain payment of our costs;
 - contains information that is not provided openly, fully and in good faith.

Examples of what could be included in an Enforcement Undertaking offer

The Enforcement Undertaking may also include:

- the name of a senior manager who is responsible for monitoring and complying with the undertaking; and
- the name of an Environment Agency officer to whom the contact officer must report.

Generally, the person giving the undertaking will be responsible for:

- monitoring how the undertaking is implemented; and
- reporting this to the Environment Agency in the specified manner.

The way the person giving the undertaking proposes to do this must be set out in the Enforcement Undertaking offer and we must be satisfied that this is adequate. In resolving any matter we want to find ways to redress the offence.

Further information on Enforcement Undertakings is available on our website at www.gov.uk/environment-agency.