European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL REVIEW INITIATIVE (IRI)

("A voluntary scheme for reporting and offering advice on inspectorates and inspection procedures")

Review of the
Scottish Environment Protection Agency,
Scotland,
5 – 9 March 2007.

FOREWORD

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of IMPEL and shares the chairmanship of its Plenary Meetings.

The network is commonly known as the IMPEL Network

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of greater consistency of approach in the implementation, application and enforcement of environmental legislation, with special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.
Information on the IMPEL Network is also available through its web site at:
http://europa.eu.int/comm/environment/impel

Document Page:

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Executive Summary

This review was undertaken at the request of the Scottish Environment Protection Agency (SEPA). It is the ninth IRI Review and the second review since completion of a 2-year trial of the scheme and the subsequent agreement to its continuation.

The IRI Review in March 2007 was based in SEPA's Riccarton Office (Edinburgh) and was principally focused on the environmental regulatory activities associated with the implementation of the IPPC and Seveso II Directives. A pre-review meeting was held at the Edinburgh Airport Hilton with a brief visit to the SEPA Riccarton office in September 2006. The scope of review and practical implications were discussed and agreed with the Review Team Leader. Information about the constitutional and legal arrangements for environmental regulation in Scotland was supplied to Review Team Members in advance of the review. As a result of the review, the Review Team concluded that all of the objectives of the area of EC environmental law reviewed are being delivered in Scotland, and to a high standard. It also concluded that arrangements for environmental inspection and enforcement were broadly in line with the MCEI Recommendation.

SEPA is reliant on many of its systems and has procedures for the majority of its activities. This is a positive development in terms of aiding consistency but thought needs to be given to ensure that SEPA does not become constrained by system complexity.

SEPA uses risk based methodologies throughout its regulatory work in an effort to correctly prioritise its workload. The most notable is the Operator Performance Risk Assessment (OPRA) system which highlights aspects of a site requiring attention and is also used to identify the number of inspections a site requires in the coming year. Risk based systems are key tools to focus regulatory effort in a resource constrained world. In addition to these broad observations, the Review Team recognised and recorded specific examples of good regulatory practice and, based on their own personal experience, they offered suggestions on opportunities for development that may wish to consider.

Lessons for further reviews were noted and are recorded in the report. The Review Team also acknowledged the support provided by the respective organisations of Review Team members and recorded their appreciation of the hospitality accorded them by their Scottish colleagues.

IRI Review in Scotland 5 – 9 March 2007

Participants in the IRI Review Team from left to right

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- Anita Pokrovac Patekar Croatia
- Geir-Rune Samstad Norway
- Pieter-Jan van Zanten Holland
- Simon Cole Scotland
- Margareta Hernebring Sweden
- Simon Bingham Scotland
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1. EXECUTIVE SUMMARY

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2. INTRODUCTION

This is the ninth IRI Review, the second since completion of a 2-year trial of the scheme and the subsequent agreement to its continuation. Continuation was agreed, at the IMPEL Plenary Meeting in Dublin, in 2004, on the basis of conclusions of a review of the trial held in Bristol in October 2003. The review was undertaken at the request of Scottish Environment Protection Agency (SEPA), and the Terms of Reference are attached at Appendix 1.

The concept of IRI Review was first proposed at the IMPEL Plenary in Helsinki, in November 1999, and was described as "a voluntary scheme for reporting and offering advice on inspectorates and inspection procedures" (the "scheme"). Terms of Reference for a 2-year project designed to test the scheme were agreed at the Porto Plenary meeting of IMPEL in May 2000, and referred to a "Recommendation of the European Parliament and of the Council for Minimum Criteria for Environmental Inspections in the Member States" (MCEI)**.** A copy of this recommendation is attached at Appendix 2. The 2-year trial of the scheme started the following year.

The potential benefits foreseen from such a scheme were:

- Encouragement of capacity–building in EU Member State inspectorates
- Encouragement of further collaboration between EU Member State inspectorates on common issues or problems, on exchange of experience and on development and dissemination of good practice in environmental regulation
- Provision of advice to inspectorates ("candidate inspectorates") who may be seeking an external view of their structure, operation or performance by trusted, knowledgeable and independent counterparts for the purpose of benchmarking and continuous improvement of their organisation
- Spread of good practice leading to improved quality of inspectorates and inspections, and contributing to continuous improvement of quality and consistency on application of environmental law across the EU ("the level playing-field")

The features considered necessary to deliver these benefits were seen as being:

- Well-defined scope of application
- Practical and easily understood arrangements for scheduling, organising, funding, conducting and reporting on any review of a candidate inspectorate, and with minimal bureaucracy
- Absence of any threat of self-incrimination or infraction proceedings arising specifically from application of the scheme
- Control, by the candidate inspectorate, of dissemination of information arising from any review
- Participation, by the candidate inspectorate, in selection of personnel to carry out any review

- Effective follow-up arrangements for support of any candidate inspectorate seeking further advice or assistance on issues identified during review

- Effective arrangements for dissemination across Member States of training or educational material on lessons learnt and good practice identified during any review

To reflect the interests and activities of IMPEL it was proposed that, by agreement with the candidate inspectorate, the Organisational Scope of the scheme should include any or all of the following:

- The legal and constitutional bases of the inspectorate, including interfaces with other bodies such as Planning Authorities, and its related powers and duties (that is, "political independence / dependence")

- Structure and managerial organisation, including funding arrangements, staffing and lines of authority and responsibility for regulatory and policy functions

- Workload and associated resources

- Qualifications, skills and experience of regulatory staff

- Procedures for assessment of training needs and provisions for training and maintaining current awareness

- Procedures, criteria and guidance for drafting of permits, for planning inspections**,** for subsequent assessment of compliance ("inspection") and for enforcement action in cases of non-compliance

- Arrangements for internal assessment of the quality of regulatory performance and for improvement if appropriate

- Arrangements for reporting on inspectorate activities

This scope addresses all aspects of inspectorate organisation, management and operation, and the first, third, sixth and last items of the above list address specific issues covered by the MCEI.

The review was carried out using the Questionnaire and Guidance attached at Appendix 3, and this report describes the results.

3. PRE-REVIEW MEETING

The conclusions of the review of the 2-year trial of the IRI Review scheme confirmed the vital importance of appropriate preparation for an IRI Review and endorsed the previous arrangements which noted that preparation should include the following elements to ensure its smooth running and greater efficiency:

- The objectives of the IRI should be communicated directly to the host country well in advance of the review commencing.

- The review team-leader should visit the host country a few weeks in advance and brief the candidate inspectorate's senior management.

- The review team-leader would agree, with the candidate inspectorate, the scope and conduct of the review, the composition of the review team, the nature of documentation/briefing material to be supplied by the candidate body (bearing in mind the need for minimal bureaucracy) and would make arrangements with the candidate inspectorate for any necessary security clearances and/or access to sensitive sites or documentation.

- The candidate inspectorate should prepare and present the information required in an appropriate format and submit a copy to the review team-leader in advance of the IRI visit. If it is not possible to achieve this, then the information required must be presented to the IRI team directly on their arrival in the host country.

- The review team-leader would be responsible for organising the review team, managing the review process (in the nature of a lead assessor for management systems) and for managing production of the review report.

The report of the review also recorded various lessons for the overall IRI Review process that had been learnt during the trial phase. The more important points were as follows:

- In regard to the essential pre-review meeting, it might be useful for more people from the candidate inspectorate, such as Heads of Division, to participate.

- It is important for the pre-review meeting to clarify the issues and questions in the Questionnaire, to discuss practical issues such as the use of language in the review, and to establish the right working relationship for constructive discussion.

- It is important to have summary information about main areas of the Questionnaire in advance of reviews, particularly in regard to constitutional and legal arrangements, but it is desirable to limit preparation of such information a sensible minimum.

- Allow widening of the Regulatory Scope of IRI reviews to include all aspects covered by the MCEI.

- It is recommended that IRI Reviews in Federal States (or States with regionalised inspectorates) include a participant from at least one other land, community, region or province not directly involved in the review.

- Direct contact with inspection staff during reviews is invaluable for a balanced report but numbers should not become so large as to impact on the conduct of business.
- Travel arrangements should not curtail time for the pre-review meeting.
- The IRI Review needs a fairly large meeting room, e.g. for 12 – 15 people.

The pre-meeting for the Scottish IRI Review was conducted having regard to all of the above points. Mr. van Zanten, the Review Team Leader had arranged this pre-meeting by way of Mr. Gorman of the Scottish Environment Protection Agency (SEPA). The meeting took place in the Edinburgh Airport Hilton with a visit to the Edinburgh (Riccarton) office of SEPA on 22 September 2006. The participants were:

Dave Gorman	Better Regulation Manager, Scottish Environment Protection Agency. (SEPA IMPEL Coordinator).
Pieter-Jan van Zanten	Head of Environmental Enforcement, Province of Overijssel, Holland. (Review Team Leader).
Simon Bingham	Senior Environmental Protection Officer, Scottish Environmental Protection Agency. (Rapporteur for Review & Scottish IRI Project Manager.)

Several other members of SEPA staff who would be involved in the IRI were introduced to Mr. van Zanten during the visit of the SEPA office.

Mr. Gorman opened the meeting with introductions and welcomed Mr. van Zanten to Scotland. Mr. Gorman explained that the regulatory focus of the review was to be the IPPC and Seveso II Directives. He then outlined that the review intended to cover the environmental regulatory activities of SEPA nationally but that the South East Area would be used as a representative sample. Mr. van Zanten then summarised the objectives of the IRI scheme, with particular reference to Recommendation III (4) of the EC Recommendation on Minimum Criteria for Environmental Inspection (MCEI):

> "In order to promote best practice across the Community, Member States may, in co-operation with IMPEL, consider the establishment of a scheme, under which Member States, report and offer advice on inspectorates and inspection procedures in Member States, paying due regard to the different systems and contexts in which they operate and report to the Member States concerned on their findings."

He emphasised the importance of this voluntary scheme as an effective alternative to some more formal requirement and confirmed that the candidate inspectorate owned the IRI Review report, with publication of it, or parts of it, being at the discretion of the candidate inspectorate.

The constitutional position of SEPA was described briefly by Mr. Gorman. Mr. Bingham outlined the arrangements for permitting and inspection of regulated sites.

IPPC installations are categorised as Band A or Band B activities depending on their level of environmental hazard (with A being the higher hazard). The IPPC Directive is transposed through the Pollution Protection & Control Regulations and is known in SEPA as PPC.

SEPA is not the sole competent authority for the Seveso II Directive with equal control being shared with the UK wide Health & Safety Executive (HSE). Seveso II sites are known as COMAH (Control Of Major Accident & Hazard) sites in Scotland. COMAH sites are banded as per the Directive into Upper & Lower tier.

Against this background it was agreed that the scope of the IRI Review would include all matters relevant to the MCEI in regard to environmental control of installations that require permits or notification. Thus, the review would cover permitting, and inspection of Band A, IPPC installations, and Upper Tier Seveso II installations, and would examine the activities of the Edinburgh (Riccarton) Office of SEPA.

The composition of the Review Team was confirmed. It was also agreed that a SEPA representative would be available to assist Mr Bingham throughout the review.

The main business of the meeting was concerned with reviewing the Questionnaire and Guidance in order to clarify the nature of the responses expected and the information that would be useful for the Review Team to have in advance of the actual review. Mr. van Zanten pointed out that the Questionnaire was a guide to discussion and that the real value of the review lay in having free discussion and exchange of ideas around the ten areas identified in the Questionnaire. One of the lessons from the trial of the review scheme was that freedom for such discussion was of benefit to the Candidate Inspectorate, to Review Team members and to the inspecting authorities they represented. In this context it was emphasised that the time devoted to formal presentation of prepared material should be kept to a minimum required to convey understanding with plenty of time for question and answer sessions. Mr. van Zanten stated that Review Team members should have read all material supplied in advance of the review.

The potential problem of language becoming a barrier to full participation in discussion was also discussed. English would not be the first language of most team members, so the English language used in the discussion therefore needs to be straightforward and not too fast.

As regards practical arrangements, the venue for the review was agreed as being the offices of SEPA in Riccarton (Edinburgh), which were seen by Mr. van Zanten and judged to be very suitable for the review. On Wednesday the Review Team will have a morning meeting based in their Edinburgh hotel prior to travelling to Grangemouth for a site visit. It was also agreed that Mr.van Zanten, as Team Leader, would arrange to brief Review Team members on the Sunday evening before the start of the review. The daily programme for the review would generally involve starting at 08:30 with a meeting of the Review Team to consider the previous day's work and plan for the current day. Review proceedings would start at 09:00 with an interim summary of the previous day's conclusions and would finish at 17:00 allowing the Review Team to discuss interim conclusions.

The following work schedule was proposed:

Monday	Questions 1 and 2.
Tuesday	Questions 3, 4 and 5.
Wednesday	Questions 6, 7 and site visit.
Thursday	Questions 8, 9 and 10.
Friday	Finalise draft report and summarise essential conclusions.

As regards the preparation and availability of written material, Mr. Bingham agreed to send Review Team members information about the Constitutional and Legal arrangements in Scotland, together with a list of participants in the review and a draft programme and agenda. During the review an opportunity would be sought to see examples of inspection plans, permits, site-visit reports, etc. and to meet with inspectors. The final programme is included in Appendix 6.

4. REVIEW AND MAIN FINDINGS

The review was conducted from 5 to 9 March 2007, in the Riccarton (Edinburgh) offices of the Scottish Environment Protection Agency (SEPA), using the Questionnaire and Guidance shown in Annex 3.

This section of the report follows the structure of the Questionnaire. It records the objectives of each section and summarises the main points of discussion in terms of:

- Information about the Inspectorates.
- Examples of good practice.
- Opportunities for development.

Lessons for the review process are also identified and noted.

A summary of the information submitted in advance of the review, together with other information supplied during the review, is attached at Appendix 4, and the list of participants in the review is at Annex 5.

4.1. Constitutional Basis for Inspecting Authority.

Objective.

- To establish how the Member State allocates responsibilities for technical policy, socio-economic policy and any related political issues associated with environmental regulation.
- To understand how the Candidate Inspectorate is constituted within the Member State.
- To understand the Candidate Inspectorate's role in the interface between technical regulatory issues and related political or socio-economic issues in the Member State.

Scotland's position within the UK Member State
Scotland was an independent state until the Act of Union in 1707 which resulted in political union with England & Wales to form Great Britain. The United Kingdom of Great Britain was formed in 1800 when Ireland was absorbed into Great Britain with a further Act of Union. The Republic of Ireland broke away from the Union in 1922. The remaining "home nations" Scotland, England, Wales & Northern Ireland constitute the United Kingdom (UK) member state. The UK joined the then European community in 1973.

Scotland's constitutional set-up
The UK Constitution ultimately defines how Scotland shall be governed. The UK Parliament (Westminster, England) has historically been the principal source of all legislation in Scotland. However in 1998, following a referendum in 1997 (74% voted for devolution) Scotland gained partial devolution from the UK Parliament with the Scottish Parliament (Holyrood, Edinburgh) being formed through the Scotland Act

1998. It is responsible for devolved matters including the environment, local government, agriculture & forestry. The Scotland Act 1998 allows for primary and secondary legislation to be created for devolved matters. Those areas not devolved are known as reserved subjects, notably they include the constitution, defence & National security, energy, trade & industry, foreign affairs, tax and the economy.

The Scottish Parliament can debate reserved matters but may not legislate and equally although the UK Parliament has powers to enable it to legislate on devolved matters it will always give the Scottish Parliament the opportunity to give its consent through a legislative consent motion known as the Sewel Convention.

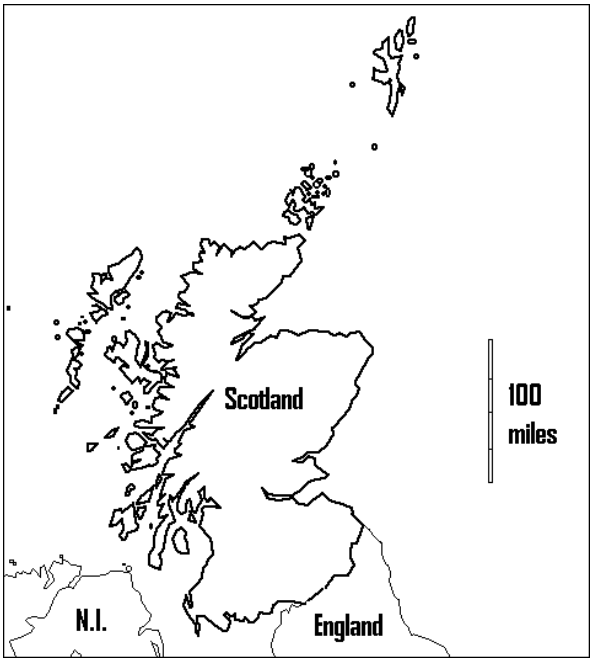

Figure 1. Map of Scotland

The Scottish Parliament is made up of 129 MSPs (Members of the Scottish Parliament) who are elected through a mixture of first-past-the-post (73 constituency members) and proportional representation (56 regional members, equates to 7 in each of the 8 regions used to select MEPs (Members of the European Parliament). The majority party (or coalition majority) is responsible for selecting a First Minister who in turn appoints a Cabinet of Ministers. The Ministers are accountable to the Scottish Parliament.

Each minister is responsible for a certain department consisting of civil servants working on a certain portfolio of work. The First Minister, Ministers and civil servants make up the executive arm of the parliament known as the Scottish Executive. Legislation is generally introduced through Bills and Acts that provide for Regulations to be made by the relevant Government Departments.

(NB. Since the review was carried out, an election was held in May 2007. The outcome changed the administration (from Labour/Liberal Democrat coalition to Scottish Nationalist Party (SNP)) who have subsequently renamed the "Scottish Executive" to the "Scottish Government"). Consequently, all references in this Report are to the "Scottish Government".

Scotland's legal system
Scotland's legal system known as Scots Law is a unique system based on Roman law; it is different from the system used in England and Wales. The Act of union in 1707 bought English influence on Scots Law and in more recent years European law has had a profound effect.

Approximately 90% of all environmental legislation in Scotland originated from the EU. Community law and decisions of the European Court of Justice take precedent over national law in all circumstances. Convention rights have been given a constitutional status in Scotland and are legally superior to Acts of the Scottish Parliament. The Scottish Parliament cannot make law which is incompatible with Convention Rights or community law. The environmental regulatory system in Scotland relies heavily on criminal sanctions to ensure compliance with environmental law. SEPA cannot levy any administrative penalties against those failing to comply with environmental legislation.

Scotland has an independent public prosecution service known as the Crown Office and Procurator Fiscals Service. The service is headed up by the Lord Advocate and all prosecutions are carried out in his or her name. The police and other enforcement agencies (eg. Scottish Environment Protection Agency, SEPA) cannot take prosecutions to court. Reports giving details of alleged crimes are passed to the public prosecutor known as the procurator fiscal, who has discretion whether or not to prosecute.

There are no specialist environmental courts in Scotland. There are three levels of court in Scotland: the High Court of Justiciary (supreme criminal court which tries the most serious crimes); Sheriff Courts (49 'regional' courts which mainly deal with less serious offences) and District Courts which deal with minor offences and are administered by the local authority. The vast majority of all environmental cases are heard at the Sheriffs Court.

Environmental Protection in Scotland
SEPA is an executive non-departmental public body (NDPB) and is accountable to the Scottish Parliament through the Scottish Government. An NDPB is semi independent but expected to carryout the wishes of the parliament. Including SEPA there are five NDPBs that cover different aspects of environmental protection in Scotland.

Scottish Natural Heritage - is responsible for: the protection of natural heritage (protected sites eg Natura 2000, wildlife, habitats, rocks, landscape etc); helping people enjoy and value natural heritage and encourage people to use natural heritage sustainably. SEPA aside, the other NDPBs are:

Royal Commission on the Ancient and Historical Monuments of Scotland – is responsible for the identification, survey, interpretation, preservation and promotion of Scotland's built heritage.

Cairngorms National Park Authority & Loch Lomond and the Trossachs National Park Authority – Scotland's two national parks have the same overall responsibilities for two separate geographical areas: to conserve and enhance the natural and cultural

heritage; promote sustainable use of natural resources and to promote sustainable social and economic development of the communities of the area.

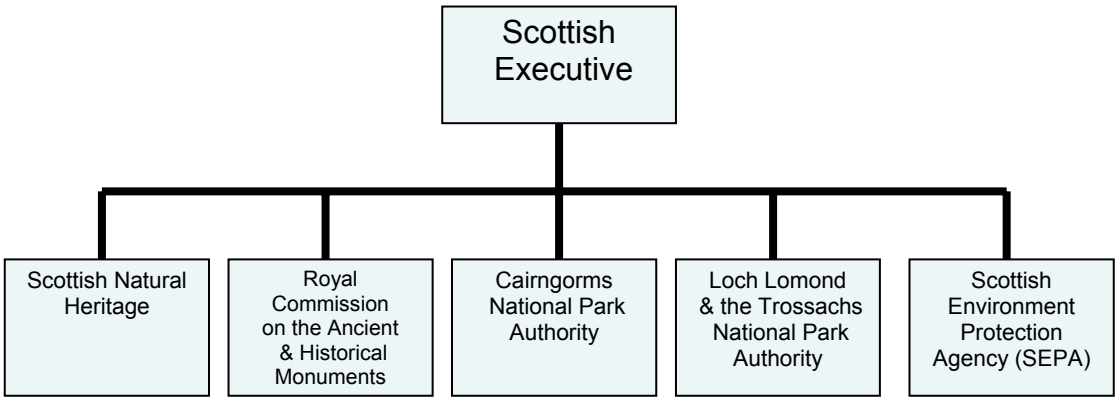

Figure 2. The five principle Non-Departmental Public Bodies responsible for aspects of environmental protection in Scotland.

Each NDPB is reviewed every five years by the Scottish Government to identify if the public body is still needed and if it is going in an acceptable direction and to assess whether it is efficient and effective. The process is known as the Policy & Financial Management Review (PFMR).

Relationship between Scottish Ministers & SEPA
SEPA's parent department in the Scottish Government (as of May 2007) is the Rural Affairs & Environment Department. This Department is responsible for the oversight of SEPA's financial controls, the environmental policy framework within which it operates, and policy on all its functions.

The relationship between SEPA and the Scottish Government is governed by means of a Financial Memorandum and a Management Statement. The Financial Memorandum defines the controls on financial, staffing and related matters and the Management Statement includes the broad framework within which SEPA operates.

In particular the Management Statement includes: the rules and guidance relevant to the exercise of SEPA's functions, duties and powers; the conditions under which public funds are paid to SEPA and how SEPA is to be held to account for it's performance. SEPA does not have a statutory principal aim but the Scottish Government have a duty to set out guidance on the aims and guidance they consider appropriate for SEPA to be pursuing. The Scottish Government have given guidance to SEPA entitled "SEPA and Sustainable Development" which set out SEPA's principle aim as:

"to provide an efficient and integrated environmental protection system for Scotland, which will both improve the environment and contribute to the Government's goal of sustainable development".

This guidance also sets out seven principle objectives for SEPA which include:

- Adopting across all functions an integrated approach to environmental protection and enhancement;

- Working with all relevant sectors of society, including regulated organisations, to develop approaches which deliver environmental requirements and goals without imposing excessive costs;
- Adopt clear and effective procedures for serving its customers;
- Operate to high professional standards based on sound science;
- Organise its activities to reflect good environmental and management practice;
- Provide clear and readily available advice and information on its work;
- Develop a close and responsive relationship with the public, local authorities and other representatives of local communities, and regulated organisations

SEPA's performance is judged on its contribution to protecting and improving Scotland's environment and quality of life. The Scottish Government guidance states that the responsibility for setting the policy framework that defines the priorities for such environmental outcomes lies with Scottish Ministers, who will supplement the strategic objectives with policy priorities. The Scottish Government also publish a document entitled "Policy Priorities" that identifies policies and priorities that are relevant to SEPA and defines SEPA's role in implementing these.

The Scottish Ministers can exercise considerable control over the activities of SEPA by giving directions as to how to carry out its functions. Direction is generally placed within regime specific legislation but is also embedded within the legislation that setup SEPA.

SEPA and politics
As a publicly accountable organisation SEPA must have an understanding of the political process. SEPA responds to official ministerial enquiries and gives evidence when called to parliamentary enquiries.

SEPA must remain independent of the political process. Six weeks prior to an election the Scottish Government call a period of Purda. This means that NDPBs such as SEPA must not release policy or materials within that 6 week period which could be used for party political gain.

Health and Safety in Scotland
The Health and Safety Executive (HSE) are responsible for the enforcement of health and safety legislation in England, Wales & Scotland. SEPA is a joint competent authority with the HSE for Seveso II sites in Scotland. The HSE and SEPA have a Memorandum of Understanding (MoU) defining how they will interact with each other. SEPA holds quarterly meetings with the HSE and the Environment Agency (the EA share competent authority with HSE in England & Wales) to discuss issues and to ensure a consistent approach is taken across the Member State.

Funding
SEPA has an annual budget of approximately £60 Million (€ 80.4 Million). Approximately 44% of this comes from charging schemes in line with the 'polluter pays principle'. Different charging schemes exist for different regimes but the norm is to charge for application to carry out an activity, change a permit and for on-going subsistence to cover monitoring. Charging regimes are consulted on prior to adoption and have to be approved by the Scottish Ministers.

The other 56% comes from grant in aid direct from the Scottish Government. This is used to pay for a variety of things including enforcement against non-permit holders,

background environmental monitoring not associated to regulation, preparatory work for new legislation and assessing planning applications. The Scottish Government run a three year funding cycle. SEPA must bid for money in a process known as the Corporate Spending Review (CSR). The aim of the Scottish Ministers is for SEPA to become a cost recoverable agency. The Scottish Ministers have a balancing act between funding and reducing cost and not passing excessive costs to those SEPA regulates.

Feedback to Government on environmental legislation
SEPA does not produce legislation. SEPA tries to influence the development of UK and Scottish legislation through involvement in the legislative process. This can include: making input to representations on EU legislation; providing opinion on the best method of implementing legislation prior to its drafting and commenting on its drafting.

SEPA is a statutory consultee for any new legislation proposed by the Scottish Government. SEPA feeds back to the Scottish Government any comments as to the applicability, enforceability and scope of the draft legislation. The Scottish Government are not obliged to accept any recommendations. Where there is an identified error in national legislation or SEPA has identified the need to change the scope of legislation SEPA seeks to directly influence its Scottish Government sponsor department (Rural Affairs and the Environment).

SEPA does draft regulatory policies (eg Enforcement Policy) and guidance documents (eg Practical Guide to Pollution Prevention and Control (PPC)).

Where there is a requirement to submit information (eg RMCEI) to the commission or there is a requirement to seek a change in a Directive this is done as a member state through the appropriate Westminster department. For environmental matters this is the Department for the Environment, Food & Rural Affairs (DEFRA).

Transboundary Issues
Legislative measures for dealing with transboundary issues are either embedded in Scottish law eg Article 16 of the IPPC Directive or Scotland relies directly on the provisions within EU law eg Regulation 259/93 on the shipment of waste.

For IPPC Sites where Scottish Ministers are aware of significant negative affects they forward on the application and if available any draft determination to the Secretary of State (Westminster) for onward transmission to the Member state concerned.

If the member State returns comment within the statutory determination period these comments must be considered prior to the issuing of a permit.

The devolution of environmental regulation to the different countries within the UK means that transboundary issues can occur within the Member State. SEPA would contact the relevant Agency to give them the opportunity to comment should this be identified.

Working with other Agencies
In undertaking its regulatory functions SEPA works with other Agencies. An example of this is the permitting of PPC permits. The relevant Local Authority and Health board along with the Food Standards Agency and Scottish Natural Heritage must be consulted as statutory consultees. SEPA uses Memorandums of

Understanding to formalise the individual roles and responsibilities of the working relationship with other agencies.

As stated above, SEPA also works with the HSE as joint competent Authority for Seveso II sites.

Outwith Scotland SEPA takes part in joint working groups with the other environmental agencies of the UK. SEPA jointly funds (along with others) a research forum with Northern Ireland Environmental Heritage Service known as the Scottish & Northern Ireland Forum For Environmental Research (SNIFFER).

SEPA actively participates in IMPEL activities and the EPA Network.

Examples of good practice

- Regular meetings with the HSE & EA to discuss Seveso II.

- The Purda system of independence from politics for the 6 week period prior to an election is a good one.

Opportunities for Development.

- Although reserved matters, tax instruments and energy are clearly linked to the environment, it would be useful if these could be linked.

- It is suggested that SEPA should look at more instruments to achieve environmental goals. SEPA should look at Scottish, UK and European Governments and regulatory bodies.

- It is thought the Memorandum of Understanding (MoU) process concerning joint agency working increases bureaucracy.

4.2. Legal Basis for Inspection Authority.

Objective

- To establish an understanding of the legal basis of the Candidate Inspectorate within the Member State.
- To gain an understanding of those parts of environmental legislation for which the Candidate Inspectorate is the competent authority together with an explanation of the types of installations and operators covered.
- To establish the roles of the candidate Inspectorate in enforcement of relevant permit conditions and prosecution.

Environment Act 1995

The Scottish Environment Protection Agency (SEPA) was created by the UK wide Environment Act 1995 (prior to devolution). The 1995 Act was enacted to create a unified environmental body of Scotland (and an equivalent for England & Wales, the Environment Agency). The legal basis for SEPA is contained within the 1995 Act. Historically environmental protection was the responsibility of 64 different bodies in Scotland, the water pollution functions were the responsibility of the river purification boards, integrated pollution control and radioactive waste functions were performed by Her Majesty's Industrial Pollution Inspectorate and, district and islands councils performed waste regulation and local air pollution functions.

The 1995 act transferred the functions of the 64 bodies to SEPA when it came into being on the 1st April 2006. Many of the original organisations were dissolved at this time.

The main functions transferred to SEPA related to water pollution & management, integrated pollution control, radioactive substances control and waste regulation. SEPA was also given several new powers which it's previous bodies had not exercised. This included powers to give guidance to local authorities on contaminated land and enforcement responsibilities on special sites; the power to assess where local air quality standards are not being met and in some circumstance to give direction to local authorities, to prepare a waste strategy for Scotland; enforce the Producer responsibility regulations and as a statutory consultee with regard to permitting of nuclear installations.

SEPA does not have powers relating to a number of areas of environmental law including: pesticide registration & enforcement; drinking water standards; genetically modified organisms and monitoring & coordinating marine pollution. SEPA does not have Crown privilege, immunity or exemption from taxation. It does not carry out its functions on behalf of the Crown.

SEPA's Governance

SEPA has a Board, the Chair of which is a political appointee made by the Scottish Ministers. The main Board comprises 10 individuals plus the Chief Executive who is appointed by the Board. The Board, which in terms of the Environment Act 1995 (the piece of legislation that created SEPA) is the Agency, has ultimate responsibility for

the organisation. This power is passed through the organisation down to inspectors via the Chief Executive in a scheme of empowerment known as governance. A document has been created to define how power has been delegated. This is known as the Scheme of Delegation.

SEPA also has three regional Boards (North, South West & South East) whose responsibilities include engaging with stakeholders in order to achieve a better understanding for SEPA of how its work is perceived in the Region and to communicate SEPA's strategic and business aims to communities and other stakeholders. The Regional Boards also advise the Agency Board of relevant matters affecting the delivery of SEPA's services within the Region.

IPPC Directive.
The IPPC Directive is implemented through the Pollution Prevention & Control (Scotland) Regulations 2000. This set of Regulations primarily created to enact the IPPC Directive is an integrated piece of legislation and has been used as a vehicle to enact the Waste Incineration, Large Combustion Plant, National Emissions Ceiling, Environmental Noise, Landfill and Solvent Emissions Directives. It also enacts some aspects of the Water Framework Directive.

Its adoption amended various bits of domestic legislation some dating back to 1974. The principle piece of legislation covering large industrial sites was the Integrated Pollution Control Regulation which included BATNEEC and BPEO as principals. Waste sites including landfills were regulated by the Waste Management Licensing Regulations.

The sites included in the individual sectors within the IPPC Directive are known as Part A's, there are 490 part A's in Scotland. The scope of the PPC Regulations goes beyond that of the Directive in that it also covers a lower tier of sites known as Part Bs, these are regulated for emissions to air only. There are 2000+ part Bs in Scotland.

The IPPC Directive requirements have undergone a 6 year phased transition based on sectors. It has included new sectors not previously regulated by SEPA (including intensive agriculture and food & drink) and new aspects of regulation (eg. accidents and noise). The majority of the sites moving to PPC were scheduled to become PPC in 2006 and 2007.

SEPA has a formal licensing process, with a statutory determination period of 4 months. The 4 month period can be extended with the agreement of the applicant or when a notice is served requiring further information. All operators of sites to be permitted are met with to discuss the requirements of SEPA and to discuss the permitting process. Once an application is made it is assessed to identify if there is enough information to permit, if not the application is sent back highlighting deficiencies. SEPA uses standard templates for simple sites and standard conditions for more complex sites to aid consistency. Site specific conditions may be drafted if required. All non-templated permits are checked by a solicitor prior to senior management sign-off. SEPA has found it difficult to meet the 4 month determination period.

Inspections are risk based and are carried out based on the priorities set by regulations, government and senior management.

Seveso II Directive.
The Seveso II Directive (96/82/EC) is implemented through the Control of Major Accidents & Hazards Regulations 1999 (known as COMAH) which regulates dangerous, named chemicals. The COMAH Regulations are treated as health and safety regulations under the Health and Safety at Work Act 1974, it is a UK wide set of regulations as health & safety is a reserved matter. COMAH replaced the Control of Industrial Major Accident Hazards Regulations 1984 which was solely regulated by the Health & Safety Executive (HSE - a UK wide Agency).

The competent authority (CA) responsible for enforcing Seveso II in Scotland is jointly made up of the SEPA and the HSE. SEPA has the responsibility for environmental issues and the HSE for health and safety. Inspections, unless solely looking at a specific targeted component of a Seveso II site a will be joint. Regular meetings are held with the HSE to agree the scope of the inspection.

Sites are categorised either as Top Tier or Lower Tier as per the Directive. Permits are not issued and there are no General Binding Rules (GBR) to comply with, the duty to comply is implicit within the Regulations. Ignorance of the law is not a defence. Individual establishments have the responsibility to decide if Seveso II regulations apply. If Seveso II does apply, they must notify SEPA and the HSE. This applies to existing establishments and new establishments prior to commencing operation.

The CA can prohibit the operation of an establishment or installation if a serious deficiency in the measures for the prevention and mitigation of major accidents is identified either via the safety report assessment or site inspection. Operators of establishments have the right to complain or appeal against any decision made by the CA regarding assessments of Seveso II information documents or site inspection conclusions. They can appeal direct to the CA or to an independent employment tribunal to adjudicate.

Interaction with planning
Spatial or development planning controls have been in place since the 1940's. There are 32 local authorities in Scotland responsible for controlling development through the Town and Country planning act. SEPA is a statutory consultee for all planning developments. In practice SEPA comments on approximately 2000 planning applications per year that have a potential impact on the environment. SEPA is also required to comment on all strategic, area and sub area plans.

The development process is sequenced such that planning permission is granted by the Local Authority Planning Department prior to a PPC Part A permit being granted by SEPA then, authorisation from other agencies eg sewage undertaker, Scottish Water then building permit issued by the Local Authority Building Control section followed by the submission of Seveso II pre construction plan to SEPA and the HSE.

Appeals and complaints
Appeals are the usual mechanism of challenging regulatory decisions. The rights of appeal are set out in the relevant legislation and in most cases the appellant body is the Scottish ministers but in some cases it may be the Sheriff's Court. Appeals are usually only for regulated persons not third parties.

Once the rights of appeal have been exhausted (if any exist) the regulated person may seek judicial review. Judicial review is only available on certain grounds.

SEPA has a complaints procedure and a service charter. If an individual's complaint is not resolved to their satisfaction they may complain to the Scottish Public Services Ombudsmen or to the petitions committee of the Scottish Parliament. There is also the ability to complain to the European Commission or appeal to the European Parliament.

Public Consultation

There are several consultation exercises prior to any new development commencing it's activity. There is public consultation through any zoning of land in the form of local and structural plans; through the planning permissions process to develop a particular site on a particular piece of land and through the SEPA permitting process.

Each site is required to advertise in relevant local and national newspapers during the permitting process. The public have a statutory time period in which to reply formally to SEPA addressing their concerns/support.

All documents other than commercially confidential or national security information are available to the public.

Enforcement tools

SEPA has a variety of enforcement options available to it (see figure 3) in cases of non-compliance. SEPA does not have the ability to raise administrative fines.

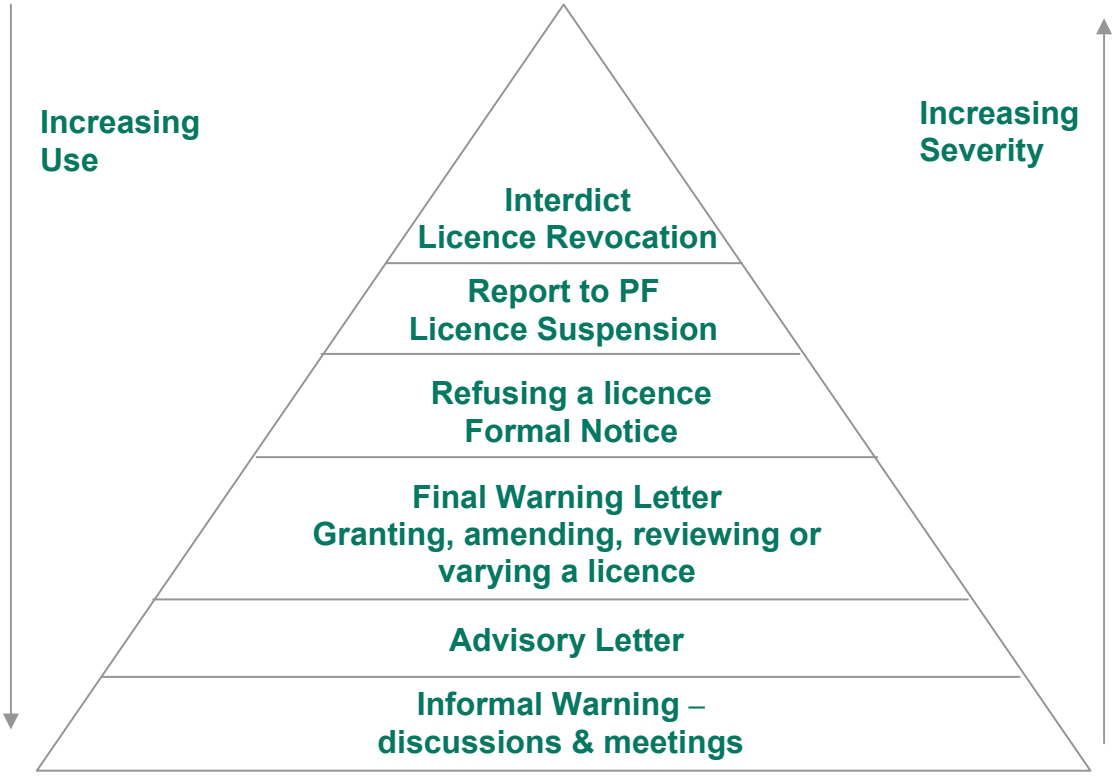

Figure 3 – SEPA's Enforcement tool kit

Examples of Good Practice.

- The way Scotland has combined multiple Directives (IPPC, Large Combustion Plant, Waste Incineration, Landfill etc) into one set of Regulations (PPC Regulations) is a very good environmental system. This makes it very clear to those regulated which set of Regulations they need to comply with.

- Joint inspections on Seveso II sites with the other competent authority (HSE) are very efficient, it ensures no duplication of requests from multiple inspections and it also reduces regulatory burden for the operator.

- Regular pre-meetings with the HSE were also noted as being good practice as they allowed the scope of any inspection to be fully discussed.

- The enforcement tool kit is a very useful easily understandable system.

- The PPC Regulations as implemented promote sustainable development.

- SEPA provides a very comprehensive support system for operators in terms of written material and meetings eg. 3 day+ pre-application period for every part A PPC installation.

- The use of standard templated conditions and for less complex sites standard permits is very useful to aid consistency and so that inspectors do not need to routinely re-invent standard material. Every non-standard permit is checked for legal correctness prior to issue.

Opportunities for Development.

- It is suggested that administrative penalties such as fines could be employed.

- Both Scottish Water (Scotland's drinking water and sewerage undertake) and SEPA places conditions on what a Part A operator can discharge to a sewerage network. It would be less confusing for the operator if it was only one authority placing conditions.

- It is suggested that there is a proactive system for searching for Seveso II sites out with SEPA's current knowledge. Currently it is reliant on the operator to come forward or other systems to catch sites eg the planning system or other permitting regimes.

- The statutory 4 month PPC permit application determination period has been difficult to meet. Systems should be designed to make it easier to apply. Work should be carried out on standards, guidance and procedures to make SEPA's requirements more explicit.

4.3 Organisational Structure and Management.

Objective

- To establish how the Candidate Inspectorate is organised, staffed and managed.

To help put the organisational structure in context a few key characteristics of Scotland are shown as follows:

- It has a land mass of 78,772 km^2.
- It has a coastline > 3200km.
- It has > 790 islands of which approximately 90 are inhabited.
- It has a 96km land border with England.

- A total of 5.2 million inhabitants with an overall population density of 65 per km^2.
- The majority of the population (70%) live in an area known as the central belt stretching from Glasgow to Edinburgh.
- It principally has a service economy with a GDP >£86 Billion
- It has 47,000 agricultural units, 265,450 private sector enterprises.

SEPA is Scotland's principal environmental regulator and advisor. It delivers its service through 21 area based offices with a head office in Stirling (Map in Appendix 7). The locations are based on the desire to give a local presence throughout the country. It has a total workforce of 1300 staff.

The day-to-day running and management of SEPA is the responsibility of the Chief Executive. SEPA is organised into four Directorates:

- Environmental & Organisational Strategy (EOS - SEPA's policy function);
- Environmental Science (SEPA's principal monitoring section - chemistry, ecology etc);
- Finance & Corporate Services (Human Resources, Information Services, Charging Schemes, Payroll etc); and
- Environmental Protection & Improvement Directorate (EPI -Regulatory teams).

Each Directorate has a Director who sits on the Corporate Management Team (CMT) who is responsible along with the Chief Executive Officer of the day-to-day running of SEPA. Each Director also heads up their own Directorate Management Team (eg EPI Management Team).

SEPA operates an Integrated Business Management System (BMS) covering quality, environmental and health & safety systems. SEPA's BMS is certified and operated to ISO9901 (Quality), ISO14001 (Environmental Management) and ISO17025 (Laboratory Testing).

SEPA's portfolio is vast and includes regulation on waste activities, discharges to the aqueous environment, impoundment, abstraction, river engineering, diffuse pollution, emissions to air, radioactivity, IPPC, Seveso II, Packaging, Emissions Trading Scheme, contaminated land, responses to planning consultations, waste management activities etc. It does not directly include protection of natural or built heritage sites.

The main focus of the review lies with the work of the Environmental Protection & Improvement Directorate (EPI) and the Environmental & Organisational Strategy Directorate (EOS).

There are 550 staff in the EPI Directorate of which approximately 310 are frontline regulators. The stated remit of the Directorate is to "protect and improve the environment by the translation of SEPA's policies into progressive action by others and through fair, environmentally sound, legally correct regulation and partnerships."

The Directorate carries out its work through a geo-spatial framework. There are three regions: North; South East & South West (see Appendix 8 for organogram) and a nationally based section. The National function includes a centrally managed but geographically dispersed team of radioactive substance inspectors legal team, registry (public registers), enforcement and media based support teams and an emissions trading unit.

Each of the three regions is sub-divided into two areas. Each geographical region has an overall manager with four principal sections reporting directly to them, the heads of the two areas, the head of an Environmental Partnership Unit and the head of the Process Engineering Unit.

The Environmental Partnership Unit is responsible for all planning (spatial), contaminated land, local development of the national waste strategy and local air quality work in liaison with Scotland's local authorities (unitary authorities). There is one unit in each of the geographical regions, made up of planners and specialist officers.

The Process Engineering Unit regulates the most complex of IPPC sites such as large power stations, refineries, chemical and pharmaceutical production plants. There is one unit within each of the geographical regions which contains approximately ten members of staff. The majority of staff are chartered chemical or process engineers.

Each sub-area is also made up of three to four teams (EPIT) of officers. Some of the teams may be co-located when based around large conurbations (such as Glasgow), some teams may be located in one office and some split in more rural/remote areas.

Each team is managed slightly differently based on workload and size of resources needed to complete the geographically located activities. Teams vary in size from 6 to 16 officers of a range of grades, abilities and technical specialisms.

For the majority of the work carried out by SEPA there are no centralised permitting teams. All permits are available on SEPA's S drive which makes any permit visible to all those permitting in SEPA. The EPIT members carry out a mixture of inspection and permit writing. The majority of team members would be expected to have a specialism in one media (waste, water, air/IPPC), a working knowledge of a second and an awareness of the third.

Direct Liaison with industry
SEPA aims to work with industry to gain environmental protection and improvement whilst minimising burden on industry. SEPA uses the principle that there should be no surprises for industry.

During the implementation of IPPC SEPA took a sector approach by appointing a sector manager to oversee the permitting of a particular IPPC sector eg. food and drink. A key part of the role was the identification of activities, liaison with industry about SEPA's requirements and the implementation of a consistent approach to permitting. SEPA held seminars, talked to trade associations and encouraged discussion on a site basis with operators up to two years prior to a sector coming under IPPC.

SEPA also has a PPC users group which is a more formal liaison mechanism with a wide cross section of trade associations subject to IPPC. It provides a forum for SEPA to discuss across sector issues with industry.

Decision Making
Whilst in the field, the majority of regulatory decisions are made by the inspecting officer, but where they are uncomfortable taking a decision they are delegated upwards. Where there are political implications, national regulatory issues or perceived risk to the business they are elevated to the EPI Management Team or CMT. Authorisation is dictated in the scheme of delegation.

Sign-off of a formal notice or permit is as dictated in a formal signing protocol. The protocol is based on risk with the higher the risk, the higher the sign-off authority.

Technical advice is given by several internal groups set up to facilitate the decision making process. Regulatory and Policy Support groups are set up to provide technical direction. The National Environment Group has been set up to determine the environmental priorities for SEPA.

Policy Development in SEPA
The EOS Directorate is responsible for preparing SEPA for incoming legislation, market developments and Government policy. EPI are responsible for delivering policy through regulations, initiatives and partnerships.

Implementation of New Duties
The EOS Directorate is principally concerned with the formulation of policy, future strategy and liaising with government and outside bodies to yield effective regulations. The EOS strategy function provides two systems to ensure that new legislation or developing issues are captured by SEPA. The first is a horizon scanning function to identify emerging issues and to highlight these to the appropriate personnel within SEPA.

The second system is the management of a new duties to assess business need and environmental priority. This system uses a checklist to identify issues such as size of the new duty, whether SEPA will be the competent authority, and resources required to implement and run the new duty (eg. number of personnel, cost, IS infrastructure).

When a new duty is required to be implemented by SEPA an assessment of the size of the task being implemented is made. For smaller projects a task and finish group is initiated (eg. the implementation of the Waste Incineration Directive. For larger

projects a programme management group is initiated. Any implementation team is made of staff from various functions as required including the particular EOS media based policy team, EPI media based support team, IS, science and finance for charging scheme implications.

Resources and costs
Being a Non Departmental Public Body SEPA is accountable for the money they spend to the Scottish public. Resources are estimated through the new duties process and then used to inform the implementation process. Each activity is costed based on the level of officer and the time taken to carryout the activity. This is used either to inform a request for grant-in-aid or to support a charging scheme.

Examples of Good Practice.

- The emerging issues and new duties system are very useful to alert SEPA to future business resourcing and developments.

- All permits are available to access on a central electronic system. This allows an officer permitting in one part of the country to see what conditions were used in the other to aid consistency.

- Geographical spread of staff, staff numbers and specialisms based on need to give effective local delivery.

- The signing protocol is a good system making it transparent for all users. It is well structured and allows future development.

Opportunities for Development.

- Work could be carried out to make costs in the charging scheme more explicit.

- SEPA should consider how much it charges and its impact on industry. Work in an efficient way and be lean.

4.4 Workload.

Objective.

- To understand the workload of the Candidate Inspectorate and the arrangements for its effective delivery.

Corporate Workload

SEPA routinely (annual to every 4 years) inspects approximately 11,000 authorised sites in Scotland including IPPC and Seveso II. The majority of the environmental regulations enacted in Scotland have risk based mechanisms in built into the level of regulation. PPC has the more complex sites regulated as Part A and the lower risk sites as Part B. SEPA has implemented the Water Framework Directive such that there are four levels. In order of increasing risk they are: adherence to General Binding Rules, Registration, Simple Licence and Complex Licence.

Within the scope of this review SEPA has 490 Part As and >2000 Part Bs regulated under PPC. SEPA also regulates approximately 60 Top Tier sites and 120 Lower Tier sites under Seveso II. There are a large number of whisky bonded warehouses that contribute to the higher number of Lower Tier sites.

In addition to the IPPC and Seveso II sites SEPA has 4200 licences and 100000 registrations to discharge to the aqueous environment. SEPA has 2500 licences and registrations for abstractions and impoundments and 500 annual licences and registrations for engineering activities in inland waters.

In the waste media SEPA controls the disposal, treatment, storage and treatment of approximately 12 million tones of waste through 1000 waste management licences and through the annual issuing of approximately 40,000 special waste movement certificates per year.

SEPA runs a 24/7 out of hour's response. This is controlled by a permanently manned call centre who will call a standby inspector (1 or 2 per region) in the event of a pollution notification. Including SEPA identified pollution events (not including non compliant sites at the time of inspection) SEPA officers respond to approximately 7000 incidents per year from a mixture of SEPA regulated and unregulated sites. SEPA is a tier 1 responder along with the Police and Fire services under the Civil Contingencies Act for major incidents. SEPA inspectors are placed on a standby rota.

SEPA uses an oracle based computer system to manage both inspections and sampling (site monitoring programme). The National Environmental Management System (NEMS) is preprogrammed on a yearly basis with the number of sites and the required number of inspections. NEMS then schedules the inspections throughout the year by month. The inspecting officers have the ability to carryout the inspection any time within the month. Although pre-planned the majority of inspections are unannounced. The system gives the ability to program work and to see what has been achieved based on the plan. The system is also used to program licence reviews.

Regional and team workload

The South East Region has 120 staff in the EPI Directorate. A sample of the work programme for the current year for the region is shown below in Table 1:

Media	Number of Programmed Inspections
PPC A & B	890
Waste	2600
Water (point source)	1900
Radioactivity (low level)	70
Farms	170

Table 1. South East Region workload

As discussed in section 4.3 above there are seven EPI teams which are geographically spread and carry out the vast majority of inspections and permitting. Table 2 gives an indication of part of the typical workload for one of these teams. The example given belongs to the Fife EPIT a mostly rural area located between the cities of Edinburgh and Dundee. The team have 50 waste sites, 27 Part As and 71 Part Bs.

Waste Activity	Number
Inspections	450
Licence Reviews	13
Improvement Plans	8
PPC Sites	
Inspections	100
Licence Reviews	30
New Application Determination	5

Table 2. Fife EPIT workload

Workload planning
SEPA has limited resources and increasing responsibilities and has therefore developed methodologies to prioritise workload. SEPA uses a risk based methodology to determine the number of inspections a site requires in any given year and as a management tool to identify which aspects of the site the operator needs to concentrate on. The methodology is also used to help inform regulatory activity over the coming year and to help set targets.

For IPPC sites the methodology is known as OPRA (Operator Performance and Risk Assessment). OPRA has two components the Pollution Hazard Appraisal (PHA - intrinsic risk of the site including location in relation to receptors) and the Operator Performance Appraisal (OPA - how the site is managed and whether they have had any non-compliance) which when combined this gives an overall risk assessment for the site.

The PHA is only reviewed when the site changes fundamentally whereas the OPA component is carried out annually at the end of the calendar year. The OPRA is carried out by the inspecting officer.

One of the outputs is the number of inspection the site should get in the following year. A large complex site would get 4 inspections per year and a small site 1 inspection. Good sites get a reduction in the frequency of visits and failing sites get more.

Unit managers review all risk assessments and will explore issues with the team. By comparing the OPA results across a sector trends can be identified to target future

inspections eg maintenance. Data is published on an annual basis for all Part As for both the satisfactory and unsatisfactory sites.

Workload planning is carried out based on a financial year with planning for each year starting three months earlier. Figures are based on the previous years NEMS results plus any know changes from the OPRA system or through the addition of new sites. Each officer is assumed to have a working year of 180 days not including training.

Each activity such as inspection of a particular type of site, review or assessment of a particular type of permit is assigned a workload figures (eg. 26 days to assess a small Part A chemical plant application). The volume of work and types of activity are amalgamated to give the workload of the team. Each team has a workload plan which feeds into the Directorate plan.

Issues which may affect the planned workload include the expectations of stakeholders, changing priorities, conflicts between statutory requirements and environmental improvement. SEPA also has conflict between the calendar and financial year with different data recording systems not being aligned. Responding to environmental events and the amount of enforcement action is also preprogrammed but due to the unpredictability of these elements of work they are based on previous year's data.

EPI Teams also work on environmental improvement plans. These projects are used to plan work outwith normal activity that may involve specialist support from other sections of SEPA. These projects such as work to improve a downgraded stretch of river, are approved on a regional priority basis and may take several years to complete.

During the IRI it was noted that the implementation of new duties particularly relating to the implementation of the Water Framework Directive and the permitting of IPPC sites was having a major affect on the ability of EPI Officers to carryout routine inspections. This was because permitting was given the highest priority.

An EPIT officer would routinely carryout 50 to 60 inspections of licenced sites per year, a Specialist I in the process engineering unit would carryout significantly less. A proactive/reactive inspection ratio is thought to be 50/50 for large sites and 10/1 for small.

Charging

SEPA has a responsibility to recover costs. SEPA charges for submission of PPC applications, substantial change, transfer and surrender as well as ongoing subsistence. Charges are based on complexity and are based on the number of activities on site with application costs ranging from £500 to £144,000 (€670 to €181000). The Seveso II charging scheme is based on a standard charge per hour on site (currently £124 per hour - €166).

Enforcement Action

Formal enforcement action such as preparing a report to the Procurator Fiscal recommending prosecution is very time consuming with a simple case taking approximately 20 working days to complete. This can have a significant effect on the ability of an EPI Team to carry out its routine duties.

SEPA takes an average of approximately 65 reports to the Procurator Fiscal per year and achieves a 60-70% success rate in terms of prosecution. Of the cases not successfully prosecuted a significant number will gain a fiscal warning from the Procurator Fiscal. Lower levels of enforcement action (see Figure 3) are a daily occurrence for most officers.

Examples of Good Practice.

- 24/7 call centre and standby rota for inspectors.

- Risk based approach to inspections is very advanced and is one of the most important tools in SEPA. Operator performance is clearly linked to regulatory effort in terms of number of inspections and action plans. This system will be important in the future if resources become tighter.

- High performing sites gain earned autonomy receiving fewer inspections.

- Operator performance results for PPC Part A sites are published. This is useful to aid recognition for the high performers and to deter poor performance.

- The NEMS IS planning system is a good tool. It is useful for managers, business planners, laboratories and inspectors.

Opportunities for Development.

- Consider developing OPRA system to link to charging. Financial rewards for good sites, penalties for poor.

- It appears to be very time consuming to take a report recommending prosecution to the procurator fiscal. It is recommended that this is streamlined.

- It is understood that the SEPA currently has a regulatory priority to get all PPC permits issued prior to the end of October 2007 and that the Water Framework Directive (WFD) has also just been implemented also requiring concentration to be placed on permitting. It is noted that this has meant that the inspection programme has had to be altered requiring a reduction in inspection frequency. Although the reduction in inspection frequency is risk based a red circled percentage of time should be identified such that a baseline inspection frequency is established.

4.5 Qualifications, Skills and Experience.

Objective

- To understand the qualifications, skills and experience required by inspectors undertaking environmental regulation within the Candidate Inspectorate, both on appointment and during their career.

All SEPA staff undergo a formal induction when they start employment with SEPA. SEPA has several grades of officer involved in inspection and permitting. These are Assistant Environmental Protection Officer (AEPO); Trainee Environmental Protection Officer (TEPO); Environmental Protection Officer (EPO); Senior Environmental Protection Officer (SEPO); Specialist II and Specialist I.

The EPO post is the core officer grade in EPI. One of the requirements before being accepted for an EPO post is that candidates have at least one year's relevant technical or scientific experience.

All posts TEPO and above must have a relevant degree qualification or equivalent. The majority of recent entrants to these SEPA positions have second degrees (eg. MSc). Many of the UK's universities have courses in relevant disciplines such as environmental management, waste or process engineering. SEPA also has many very well qualified members of staff from throughout Europe and the wider world.

A scheme to develop competent core grade EPOs was initiated in 2005, this is known as the Trainee EPO programme. The EPI directorate identified a skills gap and had difficulty filling EPO positions with suitably experience external candidates. The need for new appropriately experienced EPOs grew following the rapid increase in size of SEPA in the early naughties (00) with many of the incumbent experienced staff gaining promoted posts within SEPA.

It was identified that it was more cost effective to grow our own EPOs rather than paying higher wages in an attempt to attract appropriate staff. A structured development framework including mandatory training, competencies and immersion into a working EPI team was developed. Each trainee is assigned a mentor who will guide them through the development process, the mentor is usually the SEPO in the team. The majority of TEPOs graduate the scheme between 12 and 18 months with the maximum time on the scheme is 24 months.

Once the trainee EPOs have graduated from the scheme they are placed within an EPI team (usually the one they have trained in) where they undertake routine work. SEPA receives approximately 60 applicants for every TEPO position. SEPA recruits approximately 18 TEPOs per annum.

PPC Part A & COMAH sites are normally reserved for experienced members of staff. Experienced EPOs often regulate intensive agriculture, waste and food and drink sectors. Specialist Is regulate the most complex sites such as refineries, incinerators and pharmaceutical plants, Specialist Is often have a process engineering background. The sites in between the easiest and most complex are usually regulated by Specialist II officers and SEPOs. It is unusual for an inspector with less than 3 years experience to regulate a PPC part A or COMAH site.

SEPA teams are composed of all grades of officers except for Specialist Is. The Specialist Is work in separate process engineering units (1 team of 10 per region). The skills of the EPI team vary considerably to cope with local situations. Highland and Island teams tend to be focused on agriculture and fish farming with perhaps whisky distilling as the principle industry rather than the industrialised central belt which has a lot more waste issues and large industrial processes. Officers in the smaller rural teams are often multi skilled to cover a bit of every media whereas the larger urban teams tend to specialise in a particular regime eg waste. EPO's work in media areas as required matching needed skills to skills shortages in local situations.

The EPI Directorate are developing a competency scheme. The framework will be used to ensure that all teams have the appropriate skills, that skills are kept up-to-date and to allow individual staff members to develop. It is also envisaged that it will help SEPA demonstrate that its staff are professionals. SEPA Officers are encouraged to become members of professional bodies or chartered within their own field (eg Chartered Chemical Engineers).

Inspector Authorisation
All SEPA inspectors have to be authorised (a warrant type system) to carry out their duties. The authorisation is signed by a senior manager and is fixed to the back of each identification card, this card has to be shown to an operator prior to going on site. The authorisation gives powers of entry and powers to collect evidence. The powers of entry are similar to that of the police and allow SEPA officers to go onto a business premises in an emergency situation. The authorisation powers are fixed in statute.

Code of conduct
SEPA has an employee code of conduct which applies to all members of staff. It includes sections on conflicts of interest, paid employment out with SEPA (presumption against), receiving hospitality, gifts and corruption. Where conflicts of interest may exist they must be declared. Failure to comply with the code is a disciplinary offence and may even be a criminal offence.

Inspector rotation
SEPA has no stated policy on officer rotation to avoid regulatory blindness. The majority of teams have a local arrangement whereby officers are rotated. To date SEPA does not believe this to have been an issue due to inspector rotation brought about from inspector change due to promotion.

Examples of Good Practice.

- SEPA invests a lot of resource into keeping skills state of the art.
- Formalised trainee scheme to develop new members of staff.
- Assignment of experienced mentors to support and develop new staff.
- Code of conduct which applies to all staff eg all potential conflicts of interest must be declared.

Opportunities for Development.

- Introduce a formalised protocol to rotate inspectors to avoid regulatory blindness, ideally an Officer should not inspect a site for more than 3-4 years.

- Continue to develop a competency scheme, to highlight training and development needs of staff as they will bring benefit to the organisation in many ways.

- Work to ensure that restructuring does not unnecessarily deplete expertise.

- As permit writer and inspector there is a possibility that an issue or mistake is missed due either to being so close to the permit or by being exposed to subject outwith your knowledge area. It is recommend that for large plants SEPA has at least two responsible officers for a site as routine.

- Consider how to capture product and technological improvements and how to disseminate this information.

4.6 Training.

Objective

- To understand any systems the Candidate Inspectorate may use for identifying training requirements against the skills necessary for environmental regulatory service delivery, for providing training, and for checking that training has been successful.

SEPA has a culture of on the job training (eg shadowing) complimented with classroom based training. SEPA officers receive on average 10 days formal classroom based training on average per annum (this figure is used in resource planning) with TEPOs receiving upwards of 30.

Training needs analysis is carried out annually for each member of staff by each line manager in conjunction with the officer to assess their requirements for the following year. Requirements are then sent to the appropriate section to collate and satisfy the need. Information on the content and applicability of all courses is available on the intranet.

SEPA has a highly developed training system. The system is split into two with soft skills; management skills; health & safety and office based skills (eg Microsoft) delivered by a centralised function within SEPA called Organisational Development & Training (ODT). ODT also have other training resources such as books & DVDs.

Technical training for EPI officers is coordinated by the EPI Directorate. Historically technical training was delivered by consultants but it was identified that this technical training was both expensive and not designed with regulators in mind. EPI now design and deliver the majority of all technical courses themselves with delivery

generally being by experienced SEPA regulators. The trainers are themselves given development opportunities on train the trainer courses and seminars.

EPI deliver 44 technical courses at 4 levels: core skills (eg enforcement & inspection principles); entry level (eg introduction to waste regulation); advancing skills (eg. PPC permitting) and specialist skills (eg landfill regulation). EPI have a technical training intranet site documenting the courses they deliver. EPI are designing online training to supplement classroom and on the job training.

Staff who attend training courses are required to provide an evaluation of the course, including it's applicability to their current role. This data is collated centrally and provided to the corporate management team as a key performance indicator. All officers are expected to discuss the training with their line manager.

The training needs analysis is carried out in line with a yearly appraisal. The training needs are requested through a personal development plan (PDP). Training (eg external courses, conferences) outside SEPA may also be requested through the PDP.

Each employee of SEPA also has an Individual Learning Account (ILA). This allows all staff to apply for up to £150 and up to 14 hours leave per financial year for personal study. Many staff use the money to fund their membership to a professional body (eg Chartered Environmentalist).

There is a duty placed upon SEPA within the PPC Regulations to follow developments in best available techniques (BAT) this is achieved through a mixture of training, seminars and technical documentation.

Examples of Good Practice.

- Good system for the development of staff. It was noted that the numbers of staff leaving the organisation was low.

- The Individual Learning Account (ILA) system is very good allowing the development of personal skills. It is also good for motivation.

- Very impressive training scheme (not observed previously) in terms of size and scope.

- Using experienced regulators to give regulatory training allows transfer of experience to occur and brings benefits.

- Evaluation of training courses, and summary of information acquired, used to improve training delivery.

Opportunities for Development.

- Consider introducing refresher training.

- Be aware of impact of taking regulators of the frontline to deliver training.

4.7. Procedures.

Objective

- To understand the system of procedures, including work instructions, covering activities associated with implementation of the relevant environmental legislation.

As mentioned above SEPA is certified to ISO9901 (Quality) and that this is an important part of its Business Management System. The scope of the BMS includes the design and delivery of regulation, methods for monitoring of environmental emissions, environmental assessment and reporting and the work of the support functions (eg legal, personnel, finance, information services) and covers all business processes.

Every member of staff uses the system. All controlled documents are accessed from SEPA intranet through the web part of the quality system. Because SEPA was formed from the amalgamation of 64 separate bodies there has been a lot of work to improve consistency and to standardise approaches taken through the development of quality controlled documentation. There are 5500 documents on the Q-pulse system with approximately 1200 owned by the EPI Directorate.

It was noted by the review team that the documents are not always easily accessible due to a poor search facility within the web based system. SEPA's application forms, inspection forms, licence templates and procedures are all contained within this system. There is an electronic manual detailing working procedures and systems for both IPPC and Seveso II.

Procedures include permitting, assessing commercial confidentiality and national security issues, variation and substantial change, suspension and revocation and inspection. Online manuals have also been created to cover licensing, enforcement, inspection and the environmental risk assessment system.

As stated in section 4.4 SEPA uses its own oracle based system called NEMS to plan and record inspections and samples against SEPA's monitoring plan.

Registry
During the IRI the review team visited one of SEPA's public registers. This largely paper based system stores signed copies of all permits, permit applications and inspection forms as set out by statute. The public are able to physically visit the registry or may request information by phone, e-mail or letter. The information is free of charge but a cost may be charged to cover time of collation.

Examples of Good Practice.

- Very comprehensive quality system with a good document management system accessible through the intranet.

- All audits (internal and external) available on the intranet system. Results taken seriously by management.

- Public Registry was very impressive, comprehensive and easily accessible to the public.

Opportunities for development.

- There is a risk that the quality system is becoming too large ensure all documents are truly needed. Improve access to quality controlled documents.
- Consider seeking ISO18000 accreditation but beware that this may make quality system even larger.
- Consider placing external audits on the internet.
- Public registers need to be error proof, consider systems to ensure this is the case.
- Make public registers electronically available via SEPA's website
- Many procedures are based on professional judgement. Always give the inspector the ability to use their professional judgement. Make this explicit within the procedures

4.8 Standards and Guidance.

Objective

- To understand the criteria the candidate Inspectorate applies in making regulatory decisions and how these are communicated internally (to staff) and externally (to the public and industry and central government).

Guidance is developed by SEPA for a number of reasons: to provide advice to SEPA staff on undertaking their roles; advice to operators to notify them of their obligations and advice to the wider public to raise awareness of environmental matters and their legal rights.

SEPA makes extensive use of web based dissemination including a SEPA website (www.SEPA.org.uk) and an intranet site. SEPA also has a communications section which includes a publication team of technical editors and graphic designers. SEPA has three regional information centres which act both as library for referral and as a central point of stakeholders for public requiring SEPA publications.

SEPA is involved in the production of a wide variety of guidance that is published in hard copy and electronic format. Examples include guidance on the Enforcement Policy, Public Participation Directive, energy from waste guidelines and SEPA's guide for completion of its application forms. SEPA also works with other bodies to

produce guidance such as joint agency guidance and guidance drafted with the Government.

The majority of SEPA's joint agency guidance is created and published jointly with the other UK 'environment agencies' namely the Environment Agency (EA) of England & Wales and the Northern Ireland Environmental Heritage Service (NIEHS). The aim of the guidance is to deliver a consistent technical platform across the member state. Guidance produced includes Pollution prevention guidelines for business and UK technical guidance (UK interpretation of BREF documents in terms of process and sector specifics). SEPA also publishes Seveso II guidance jointly with the Health & Safety Executive.

SEPA's joint publications with government include the IPPC Practical Guide and the Waste Incineration Practical Guide.

SEPA in conjunction with the EA and NIEHS also run a website (www.netregs.gov.uk) specifically aimed at improving environmental awareness and compliance with environmental legislation within small to medium sized enterprises (SMEs). The majority of sites that SEPA regulates are SMEs.

As part of the IRI the team visited one of the regional information centres and saw first hand the scope of some of the available documentation.

SEPA officers also give presentations to business sectors as and when required. During PPC implementation workshops were held by SEPA for particular sectors with regard to the implementation of PPC. Guidance is also passed down through SEPA via its management chain. This is routinely discussed at team meetings.

Guidance Development
SEPA's quality system is developed to ensure that guidance is developed considering the aim, outputs, management, resources, timetable, consultation plan and future review of any guidance. SEPA has a quality controlled procedure on how to draft guidance.

SEPA often undertakes formal consultation on the guidance it produces. This is done both passively on the website and proactively by direct contact with appropriate parties. SEPA uses the Cabinet Office (Westminster) code of practice on consultation as a guide. All guidance must get sign-off by an appropriate SEPA management team prior to authorisation (usually Director level) before any guidance is adopted.

Guidance Review
SEPA believes in the principle that guidance must be reviewed to remain effective. Review datelines may be statutory, recommended by Government, recommended by SEPA's Corporate Management Team or set in the quality system. All documents produced are date and version stamped.

The performance of SEPA's quality controlled documents is evaluated through internal audit, management review, external audit, compliments & complaints and through the assessment of customer satisfaction. The internal auditors who are all volunteers, are trained on certified courses provided by external consultants and are independent of the process to be audited either geographically or by the job. There are approximately 160 internal auditors in SEPA who carry out on average 300 audits per annum.

Examples of Good Practice.

- All guidance reviewed routinely.
- Decision taken by management about whether guidance is adopted.
- Specific guidance aimed at small to medium size enterprises (SMEs).
- Having inspectors as internal auditors can bring benefits to the process. It is also good for staff development

Opportunities for Development.

- Be aware of how the drafting of guidance may impact on inspectors.
- Ensure that resource is available to keep all guidance current.
- Be aware of how the intranet and internet sites are constructed to ensure any message is consistent.

4.9 Performance Assessment.

Objective

- To understand how the Candidate Inspectorate assesses the quality, and consistency of its performance as a regulator and the environmental impact of its activities.

The NEMS system is automatically interrogated to provide statistics to show how the teams and EPI Directorate are progressing with their proposed plan. This information is used to inform SEPA's performance reports. It is used to assess both the numbers of inspections carried out against that which was proposed and to assess the percentage of sites with satisfactory levels of compliance.

SEPA tracks performance monthly, quarterly and annually. The monthly report measures progress against Key Performance Indicators (KPIs) that are set for all critical areas of SEPA's business. Each directorate reports on KPIs, developments and risks. The document (approximately 50 pages) is created for the Corporate Management Team (CMT) as an early warning system and focuses attention on major issues. Approximately two weeks after it has been to the CMT it is published on the intranet. It also has KPIs on a variety of other sections including access to information, internal environmental performance, project management and incoming calls (call centre only).

The quarterly report is used to report against targets and measures in the corporate plan. The report is produced for SEPA's main and regional boards and the Scottish Government. It is published on SEPA's website. It contains 120 targets and SEPA's progress towards achieving them using the traffic light system (red, amber, green). There are 21 strategic targets with the rest being tactical, team and permit level.

The annual report is agreed by the main board. Once it has gained approval internally it is taken by the Deputy Minister for the Environment and Rural Development for approval by the Scottish Government. The environmental impact of a regulatory process is captured within the progress SEPA achieves on its outcomes.

Examples of Good Practice.

- Corporate Plan based on three year cycle is more appropriate than annual to allow more strategic thinking.

- Corporate Plan is well structured and links sustainable development and economic well being to the environment.

- Comprehensive levels of reporting. The traffic light system is very useful to highlight issues.

- The business planning unit makes good use of resources to monitor and evaluate progress rather than use frontline resources to do it.

Opportunity for Development.

- 120 KPIs is too many. Key should mean key.

- It is suggested that the Corporate Plan, Annual Plan and NEMS are in the same time frame (fiscal/calendar). Recommend calendar as this is more in line with Europe.

- Consider including explicit connection between spatial planning and transport within the Corporate Plan.

4.10 Reporting.

Objective

To understand how the Candidate Inspectorate:

- Reports its activities to the public
- Provides information to the Member State,
- Supplies information to the European Commission e.g. for the Member State's obligations to report progress on the implementation of the Recommendation on Minimum Criteria for Environmental Inspections.

Reporting against targets

SEPA produces a three yearly Corporate Plan (current plan is 2005-2008). Prior to publishing, the plan is agreed by SEPA's Board and approved by the Scottish Government. The aim of SEPA's Corporate Plan is to highlight how the organisation achieves its main aim; what SEPA's targets are, and how SEPA tracks its efforts against what it was trying to achieve. It is primarily focused on the achievement of six outcomes. An example is 'minimised, recovered and well managed waste'.

The plan highlights SEPA's key performance indicators and has a section on each of the outcomes which includes measures and targets for each of the three years. It also has a section on long-term targets.

SEPA also publishes the Annual Plan and Quarterly Plan highlighting how SEPA is progressing against its targets for each outcome in the Corporate Plan

Scottish Pollutant Release Inventory

SEPA has developed a publicly accessible web based electronic database of releases of pollutants and transfer of waste. The system known as the Scottish Pollutant Release Inventory (SPRI) has been designed to comply with the requirements of the European - Pollutant Release and Transfer Register Regulation. (E-PRTR). SEPA produced its first European Pollutant Emission Register simple tabular web based report in 2002.

In 2003 the Scottish Government funded the £1 million development of SPRI which now includes a GIS based tool. SPRI also contains basic information on how it might affect the environment and how might exposure to the chemical affect human health. The latter was designed in conjunction with a human health based NDPB Health Protection Scotland.

SPRI includes a large range of emission sources including >15000 population equivalent waste water treatment works, all PPC A, caged fish farms, off-site waste transfers, mining and releases to land. The system uses below reporting thresholds to indicate if a pollutant is present in any releases.

Public Registers & Freedom of Information

Much of Scotland's environmental legislation includes provision to make information publicly available as part of SEPA's public registers. This includes all permits unless they contain commercially confidential material or information relating to National

security. The introduction of the Freedom of Information Act has made the majority of SEPA's environmental and regulatory information available to the public.

State of the Environment Report
SEPA publishes a state of the environment report every 10 years. The next report is due to be published later in 2007. This is an overarching report looking at long term trends. SEPA has also produced intermediate state of reports on Air Quality, Improving Scotland's Water, and Soil Quality.

Other Publications
SEPA also publishes an annual report detailing its own internal environmental performance and a magazine every 2-3 months on themed environmental matters eg agriculture. SEPA also produces technical documents relating to environmental regulation.

Example of Good Practice.

- Publication of State of the Environment Reports for information of the general public.

- Scottish Pollutant Release Inventory system.

Opportunity for Development.

- May wish to develop SPRI to include other sites eg small sewage works and to include risk. Should also consider feedback system to capture levels of stakeholder satisfaction

- SEPA places a lot of effort on the support of permitted sites. SEPA needs to put equal effort into supporting non-government organisations and the general public. Need to be proactive with all stakeholders.

5. INDUSTRY VISIT.

As part of the review the IMPEL Review Team visited an industrial installation. The installation was regulated both in regards to the IPPC and Seveso II Directives. SEPA is the responsible authority for both Directives (in conjunction with the HSE for Seveso II). The installation was visited and discussions were held with the company, independently of SEPA, to get an impression of the company's experience with SEPA.

The company were in general satisfied with the authority. In particular the Review Team noted the following:

- SEPA has a very structured approach to inspection.

- Pre-planned inspections are quite an advantage for large industrial sites. The month for an inspection is set early, and the schedule for an inspection is presented short before the inspection. When the company has a planned shutdown their engineers are committed to getting the plant up and running therefore no inspection will be carried out.

- Frontline inspectors are familiar with the installation and techniques and that makes the inspections more focused/fruitful. In the early days of SEPA the inspectors were relatively inexperienced and made little contribution to the installation's environmental work. They are now very professional.

- The company have the impression that the regulations in Scotland are slightly stricter in the UK than in the rest of the EU.

- The company felt that joint inspections with the HSE are a positive use of their time.

- They accepted that SEPA's OPA score sheets are published on SEPA's website. They thought the OPA scheme was fair but they did state that there could be a possibility of too much subjectivity in the judgements of an installations performance.

- The company found that although SEPA is a regulator it also offers advice to help find a solution. They also stated that the inspector maintains the right distance.

- The company spends a lot of time and money on SEPA visits. Resource also includes managing regulators.

- Inspections are time consuming for the company with a lot of work being done both pre and post inspection. It is of vital importance that this time is worthwhile/beneficial compared to the companies own environmental work.

6. SUMMARY OF FINDINGS.

Examples of good practice and opportunities for development are collated below. (The sub-section number, in brackets, identifies each source.)

Examples of Good Practice.

- Regular meetings with the HSE & EA to discuss Seveso II. (4.1)

- The Purda system of independence from politics for the 6 week period prior to an election is a good one. (4.1)

- The way Scotland has combined multiple Directives (IPPC, Large Combustion Plant, Waste Incineration, Landfill etc) into one set of Regulations (PPC Regulations) is a very good environmental system. This makes it very clear to those regulated which set of Regulations they need to comply with. (4.2)

- Joint inspections on Seveso II sites with the other competent authority (HSE) are very efficient, it ensures no duplication of requests from multiple inspections and it also reduces regulatory burden for the operator. (4.2)

- Regular pre-meetings with the HSE were also noted as being good practice as they allowed the scope of any inspection to be fully discussed. (4.2)

- The enforcement tool kit is a very useful easily understandable system. (4.2)

- The PPC Regulations as implemented promote sustainable development. (4.2)

- SEPA provides a very comprehensive support system for operators in terms of written material and meetings eg. 3 day+ pre-application period for every part A PPC installation. (4.2)

- The use of standard templated conditions and for less complex sites standard permits is very useful to aid consistency and so that inspectors do not need to routinely re-invent standard material. Every non-standard permit is checked for legal correctness prior to issue. (4.2)

- The emerging issues and new duties system are very useful to alert SEPA to future business resourcing and developments. (4.3)

- All permits are available to access on a central electronic system. This allows an officer permitting in one part of the country to see what conditions were used in the other to aid consistency. (4.3)

- Geographical spread of staff, staff numbers and specialisms based on need to give effective local delivery. (4.3)

- The signing protocol is a good system making it transparent for all users. It is well structured and allows future development. (4.3)

- 24/7 call centre and standby rota for inspectors. (4.4)

- Risk based approach to inspections is very advanced and is one of the most important tools in SEPA. Operator performance is clearly linked to regulatory effort in terms of number of inspections and action plans. This system will be important in the future if resources become tighter. (4.4)

- High performing sites gain earned autonomy receiving fewer inspections. (4.4)

- Operator performance results for PPC Part A sites are published. This is useful to aid recognition for the high performers and to deter poor performance. (4.4)

- The NEMS IS planning system is a good tool. It is useful for managers, business planners, laboratories and inspectors. (4.4)

- SEPA invests a lot of resource into keeping skills state of the art. (4.5)

- Formalised trainee scheme to develop new members of staff. (4.5)

- Assignment of experienced mentors to support and develop new staff. (4.5)

- Code of conduct which applies to all staff eg all potential conflicts of interest must be declared. (4.5)

- Good system for the development of staff. It was noted that the numbers of staff leaving the organisation was low. (4.6)

- The Individual Learning Account (ILA) system is very good allowing the development of personal skills. It is also good for motivation. (4.6)

- Very impressive training scheme (not observed previously) in terms of size and scope. (4.6)

- Using experienced regulators to give regulatory training allows transfer of experience to occur and brings benefits. (4.6)

- Evaluation of training courses, and summary of information acquired, used to improve training delivery. (4.6)

- Very comprehensive quality system with a good document management system accessible through the intranet. (4.7)

- All audits (internal and external) available on the intranet system. Results taken seriously by management. (4.7)

- Public Registry was very impressive, comprehensive and easily accessible to the public. (4.7)

- All guidance reviewed routinely. (4.8)

- Decision taken by management about whether guidance is adopted. (4.8)

- Specific guidance aimed at small to medium size enterprises (SMEs). (4.8)

- Having inspectors as internal auditors can bring benefits to the process. It is also good for staff development. (4.8)

- Corporate Plan based on three year cycle is more appropriate than annual to allow more strategic thinking. (4.9)

- Corporate Plan is well structured and links sustainable development and economic well being to the environment. (4.9)

- Comprehensive levels of reporting. The traffic light system is very useful to highlight issues. (4.9)

- The business planning unit makes good use of resources to monitor and evaluate progress rather than use frontline resources to do it. (4.9)

- Publication of State of the Environment Reports for information of the general public. (4.10)

- Scottish Pollutant Release Inventory system. (4.10)

Opportunities for Development.

- Although reserved matters, tax instruments and energy are clearly linked to the environment, it would be useful if these could be linked. (4.1)

- It is suggested that SEPA should look at more instruments to achieve environmental goals. SEPA should look at Scottish, UK and European Governments and regulatory bodies. (4.1)

- It is thought the Memorandum of Understanding (MoU) process concerning joint agency working increases bureaucracy. (4.1)

- It is suggested that administrative penalties such as fines could be employed. (4.2)

- Both Scottish Water (Scotland's drinking water and sewerage undertake) and SEPA places conditions on what a Part A operator can discharge to a sewerage network. It would be less confusing for the operator if it was only one authority placing conditions. (4.2)

- It is suggested that there is a proactive system for searching for Seveso II sites out with SEPA's current knowledge. Currently it is reliant on the operator to come forward or other systems to catch sites eg the planning system or other permitting regimes. (4.2)

- The statutory 4 month PPC permit application determination period has been difficult to meet. Systems should be designed to make it easier to apply. Work should be carried out on standards, guidance and procedures to make SEPA's requirements more explicit. (4.2)

- Work could be carried out to make costs in the charging scheme more explicit. (4.3)

- SEPA should consider how much it charges and its impact on industry. Work in an efficient way and be lean. (4.3)

- Consider developing OPRA system to link to charging. Financial rewards for good sites, penalties for poor. (4.4)

- It appears to be very time consuming to take a report recommending prosecution to the procurator fiscal. It is recommended that this is streamlined. (4.4)

- It is understood that the SEPA currently has a regulatory priority to get all PPC permits issued prior to the end of October 2007 and that the Water Framework Directive (WFD) has also just been implemented also requiring concentration to be placed on permitting. It is noted that this has meant that the inspection programme has had to be altered requiring a reduction in inspection frequency. Although the reduction in inspection frequency is risk based a red circled percentage of time should be identified such that a baseline inspection frequency is established. (4.4)

- Introduce a formalised protocol to rotate inspectors to avoid regulatory blindness, ideally an Officer should not inspect a site for more than 3-4 years. (4.5)

- Continue to develop a competency scheme, to highlight training and development needs of staff as they will bring benefit to the organisation in many ways. (4.5)

- Work to ensure that restructuring does not unnecessarily deplete expertise. (4.5)

- As permit writer and inspector there is a possibility that an issue or mistake is missed due either to being so close to the permit or by being exposed to subject outwith your knowledge area. It is recommend that for large plants SEPA has at least two responsible officers for a site as routine. (4.5)

- Consider how to capture product and technological improvements and how to disseminate this information. (4.5)

- Consider introducing refresher training. (4.6)

- Be aware of impact of taking regulators of the frontline to deliver training. (4.6)

- There is a risk that the quality system is becoming too large ensure all documents are truly needed. Improve access to quality controlled documents. (4.7)

- Consider seeking ISO18000 accreditation but beware that this may make quality system even larger. (4.7)

- Consider placing external audits on the internet. (4.7)

- Public registers need to be error proof, consider systems to ensure this is the case. (4.7)

- Make public registers electronically available via SEPA's website. (4.7)

- Many procedures are based on professional judgement. Always give the inspector the ability to use their professional judgement. Make this explicit within the procedures. (4.7)

- Be aware of how the drafting of guidance may impact on inspectors. (4.8)

- Ensure that resource is available to keep all guidance current. (4.8)

- Be aware of how the intranet and internet sites are constructed to ensure any message is consistent. (4.8)

- 120 KPIs is too many. Key should mean key. (4.9)

- It is suggested that the Corporate Plan, Annual Plan and NEMS are in the same time frame (fiscal/calendar). Recommend calendar as this is more in line with Europe. (4.9)

- Consider including explicit connection between spatial planning and transport within the Corporate Plan. (4.9)

- May wish to develop SPRI to include other sites eg small sewage works and to include risk. Should also consider feedback system to capture levels of stakeholder satisfaction. (4.10)

- SEPA places a lot of effort on the support of permitted sites. SEPA needs to put equal effort into supporting non-government organisations and the general public. Need to be proactive with all stakeholders. (4.10)

7. CONCLUSIONS.

The Review Team concluded that the objectives of EC environmental law are being delivered by the Scottish Environment Protection Agency (SEPA) and that the arrangements for environmental inspection and enforcement were broadly in line with the MCEI Recommendation.

The way Scotland has combined multiple Directives (eg IPPC, Large Combustion Pant, Waste Incineration, Landfill etc) into one set of Regulations (the PPC Regulations) is a good integrated regulatory system making it clear to all which set of regulations need to be complied with.

SEPA's regulatory activities are controlled by its quality system which has developed as a necessity to draw together the procedures of its 64 predecessor bodies. This has yielded benefits in terms of a consistent approach to inspection and enforcement throughout its 21 local offices. However, it is thought that the size and complex nature of SEPA's quality and electronic systems may lead to issues in the future if it continues to grow in complexity.

It was identified that SEPA (and its workload) has continued to grow in size since it's inception in 1996. Although workload will continue to increase it is envisaged that SEPA will be unable to increase in size to match this workload. SEPA has in place robust risk-based inspection and enforcement approaches which will be increasing relied upon to prioritise work in the future.

It is obvious that technical training and development of staff is given a high priority within SEPA. This should be continued and further developed to maintain a competent and professional regulatory workforce which is able to exercise professional judgement.

In addition to these broad observations, the Review Team recognised and recorded specific examples of good regulatory practice and, based on their own personal experience, they offered suggestions on opportunities for development that may wish to be considered.

8. ACKNOWLEDGEMENTS.

The Review Team wishes to thank the staff of SEPA for its cooperation and dedication to the project.

The SEPA IRI Project Team would like to thank the Reviewers and their respective organisations for their commitment and generous gift of time. The team would also like to thank the Directorate-General Environment of the European Commission for their support and in addition the Team would like to thank Dawn Millar and the National Admin staff of the Riccarton Office without whom the Review would not have run so smoothly.

9. LESSONS FOR THE REVIEW PROCESS.

The following observations may be helpful for the organisation and conduct of future IRI Reviews:

- The value of the pre-review meeting, and of having information about constitutional and legal matters well in advance of the review, was confirmed as very useful.

- The assignment of specific blocks of time at the beginning and end of each day for Review Team discussion was very important.

- Copies of any presentations are invaluable to the Rapporteur.

- A balance needs to be struck between having presentations with question time and open discussion. The presentations are good for structure based on the questionnaire but ample time must be given for discussion.

- The review process is very time consuming and tiring for both the Reviewers and the lead team from the host inspectorate. Travel time for all involved should be minimised.

- It is sometimes difficult to find a willing Rapporteur. The job is extremely important and ultimately rewarding so can be recommended. However, don't be tempted to facilitate and carryout the Rapporteur role as it is too much! (the Rapporteur…)

10. ABBREVIATIONS.

BAT	Best Available Technique. (Under the IPPC Directive).
BATNEEC	Best Available technology Not Entailing Excessive Cost
BMS	Business Management System
BPEO	Best Practicable Environmental Option
BREF	BAT Reference Document.
CA	Competent Authority.
CMT	Corporate Management Team.
COMAH	Control OF Major Accidents & Hazards (implements Seveso II).
EOS	Environmental & Organisational Strategy Directorate.
EPI	Environmental Protection & Improvement Directorate.
EPIT	EPI team of officers (inspection & permitting).
EPO	Environment Protection Officer (member of an EPIT)
HSE	Health & Safety Executive.
IPPC	Integrated Pollution Prevention and Control.
MCEI	Minimum Criteria for Environmental Inspection.
MoU	Memorandum of Understanding.
NDPB	Non Departmental Public Body.
NEMS	National Environmental Management System.
OPA	Operator Performance Assessment
OPRA	Operator Performance Risk Assessment
PHA	Pollution Hazard Appraisal
PPC	Pollution Prevention & Control Regulations (implementing IPPC)
SEPA	Scottish Environment Protection Agency.
SPRI	Scottish Pollutant Release Inventory.
TEPO	Trainee Environment Protection Officer.

Annex 1.

TERMS OF REFERENCE FOR IMPEL PROJECT

TOR FOR SEPA IRI REVIEW

No	***Name of project***
	IMPEL Review Initiative (IRI): It is proposed the project in Scotland will take place in the second half of 2006.
Project Manager	*Dave Gorman, Scottish Environment Protection Agency, Scotland*

1. Scope

1.1. Background	*The Helsinki Plenary Meeting of IMPEL, in December 1999, requested that proposals be drawn up for "a voluntary scheme for reporting and offering advice on inspectorates and inspection procedures" (the "scheme"). This was against the background of preparation of a European Parliament and Council Recommendation on Providing Minimum Criteria for environmental Inspections in the Member States and the expectation that further recommendations would follow on Minimum Criteria for Inspector Qualifications and for Inspector Training.* *In March 2001 the IRI Working Group finalised a proposal for the voluntary scheme and sought candidate Inspectorates to undertake the review process. The "IRI Review Guidance and Questionnaire" was approved at the IMPEL Meeting at Falun in June 2001. Germany hosted the first full review in October 2001.* *The IMPEL Review Initiative (IRI) is a project of four phases designed to test "a voluntary scheme for reporting and offering advice on inspectorates and inspection procedures". Phase 1 comprised design of a review mechanism, Phase 2 was a trial of the methodology in Denmark and Phase 3 involved trial reviews of regulatory systems in six volunteer EU Member States (Ireland, Belgium, France, The Netherlands, Spain and Sweden). Phase 4 concluded the review. It examined the results and the lessons learnt, considered whether the review process had worked and formulated recommendations for its continuation.* *At the IMPEL Plenary Meeting in Dublin, 2 - 4 June 2004, there was general agreement on the recommendations contained in the report for a continuation of the IRI process. IMPEL member countries were encouraged to identify candidate inspectorates and possible dates for an IRI.* *The potential benefits of this scheme include:* • *Encouragement of capacity–building in EU Member State inspectorates.* • *Encouragement of further collaboration between EU Member State inspectorates on common issues or problems, on exchange of experience and on development and dissemination of good practice in environmental regulation.* • *Provision of advice to candidate inspectorates who may be seeking an external view of their structure, operation or performance by trusted, knowledgeable and independent counterparts for the purpose of benchmarking and continuous improvement of their organisation.* • *The spread of good practice leading to improved quality of inspectorates and inspections, and contributing to continuous improvement of quality and consistency of application of environmental law across the EU.*
1.2. Link to MAWP and IMPEL's role and scope	*Recommendation 2001/331/EC is a substantial element of IMPEL's MAWP.*
1.3. Objective (s)	*To undertake an "IRI" review of SEPA in Scotland in accordance with the principles in Section 1.1 and the "IRI Review Guidance and Questionnaire" approved at the IMPEL Meeting at Falun in June 2001.*

1.4. Definition	*Recommendation 2001/331/EC applies to "all industrial and other enterprises and facilities, whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law, without prejudice to, specific inspection provisions in existing Community legislation."(Section II, 1a.). This scope would include all IPPC and Seveso processes and other lesser processes which, in many Member States, are regulated by a variety of bodies at local level.* *It is also proposed for the purposes of review of candidate inspectorates and to reflect the interests and activities of IMPEL that, by agreement with the candidate inspectorate, the Organisational Scope of the scheme should include any or all of the following:* • *The legal and constitutional bases of the inspectorate, including interfaces with other bodies such as Health and Safety inspectorates, and its related powers and duties. (i.e. "political independence / dependence")* • *Structure and managerial organisation, including funding, staffing and lines of authority and responsibility for regulatory and policy functions.* • *Workload, by number of IPPC processes and Annex 1 category.* • *Qualifications, skills and experience of regulatory staff.* • *Procedures for assessment of training needs and provisions for training and maintaining current awareness.* • *Procedures, criteria and guidance for drafting of permits, for scheduling inspections, for subsequent assessment of compliance ("inspection") and for enforcement action in cases of non-compliance.* • *Arrangements for internal assessment of the quality of regulatory performance and for improvement if appropriate.* • *Arrangements for reporting on inspectorate activities.* *It is also envisaged that verification of implementation of above systems be conducted during the review. This will facilitate the identification of both "good practice" and "opportunities for development" which, in the opinion of the review team, exist in the Scottish Environment Protection Agency. The verification may involve detailed examination of documentation related to the inspection of a number of IPPC permitted facilities.*
1.5. Product(s)	*In addition to the benefits listed in Section 1.1, tangible products will include,* • *Written reports of reviews for candidate inspectorates,* • *Relevant extracts from review reports, as agreed with candidate inspectorates, for dissemination to IMPEL members and the EC,* *Training and Educational material on "lessons learnt" and on examples of good practice for incorporation into training schemes of Member State inspectorates.*

2. Structure of the project

2.1. Participants	*The review team will consist of 4-6 participants from 4-6 Member States. The team will be led by Pieter Jan van Zanten from the Environmental Inspectorate in the Province of Overrijssel in The Netherlands. The remaining participants, including an expert rapporteur are to be confirmed.*
2.2. Project team	*It is proposed that the project team be composed of IMPEL Members who wish to participate, or their representatives, and that work is coordinated initially by Dave Gorman of the Scottish Environment Protection Agency (SEPA). SEPA will identify an experienced field officer to provide further support as necessary.*
2.3. Manager Executor	*Dave Gorman will be responsible for monitoring and supervision of the project on behalf of IMPEL.*
2.4. Reporting arrangements	*The results of the Review will be reported by the project manager via the IRI working group to the IMPEL Plenary for approval.*
2.5 Dissemination of results/main target groups	*The Report will follow the Template Structure shown in Appendix 1 attached and will include:* • *A written report of the review background, participants and expenditure.* • *Relevant extracts from review reports, as agreed with candidate*

	inspectorates, for dissemination to IMPEL members. • *Training and Educational material on "lessons learnt" and on areas of good practice for dissemination to IMPEL Members.*

3. Resources required

3.1 Project costs	*The project will involve the following;* • *Pre-meeting of the Review Team Leader and Lead Contractor with the Candidate Inspectorate to finalise the Scope and Timing of the Review.* • *Preparation of summary information by the Scottish Environment Protection Agency and circulation to Review Team members.* • *Review over a period of 5 Days comprising* *- 3.5 days for review and assessment* *- 0.5 days for comparison and collation of team views* *- 1 day for feedback, discussion and finalisation of report. i.e. a total of five person-weeks (maximum) over a period of one week. It is proposed that meetings and report are conducted in English.* *The costs will be limited to:* • *Travel and Subsistence(T&S) costs of 5 participants* • *Apex Flight and local transport 500 Euro each for 5 people* • *Apex flight 500 Euros each for 2 people for preparatory meeting* • *Hotel accommodation 100 Euro per night per person for 5 people for 5 nights* • *Hotel accommodation 100 Euro per night for two people for 1 night for preparatory meeting* • *2 meals/day 50 Euro 5 people for 5 days* • *2 meals/day 50 Euro for 2 people for 2 days (preparatory meeting)* • *Total cost for T&S is 9,100 Euros* • • *the costs of the contractor (6 man Days at 500 Euro plus Apex flight plus hotel accommodation and meals) is estimated at 4,250Euro* • *the production of the report in text suitable for publication on the IMPEL web-site at 1000 Euro.* *We estimate that the total costs for the IRI review would be 14 350 Euro. Personnel costs from the candidate inspectorate are not included in this assessment.*
3.2. Fin. from Com.	*7 650 Euro (the cost of travel and subsistence for participants to include the preparatory meeting but excluding the cost of dinners).*
3.3. Fin. from MS (and any other)	*Costs of time plus a contribution towards the costs of subsistence of Participant in the review team.*
3.4. Human from Com.	*None*

4. Quality review mechanisms

The quality and success of this project will be judged by the Candidate Inspectorate, the IRI Working Group and directly by IMPEL on the basis of reports to Plenary meetings by the Project Manager and the Chairman of the IRI Review Working Group.

5. Legal base

5.1. Directive/ Regulation/ Decision	*In the short term, The European Parliament and Council Recommendation on Providing Minimum Criteria for Environmental Inspections in Member States and, in due course, those on Inspector Qualifications and Training.*
5.2. Article and description	
5.3 Link to the 6th EAP	

6. Project planning

6.1. Approval	*For consideration at UK IMPEL Plenary on 30th November 2005, Cardiff.*
(6.2. Fin. Contributions)	*As incurred.*
6.3. Start	*January 2006*
6.4 Milestones	
6.5 Product	*Report on the review*
6.6 Adoption	*Helsinki Plenary Meeting, December 2006*

Annex 2.

RECOMMENDATION ON MINIMUM CRITERIA FOR ENVIRONMENTAL INSPECTION

RECOMMENDATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 April 2001
providing for minimum criteria for environmental inspections in the Member States
(2001/331/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee([1]),

Having regard to the opinion of the Committee of the Regions([2]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty([3]), and in the light of the joint text approved by the Conciliation Committee on 8 January 2001,

Whereas:

(1) The resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 1 February 1993 on a Community programme of policy and action in relation to the environment and sustainable development([4]) and the Decision of the European Parliament and the Council on its review([5]) emphasised the importance of implementation of Community environmental law through the concept of shared responsibility.

(2) The Commission Communication of 5 November 1996 to the Council of the European Union and the European Parliament on implementing Community environmental law, in particular paragraph 29 thereof, proposed the establishment of guidelines at Community level in order to assist Member States in carrying out inspection tasks, thereby reducing the currently-existing wide disparity among Member States' inspections.

(3) The Council in its resolution of 7 October 1997 on the drafting, implementation and enforcement of Community environmental law([6]) invited the Commission to propose, for further consideration by the Council, in particular on the basis of the work of the European Union network for the implementation and enforcement of environmental law (IMPEL), minimum criteria and/or guidelines for inspection tasks carried out at Member State level and the possible ways in which their application in practice could be monitored by Member States, in order to ensure an even practical application and enforcement of environmental legislation, and the Commission's proposal has taken into account a paper produced by IMPEL in November 1997 and entitled "Minimum Criteria for Inspections".

(4) The European Parliament by its resolution of 14 May 1997 on the Commission's Communication called for Community legislation on environmental inspections, and the Economic and Social Committee and the Committee of the Regions gave favourable opinions on the Commission's Communication and stressed the importance of environmental inspections.

(5) Different systems and practices of inspection already exist in Member States and should not be replaced by a system of inspection at Community level, as was

([1]) OJ C 169, 16.6.1999, p. 12.
([2]) OJ C 374, 23.12.1999, p. 48.
([3]) Opinion of the European Parliament of 16 September 1999 (OJ C 54, 25.2.2000, p.92), Council Common Position of 30 March 2000 (OJ C 137, 16.5.2000, p. 1) and Decision of the European Parliament of 6 July 2000 (not yet published in the Official Journal). Decision of the European Parliament of 1 February 2001 and Council Decision of 26 February 2001.
([4]) OJ C 138, 17.5.1993, p. 1.
([5]) OJ L 275, 10.10.1998, p. 1.
([6]) OJ C 321, 22.10.1997, p. 1.

considered in the Council resolution of 7 October 1997, and Member States should retain responsibility for environmental inspection tasks.

(6) The European Environment Agency can advise the Member States on developing, setting up and extending their systems for monitoring environmental provisions and can assist the Commission and the Member States in monitoring environmental provisions by giving support in respect of the reporting process, so that reporting is coordinated.

(7) The existence of inspection systems and the effective carrying out of inspections is a deterrent to environmental violations since it enables authorities to identify breaches and enforce environmental laws through sanctions or other means; thus inspections are an indispensable link in the regulatory chain and an efficient instrument to contribute to a more consistent implementation and enforcement of Community environmental legislation across the Community and to avoid distortions of competition.

(8) There is currently a wide disparity in the inspection systems and mechanisms among Member States in terms not only of their capacities for carrying out inspection tasks but also of the scope and contents of the inspection tasks undertaken and even in the very existence of inspection tasks in a few Member States, and this is a situation which cannot be considered satisfactory with reference to the objective of an effective and more consistent implementation, practical application and enforcement of Community legislation on environmental protection.

(9) It is necessary, therefore, to provide, at this stage, guidelines in the form of minimum criteria to be applied as a common basis for the performance of environmental inspection tasks within the Member States.

(10) Community environmental legislation obliges Member States to apply requirements in relation to certain emissions, discharges and activities; minimum criteria on the organisation and carrying out of inspections should be met in the Member States, as a first stage, for all industrial installations and other enterprises and facilities whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law.

(11) Inspections should take place taking into account the division of responsibilities in the Member States between authorisation and inspection services.

(12) In order to make this system of inspections efficient, Member States should ensure that environmental inspections activities are planned in advance.

(13) Site visits form an important part of environmental inspection activities.

(14) The data and documentation provided by industrial operators registered under the Community eco-management and audit scheme could be a useful source of information in the context of environmental inspections.

(15) In order to draw conclusions from site visits, regular reports should be established.

(16) Reporting on inspection activities, and public access to information thereon, are important means to ensure through transparency the involvement of citizens, non-governmental organisations and other interested actors in the implementation of Community environmental legislation; access to such information should be in line with the provisions of Council Directive 90/ Each Directorate has a Director who sits on the Corporate Management Team (CMT) who are responsible along with the CEO of the day-to-day running of SEPA. Each Director also heads up their own Directorate Management Team (eg EPIMT).
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13/EEC of 7 June 1990 on the freedom of access to information on the environment([7]).

(17) Member States should assist each other administratively in operating this recommendation. The establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures would

([7]) OJ L 158, 23.6.1990, p. 56.

help to promote best practice across the Community.

(18) Member States should report to the Council and the Commission on their experience in operating this recommendation and the Commission should regularly inform the European Parliament.

(19) The Commission should keep the operation and effectiveness of this recommendation under review and report thereon to the European Parliament and the Council as soon as possible after the receipt of the Member States' reports.

(20) Further work by IMPEL and Member States, in cooperation with the Commission, should be encouraged in respect of best practices concerning the qualifications and training of environmental inspectors.

(21) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, and given the differences in inspection systems and mechanisms in the Member States, the objectives of the proposed action can best be achieved by guidance set out at Community level.

(22) In the light of the experience gained in the operation of this recommendation and taking account of IMPEL's further work, as well as of the results of any schemes provided for in this recommendation, the Commission should, upon receipt of Member States' reports, give consideration to developing the minimum criteria in terms of their scope and substance and to making further proposals which might include a proposal for a directive, if appropriate,

HEREBY RECOMMEND:

I
Purpose

Environmental inspection tasks should be carried out in the Member States, according to minimum criteria to be applied in the organising, carrying out, following up and publicising of the results of such tasks, thereby strengthening compliance with, and contributing to a more consistent implementation and enforcement of Community environmental law in all Member States.

II
Scope and definitions

1. (a) This recommendation applies to environmental inspections of all industrial installations and other enterprises and facilities, whose air emissions and/or water discharges and/or waste disposal or recovery activities are subject to authorisation, permit or licensing requirements under Community law, without prejudice to specific inspection provisions in existing Community legislation.

   (b) For the purposes of this recommendation, all the installations and other enterprises and facilities referred to in point (a) are "controlled installations".

2. For the purposes of this recommendation, "environmental inspection" is an activity which entails, as appropriate:

(a) checking and promoting the compliance of controlled installations with relevant environmental requirements set out in Community legislation as transposed into national legislation or applied in the national legal order (referred to hereinafter as "EC legal requirements");

(b) monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action (including issuing, modification or revocation of any authorisation, permit or licence) is required to secure compliance with EC legal requirements;

(c) the carrying out of activities for the above purposes including:
- site visits,
- monitoring achievement of environmental quality standards,
- consideration of environmental audit reports and statements,
- consideration and verification of any self monitoring carried out by or on behalf of operators of controlled installations,
- assessing the activities and operations carried out at the controlled installation,
- checking the premises and the relevant equipment (including the adequacy with which it is maintained) and the adequacy of the environmental management at the site,
- checking the relevant records kept by the operators of controlled installations.

3. Environmental inspections, including site visits, may be:

(a) routine, that is, carried out as part of a planned inspections programme; or

(b) non-routine, that is, carried out in such cases in response to complaints, in connection with the issuing, renewal or modification of an authorisation, permit or licence, or in the investigation of accidents, incidents and occurrences of non-compliance.

4. (a) Environmental inspections may be carried out by any public authority at either national, regional or local level, which is established or designated by the Member State and responsible for the matters covered by this recommendation.

(b) The bodies referred to in point (a) may, in accordance with their national legislation, delegate the tasks provided for in this recommendation to be accomplished, under their authority and supervision, to any legal person whether governed by public or private law provided such person has no personal interest in the outcome of the inspections it undertakes.
(c) The bodies referred to in points (a) and (b) are defined as "inspecting authorities".

5. For the purposes of this recommendation, an "operator of a controlled installation" is any natural or legal person who operates or controls the controlled installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the controlled installation has been delegated.

III
Organisation and carrying out of environmental inspections

1. Member States should ensure that environmental inspections aim to achieve a high level of environmental protection and to this end should take the necessary measures to ensure that environmental inspections of controlled installations are organised and carried out in accordance with points IV to VIII of this recommendation.

2. Member States should assist each other administratively in carrying out the guidelines of this recommendation by the exchange of relevant information and, where appropriate, inspecting officials.

3. To prevent illegal cross-border environmental practices, Member States should encourage, in cooperation with IMPEL, the coordination of inspections with regard to installations and activities which might have significant transboundary impact.

4. In order to promote best practice across the Community, Member States may, in cooperation with IMPEL, consider the establishment of a scheme, under which Member States report and offer advice on inspectorates and inspection procedures in Member States, paying due regard to the different systems and contexts in which they operate, and report to the Member States concerned on their findings.

IV
Plans for environmental inspections

1. Member States should ensure that environmental inspection activities are planned in advance, by having at all times a plan or plans for environmental inspections providing coverage of all the territory of the Member State and of the controlled installations within it. Such a plan or plans should be available to the public according to Directive 90/313/EEC.

2. Such plan or plans may be established at national, regional or local levels, but Member States should ensure that the plan or plans apply to all environmental inspections of controlled installations within their territory and that the authorities mentioned in point II(4) are designated to carry out such inspections.

3. Plans for environmental inspections should be produced on the basis of the following:

(a) the EC legal requirements to be complied with;

(b) a register of controlled installations within the plan area;

(c) a general assessment of major environmental issues within the plan area and a general appraisal of the state of compliance by the controlled installations with EC legal requirements;

(d) data on and from previous inspection activities, if any.

4. Plans for environmental inspections should:

(a) be appropriate to the inspection tasks of the relevant authorities, and should take account of the controlled installations concerned and the risks and environmental impacts of emissions and discharges from them;
(b) take into account relevant available information in relation to specific sites or types of controlled installations, such as reports by operators of controlled installations made to the authorities, self monitoring data, environmental audit information and

environmental statements, in particular those produced by controlled installations registered according to the Community eco-management and audit scheme (EMAS), results of previous inspections and reports of environmental quality monitoring.

5. Each plan for environmental inspections should as a minimum:

(a) define the geographical area which it covers, which may be for all or part of the territory of a Member State;

(b) cover a defined time period, for example one year;

(c) include specific provisions for its revision;

(d) identify the specific sites or types of controlled installations covered;

(e) prescribe the programmes for routine environmental inspections, taking into account environmental risks; these programmes should include, where appropriate, the frequency of site visits for different types of or specified controlled installations;

(f) provide for and outline the procedures for non-routine environmental inspections, in such cases in response to complaints, accidents, incidents and occurrences of non-compliance and for purposes of granting permission;

(g) provide for coordination between the different inspecting authorities, where relevant.

V
Site visits

1. Member States should ensure that the following criteria are applied in respect of all site visits:

(a) that an appropriate check is made of compliance with the EC legal requirements relevant to the particular inspection;

(b) that if site visits are to be carried out by more than one environmental inspecting authority, they exchange information on each others' activities and, as far as possible, coordinate site visits and other environmental inspection work;

(c) that the findings of site visits are contained in reports made in accordance with point VI and exchanged, as necessary, between relevant inspection, enforcement and other authorities, whether national, regional or local;

(d) that inspectors or other officials entitled to carry out site visits have a legal right of access to sites and information, for the purposes of environmental inspection.

2. Member States should ensure that site visits are regularly carried out by inspecting authorities as part of their routine environmental inspections and that the following additional criteria are applied for such site visits:

(a) that the full range of relevant environmental impacts is examined, in conformity with the applicable EC legal requirements, the environmental inspection programmes and the inspecting bodies' organisational arrangements;

(b) that such site visits should aim to promote and reinforce operators' knowledge and understanding of relevant EC legal requirements and environmental sensitivities, and of the environmental impacts of their activities;

(c) that the risks to and impact on the environment of the controlled installation are considered in order to evaluate the effectiveness of existing authorisation, permit or licensing requirements and to assess whether improvements or other changes to such requirements are necessary.

3. Member States should also ensure that non-routine site visits are carried out in the following circumstances:

(a) in the investigation by the relevant inspecting authorities of serious environmental complaints, and as soon as possible after such complaints are received by the authorities;

(b) in the investigation of serious environmental accidents, incidents and occurrences of non-compliance, and as soon as possible after these come to the notice of the relevant inspecting authorities;

(c) where appropriate, as part of the determination as to whether and on what terms to issue a first authorisation, permit or licence for a process or activity at a controlled installation or the proposed site thereof or to ensure the compliance with the requirements of authorisation, permit or licence after it has been issued and before the start of activity;

(d) where appropriate, before the reissue, renewal or modification of authorisations, permits or licences.

VI
Reports and conclusions following site visits

1. Member States should ensure that after every site visit the inspecting authorities process or store, in identifiable form and in data files, the inspection data and their findings as to compliance with EC legal requirements, an evaluation thereof and a conclusion on whether any further action should follow, such as enforcement proceedings, including sanctions, the issuing of a new or revised authorisation, permit or licence or follow-up inspection activities, including further site visits. Reports should be finalised as soon as possible.

2. Member States should ensure that such reports are properly recorded in writing and maintained in a readily accessible database. The full reports, and wherever this is not practicable the conclusions of such reports, should be communicated to the operator of the controlled installation in question according to Directive 90/313/EEC; these reports should be publicly available within two months of the inspection taking place.

VII
Investigations of serious accidents, incidents and occurrences of non-compliance

Member States should ensure that the investigation of serious accidents, incidents and occurrences of non-compliance with EC legislation, whether these come to the attention of the authorities through a complaint or otherwise, is carried out by the relevant authority in order to:

(a) clarify the causes of the event and its impact on the environment, and as appropriate, the responsibilities and possible liabilities for the event and its consequences, and to forward conclusions to the authority responsible for enforcement, if different from the inspecting authority;

(b) mitigate and, where possible, remedy the environmental impacts of the event through a determination of the appropriate actions to be taken by the operator(s) and the authorities;

(c) determine action to be taken to prevent further accidents, incidents and occurrences of non-compliance;

(d) enable enforcement action or sanctions to proceed, if appropriate; and

(e) ensure that the operator takes appropriate follow-up actions.

VIII
Reporting on environmental inspection activities in general

1. Member States should report to the Commission on their experience of the operation of this recommendation two years after the date of its publication in the Official Journal of the European Communities, using, to the extent possible, any data available from regional and local inspecting authorities.

2. Such reports should be available to the public and should include in particular the following information:

(a) data about the staffing and other resources of the inspecting authorities;

(b) details of the inspecting authority's role and performance in the establishment and implementation of relevant plan(s) for inspections;

(c) summary details of the environmental inspections carried out, including the number of site visits made, the proportion of controlled installations inspected (by type) and estimated length of time before all controlled installations of that type have been inspected;

(d) brief data on the degree of compliance by controlled installations with EC legal requirements as appears from inspections carried out;

(e) a summary, including numbers, of the actions taken as a result of serious complaints, accidents, incidents and occurrences of non-compliance;

(f) an evaluation of the success or failure of the plans for inspections as applicable to the inspecting body, with any recommendations for future plans.

IX
Review and development of the recommendation

1. The Commission should review the operation and effectiveness of this recommendation, as soon as possible after receipt of the Member States' reports mentioned in point VIII above, with the intention of developing the minimum criteria further in terms of their scope in the light of the experience gained from their application, and taking into account any further contributions from interested parties, including IMPEL and the European Environment Agency. The Commission should then submit to the European Parliament and the Council a

report accompanied, if appropriate, by a proposal for a directive. The European Parliament and the Council will consider such a proposal without delay.

2. The Commission is invited to draw up, as quickly as possible, in cooperation with IMPEL and other interested parties, minimum criteria concerning the qualifications of environmental inspectors who are authorised to carry out inspections for or under the authority or supervision of inspecting authorities.

3. Member States should, as quickly as possible, in cooperation with IMPEL, the Commission and other interested parties, develop training programmes in order to meet the demand for qualified environmental inspectors.

X
Implementation

Member States should inform the Commission of the implementation of this recommendation together with details of environmental inspection mechanisms already existing or foreseen not later than twelve months after its publication in the Official Journal of the European Communities.

Done at Luxembourg, 4 April 2001.

For the European Parliament	*For the Council*
The President	*The President*
N. Fontaine	B. Rosengren

Annex 3.

IMPEL IRI REVIEW QUESTIONNAIRE AND GUIDANCE

1. Introduction.

This questionnaire and its integral guidance is designed to help the volunteer inspecting authority (Candidate Inspectorate) to describe, in its own words, the systems and procedures in place for delivery of its regulatory responsibilities. This is not an audit process but is intended to meet recital 17 European Parliament and Council Recommendation (2001/331/EC):

(17) Member States should assist each other administratively in operating this recommendation. The establishment by Member States in cooperation with IMPEL of reporting and advice schemes relating to inspectorates and inspection procedures would help to promote best practice across the Community

This questionnaire must be read in conjunction with the guidance. The completed questionnaire is intended to aid the Candidate Inspectorate and Review Team by the supply of core information in preparation for IRI Review. The response to the questionnaire will inform the review and should be seen in this light.

The guidance and questionnaire is also intended only as an aid for Review Teams in eliciting essential information and to provide an element of consistency between different reviews.

The questionnaire is structured in sections with open questions. The guidance assists by expanding on the goals the sections are intended to achieve.

2. Purpose.

The output from the questionnaire together with the Review process are intended to enable the Candidate Inspectorate and Review Team to explore the regulatory system. The review process is intended to identify areas of good practice for dissemination together with opportunities to develop existing practice within the Candidate Inspectorate and Member States.

The purpose of this voluntary scheme is to examine the arrangements within which the Candidate Inspectorate operates. The arrangements are explored using this guidance and the questionnaire, with the objective of delivering the following benefits foreseen in the original Terms of Reference for the project, with particular relevance to the Recommendation (2001/331/EC).

- Encouragement of capacity–building in EU Member State inspectorates**.**

- Encouragement of further collaboration between EU Member State inspectorates on common issues or problems, on exchange of experience and on development and dissemination of good practice in environmental regulation.

- Provision of advice to inspectorates ("candidate inspectorates") who may be seeking an external view of their structure, operation or performance by trusted, knowledgeable and independent counterparts for the purpose of benchmarking and continuous improvement of their organisation.

- Spread of good practice leading to improved quality of inspectorates and inspections, and contributing to continuous improvement of quality and consistency of application of environmental law across the EU ("the level playing-field").

Against this background the Review Teams should be looking for evidence of a comprehensive and effective regulatory system for implementation of the relevant parts of the legislation covered by the agreed scope of the review.

3. How to use the Questionnaire.

This questionnaire should be read in conjunction with the guidance. The guidance supports the questionnaire by describing the objective of each section and includes some supporting information. The output from the questions together with the IRI Review process are intended to enable the Candidate Inspectorate and Review Team to explore the idealised regulatory system. The IRI Review Process is intended to identify areas of good practice for dissemination together with opportunities for improvement to existing practice within the Candidate Inspectorate and Member State.

The questionnaire is structured in sections with open questions. The guidance is intended to assist by expanding on the goals the sections are intended to achieve. The Reference to Article in the Related Article column refers to the Minimum Inspection Criteria Recommendation.

4. Questionnaire.

Question	Related Article
1. CONSTITUTIONAL BASIS FOR INSPECTORATE **Objective.** • To establish how the Member State allocates responsibilities for technical policy, socio-economic policy and any related political issues associated with environmental regulation. • To understand how the Candidate Inspectorate is constituted within the Member State. • To understand the Candidate Inspectorate's role in the interface between technical regulatory issues and related political or socio-economic issues in the Member State. **Guidance.** The response to the questionnaire should enable the Review Team and Candidate Inspectorate to examine: • The Member State system for specifying the remit of the Candidate Inspectorate, for reviewing its performance, and for ensuring that the Candidate Inspectorate is funded to provide effective service delivery that is stable year-on-year. • Member State arrangements allowing the Candidate Inspectorate to comment upon relevant legislation and to suggest changes for improvement of the overall system for delivering it. • The funding split between central taxation, local taxation and direct charging. • Arrangements for communicating with neighbouring Member States, e.g. Article 17 of the IPPC Directive, and notification and promoting exchange of information and staff between Inspectorates as recommended in the MCEI. **Questions.** 1.1 What is constitutional relationship between the Inspectorate and its Member State (MS)?	III(1)

Question	Related Article
1.2 How does MS establish, communicate and review tasks and the delivery of the tasks to be achieved by the Inspectorate? (Including publication of the results of its work.) 1.3 How are the Inspectorate's regulatory activities financed? 1.4 How does Inspectorate feedback information about shortcomings or deficiencies in legislation to the MS? 1.5 Who, between MS and the Inspectorate, is responsible for relations with other MSs in respect of transboundary issues? (e.g. Article 17 of IPPC Directive.) 1.6 Excluding transboundary issues outline any arrangements are in place for exchange of information and/or inspectors with other competent authorities within and external to the MS?	IV, V, VII III(2)

Question	Related Article
2. LEGAL BASIS FOR INSPECTORATE. **Objective** • To establish an understanding of the legal basis of the Candidate Inspectorate within its Member State. • To gain an understanding of those parts of environmental legislation for which the Candidate Inspectorate is the competent authority together with an explanation of the types of installations and operators covered. • To establish the roles of the candidate Inspectorate in enforcement of relevant permit conditions and prosecution. **Guidance** It is for the Member State to ensure that responsibilities for all requirements of environmental legislation are appropriately allocated within the Member State, e.g. as between the Candidate Inspectorate and other competent authorities. It would be helpful also to understand how those types of installations not covered by the Candidate Inspectorate are regulated and how the relevant bodies interact. The response to the questionnaire should enable the Review Team to establish a clear picture of where the candidate Inspectorate's responsibilities overlap or interact with other legislation. This should identify areas where there may be conflicting legislative requirements and how the relevant responsibilities are allocated and co-ordinated to ensure that environmental requirements are not compromised by other considerations. It should include a description • Of the powers, duties and sanctions available to the Inspectorate to secure compliance with all requirements of the relevant legislation, and to the necessary standards • Of where, in the Member State, the ultimate authority for determining the content of permits lies, • Of how the public is involved and what happens if an operator or the public appeals against a decision by the Candidate Inspectorate. • Systems used by the Candidate Inspectorate to resolve legislative conflict. The Review team should explore transparency and clarity of arrangements.	III(1)

Question	Related Article
Questions 2.1 What legislation does your Inspectorate apply to environmental regulatory activities? 2.2 What is the scope of this legislation? (In terms of Installations/Sectors covered.) 2.3 To whom does the legislation apply/not apply? (Industry, Government, Armed Forces, etc) 2.4 With what other main pieces of legislation does Candidate Inspectorate's legislation interact? (Planning, Health and Safety, Seveso II Directive, Freedom of Information etc) 2.5 How are responsibilities divided between bodies responsible for interacting legislation and how are differences resolved if they occur? 2.6 What powers and duties are given to the Inspectorate to set and apply permit conditions in relation to Emission Limit Values, EQS, BAT, etc. 2.7 Summarise appeal provisions within the Inspectorate 2.8 Are there provisions for appeal to higher authority, by operators or the public, against Inspectorate decisions? 2.9 How is the public involved in the regulatory process? (From application to grant of permit, through inspection to enforcement) 2.10 What administrative and legal sanctions are available to Inspectorate in cases of non-compliance with an environmental permit?	III(2)

Question	Related Article
3. ORGANISATION STRUCTURE AND MANAGEMENT OF INSPECTORATE **Objective** To establish how the Candidate Inspectorate is organised, staffed and managed. **Guidance** The response to the questionnaire should enable the Review Team and Candidate Inspectorate to explore how the Candidate Inspectorate secures the: • Effective and consistent setting of high-level objectives, strategies and priorities and their internal and external communication • Effective and consistent delivery of all activities associated with implementation of the relevant environmental legislation. It should allow the Review Team and Candidate Inspectorate to gain an understanding of how and where, within the Inspectorate or Member State, final regulatory decisions are taken i.e. across the full spectrum of complexity of regulatory issues and installation, for example from individual permit conditions to the issue of complex permits. The information submitted should include information on, and a description of, any systems relevant for calculating the costs of Candidate Inspectorate activities. This should take into account the "polluter pays principle".	

Question	Related Article
Questions 3.1 Outline the Management System used by the Inspectorate and identify any use of formal and informal systems (e.g. ISO9001/2) 3.2 Using a chart/diagram describe the organisational structure of the Inspectorate, with associated staff numbers. Identify the resource e.g. person equivalent or the number of staff involved by highlighting relevant parts of the chart/diagram 3.3 How are Inspectorate regulatory policies, objectives, strategies and priorities set and communicated (internally and externally)? 3.4 How are Inspectorate regulatory activities (policy-making, standard setting, research, permitting, inspection, enforcement, reporting and public consultation and guidance) organised and managed and how are resources allocated? 3.5 Where are regulatory decisions taken within the organisation? Is this responsibility delegated? 3.6 How are the costs of Inspectorate activities calculated, allocated reviewed and revised?	

Question	Related Article
4. WORKLOAD **Objective.** To understand the workload of the Candidate Inspectorate and the arrangements for its effective delivery. **Guidance.** The response to the questionnaire should enable the Review Team and Candidate Inspectorate to explore how the Candidate Inspectorate secures the: • Effective and consistent planning of inspections and associated activities, in relation to the number and characteristics of the installations for which it is responsible. • Effective and consistent allocation of available resources as between permitting, inspection, enforcement and other activities such as pre-application contact with operators, dealing with complaints etc. The response should allow the Review Team to gain an understanding of how the regulatory process is managed at an operational level. It should address the workload in terms of number and type of installations, and indicate how the relevant tasks are measured in terms of time required and how the available resources are assigned.	IV, V

Questions	
4.1 How many, and what type of installations are, or will be, regulated by the Inspectorate? 4.2 Which of the elements of "environmental inspection", as defined in Article II, Section 2 of the European Parliament and Council Recommendation (2001/331/EC) on providing for minimum criteria for environmental inspections in the Member States (MCEI), are carried out by the Inspectorate? 4.3 How frequently are/will installations be inspected, by type or category? 4.4 What time is allocated for each such inspection? 4.5 How does the Inspectorate forecast the time required for: • Producing a permit • Maintaining a permit • Undertaking enforcement action 4.6 Outline any charges levied by the Member State or Inspectorate: • For a permit? • To maintain a permit? • For monitoring/sampling? 4.7 What determines the ratio of time spent on installations to time in the office on environmental regulation? 4.8 What determines the ratio of time spent on planned (routine) inspection to non-routine (unplanned) inspection? Unplanned inspections include reactive work e.g. complaints, incident investigation inspection. 4.9 How many enforcement actions and prosecutions are taken per year, by type or category, and what penalties (fines, imprisonment) are available and made? 4.10 What pre-application contact is made with operators to ensure they are informed and prepared to comply with environmental legislation, and how is this reflected in the work required for issuing and granting permits? 4.11 How does the Inspectorate plan and prioritise its workload to make best use of the available resources?	

Question	Related Article
5. QUALIFICATIONS, SKILLS, EXPERIENCE **Objective** To understand the qualifications, skills and experience required by inspectors undertaking environmental regulation within the Candidate Inspectorate, both on appointment and during their career. **Guidance** The response to the questionnaire should enable the Candidate Inspectorate and Review Team to explore and understand: • How Inspectors qualifications, skills and experience are reviewed and recorded e.g. in personal development plans • How senior management is assured that individual members of staff are appropriately qualified for the tasks to which they are assigned • The Candidate Inspectorate's approach to regulatory ethics e.g. "the declaration of interests", the problems of regulatory blindness through over-familiarity with installations and their operators, and possibility of corruption on the part of inspectors or those who issue permits. **Questions** 5.1 What qualifications, skills and experience are required of new entrants to the Inspectorate and how are new entrants selected? 5.2 What additional qualifications, skills, and experience are required before practise of permitting, inspection or enforcement? 5.3 How are qualifications, skills and experience matched to regulatory duties and by whom? 5.4 Are teams of inspectors or individual inspectors expected to cover all IPPC sectors or to specialise in some of them? 5.5 Are inspectors warranted or accredited for their duties? If so how? 5.6 How does the Inspectorate avoid "regulatory capture", "undeclared interests" or "issue-blindness"?	

Question	Related Article
6. TRAINING **Objective** To understand any systems the Candidate Inspectorate may use for identifying training requirements against the skills necessary for environmental regulatory service delivery, for providing training and for checking that training has been successful. **Guidance** The response to the questionnaire should enable the Candidate Inspectorate and Review Team to explore and understand: • Systems used within the Candidate Inspectorate for maintaining awareness of technical, policy and regulatory developments and for ensuring that skills of experienced staff are kept up-to-date e.g. continuous professional development (CPD) • Systems used for the continued accreditation/warranting of inspectors and any linkages to participation in skill's assessment and any relevant training requirements e.g. continuous professional development. • Any use of internal or external secondment or exchange programmes to other inspectorates, industry, or accreditation bodies • The quality of the training arrangements **Questions** 6.1 Are training requirements of individual inspectors assessed against necessary qualifications, skills and experience, If so how and by whom? 6.2 Is training provided? If so how and by whom? 6.3 Is the success, or otherwise, of training subsequently assessed? 6.4 Is awareness of relevant technical, policy and regulatory developments maintained within the Inspectorate? If so how? 6.5 Are the skills of experienced inspectors refreshed If so how?	

6.6 Is acceptance of regular assessment of qualifications, skills and experience and successful participation in any necessary training programme a condition of continuing to practice as a regulator?	

Question	Related Article
7. PROCEDURES. **Objective** To understand the system of procedures including work instructions covering activities associated with implementation of the relevant environmental legislation. **Guidance** The response to the questionnaire should enable the Candidate Inspectorate and Review Team to explore the: • System of procedures are used by the Candidate Inspectorate • The coverage of the procedures linked to implementation of the relevant legislation. • Extent to which procedures are used for tasks identified by the MCEI Recommendation • How the procedures recognise links to other legislative regimes e.g. Seveso II **Questions** 7.1 Are procedures, systems or instructions are in place for: • Determining, issuing, reviewing and revoking permits? • Scheduling and planning inspections according to the MCEI? • Conducting routine inspections according to the MCEI? • Conducting non-routine inspections according to the MCEI? (Including those associated with accidents and emergencies.) • Taking enforcement action? • Making information available to the public? Dealing with accidents on (e.g. IPPC) installations subject to the Seveso II Directive?	IV V(1,2) V(1,3), VII (VII) VI(1,2)

Question	Related Article
8. STANDARDS AND GUIDANCE. **Objective** To understand the criteria the candidate Inspectorate applies in making regulatory decisions and how these are communicated internally (to staff) and externally (to the public and industry and central government). **Guidance** The response to the questionnaire should enable the Candidate Inspectorate and Review Team to explore the Inspectorate's: • Guidance to staff on criteria against which regulatory judgements are to be made • Provision of technical guidance and how this is produced/agreed/reviewed/revised • Provision of advice on BAT for IPPC installations • System for communicating both criteria and guidance to industry and the public • Use and access to independent sources of advice e.g. Scientific Committees **Questions** 8.1 How are standards and guidance for regulatory judgements in permitting, inspecting and enforcement established and communicated? (Both internally and externally.) 8.2 What technical guidance, e.g. on BAT for IPPC processes, is available? (Internally and externally) 8.3 How is such guidance produced and how often is it reviewed/revised? 8.4 Does the Inspectorate have access to any Advisory Body or any other external, independent source of advice?	

Question	Related Article
9. PERFORMANCE ASSESSMENT. **Objective** To understand how the Candidate Inspectorate assesses the quality and consistency of its performance as a regulator and the environmental impact of its activities. **Guidance** The response to the questionnaire should enable the Candidate Inspectorate and Review Team to explore the Inspectorate's: • System for assessment of the of the Candidate Inspectorate's performance, • Arrangements for review of results by senior management • Feedback mechanisms for incorporating relevant lessons or actions into programmes for improved performance. • Approach to the review of permits **Questions** 9.1 Does the Inspectorate have systems to assess the quality and consistency of its regulatory activities? If so how is it done and how often? 9.2 How and by whom are the results of any such assessments reviewed? 9.3 How is the environmental impact of the regulatory process assessed? 9.4 How are the results of any assessment incorporated into management action on procedures, training programs, guidance, work planning etc?	

Question	Related Article
10. REPORTING. **Objective** To understand how the Candidate Inspectorate: • Reports its activities to the public • Provides information to the Member State, • Supplies information to the European Commission e.g. for the Member State's obligations to report progress on the implementation of the Recommendation on Minimum Criteria for Environmental Inspections**.** **Guidance** The response to the questionnaire should enable the candidate Inspectorate and Review Team to explore: • The Inspectorate's systems for, and relationship to the Member State and European Community's systems and requirements for the provision of environmental information. • The types of information made available, e.g. annual report, inspection reports, sampling data, enforcement and prosecution data **Questions** 10.1 What systems are used to report the Inspectorate's regulatory activities, to whom and how often? 10.2 What information does the Inspectorate make available to the MS for the purpose of their "reporting on environmental inspection activities in general"? 10.3 What information does the Inspectorate make available directly to the public and how is it organised, funded and managed? (e.g. Pollution Emissions Register.)	VI(1,2) VIII(1,2)

Annex 4.

SUMMARY OF INFORMATION SUBMITTED TO REVIEW TEAM.

Overarching Documents
Corporate Plans
Annual Plans
L111 – A guide to the COMAH Regulations 1999
PPC Practical Guide
Risk Assessment Manual

Site specific documents (eg Licences)
Safety audit of a nuclear establishment
IPC/036/1994
WML/E/2002
WML/E/130
WML/E/20019
WML/E/120038
PPC/E/30191
PPC/E/30126
PPC/E/120038
Site visited – licence, inspection reports & incident reports

Systems
Q-pulse quality system
EPICC Intranet site: virtual technical training; inspection manual; licensing manual & enforcement manual.
SPRI

Annex 5.

LIST OF PARTICIPANTS IN THE REVIEW

Pieter-Jan van Zanten	Head of Environmental Enforcement, Province of Overijssel, Holland. (Review Team Leader).
Horst Buether	Staatliches Umweltamt Koln, Koln, Germany
Anita Pokrovac Patekar	Ministry of Environmental Protection, Physical Planning & Construction, Zagreb, Croatia
Ioana Suteu	National Environmental Guard, Regional Commisariat Bucharest, Romania
Geir-Rune Samstad	Norwegian Pollution Control Authority, Oslo, Norway.
Margareta Hernebring	County Administrative Board of Vastra Gotaland, Goteborg, Sweden.
Simon Cole	Scottish Environment Protection Agency, Edinburgh
Dave Gorman	Scottish Environment Protection Agency, Stirling
Brian Healey	Scottish Environment Protection Agency, Edinburgh
Andrew Phillips	Scottish Environment Protection Agency, Perth
John W Burns	Scottish Environment Protection Agency, Stirling
Kier McAndrew	Scottish Environment Protection Agency, Stirling
Lin Bunten	Scottish Environment Protection Agency, Edinburgh
Audrey Terry	Scottish Environment Protection Agency, Aberdeen
Alison Dick	Scottish Environment Protection Agency, Edinburgh
Ian Buchanan	Scottish Environment Protection Agency, Glenrothes
Rob Ebbins	Scottish Environment Protection Agency, Edinburgh
Chuck Mulcahy	Scottish Environment Protection Agency, Perth
Simon Fagan	Scottish Environment Protection Agency, Stirling
Joan Forteath	Scottish Environment Protection Agency, Stirling
Neil Archibald	Scottish Environment Protection Agency, Stirling

Robin Ferguson	Scottish Environment Protection Agency, Stirling
Colin Bayes	Scottish Environment Protection Agency, Stirling
Calum MacDonald	Scottish Environment Protection Agency, Stirling
Allan Reid	Scottish Environment Protection Agency, Stirling

Annex 6

PROGRAMME FOR SCOTTISH IRI
04 – 09 MARCH 2007

Monday 05 March
Taxi to SEPA Riccarton - approx 0830

09:00	Introductions and welcome	Dave Gorman
09:15	Scope of Scottish Review	
09:30	Welcome to SEPA and Introduction to SE	Brian Healey
09:45	Discussion on SE region	
10:05	Constitutional Basis for Inspectorate Presentation	Andrew Phillips
10:20	Discussion and agreement	All
10:50	Coffee	
11:05	Presentation on SEPA Legal Powers	Andrew Phillips
11:20	Discussion and agreement	All
12:00	Lunch - Heriot Watt University	
13:00	Relationships with other regulators and the planning system	Dave Gorman
13:20	Discussion and agreement	All
13:50	The PPC permitting process	John W Burns
14:10	Discussion and agreement	All
14:30	Presentation on charging schemes Presentation on public participation	John W Burns
14:50	Discussion and agreement	All
15:15	Coffee	
15:30	Transboundary Issues	Keir McAndrew
15:50	Discussion and agreement	All
16:15	Relationships with government	Keir McAndrew
16:30	Discussion and agreement	

17:00	Close	

Return to hotel - evening meal followed by “special entertainment”.

Tuesday 06 March

Taxi to SEPA Riccarton at approximately 0800.

08:30	Pre-meeting - Riccarton	
09:00	Presentation on organisational structure SEPA, EPI, SE EPI	Lin Bunten
09:20	Discussion and agreement	All
09:50	Quality systems and implementation processes	Simon Bingham
10:15	Discussion and agreement	All
10:45	Coffee	
11:00	Policy decisions and management decisions	Audrey Terry
11:20	Discussion and agreement	All
11:50	Overview of regulated industry Explanation of risk assessments	Audrey Terry
12:20	Discussion and agreement	All
12:45	Lunch - Heriot Watt University	
13:45	Public Register	Alison Dick
14:10	Practicalities of team work plans	Ian Buchanan
14:30	Discussion and agreement	All
14:50	Coffee	
15:10	Presentation on qualification, skills and experience (including TEPO, competency framework etc)	Ian Buchanan
15:30	Discussion and agreement	All
16:00	Presentation on EPI Technical Training Programme, Appraisal, Personal Development TNA and ILA	Simon Bingham
16:20	Discussion and agreement	All
17:00	Close	

Return to hotel - free evening

Wednesday 06 March

Point Hotel - Meeting Room 2

10:00	Pre-meeting - Room 2	
10:30	Frontline planning and delivery of routine inspections	Rob Ebbins
10:50	Discussion and agreement	All
11:15	Coffee	
11:30	Inspectors view and Introduction to Site	Chuck Mulcahy
11:50	Discussion	All
12:15	Lunch - Point Hotel	
12:50	Depart for site visit	Review Team
13:30	Arrive at IPPC/Seveso II Site	
16:00	Depart Site for Hotel	
17:00	Close	

Review meal (not formal dress!) with some of SEPA's management team at Stac Polly restaurant, Grindlay St, Edinburgh (8pm).

Thursday 08 March

Taxi to SEPA Riccarton at approximately 0800.

08:30	Pre-meeting - Riccarton	
09:00	Technical guidance Production, dissemination, agreement, scope	Kier McAndrew
09:20	Discussion and agreement	All
09:40	Auditing and improvement (internal, external audit, surveys)	Simon Fagan
10:00	Discussion and agreement	All
10:20	Coffee	

10:35	Industry Liaison Mechanisms	Rob Ebbins
10:55	Discussion and agreement	All
11:20	Presentation on reporting and emissions (EPER, SPRI & public reporting)	Joan Forteath
11:40	Discussion and agreement	All
12:00	Lunch - Heriot Watt University	
13:00	SEPA's performance management systems (KPIs, corporate plan, annual report)	Neil Archibold
13:20	Discussion and agreement	All
13:40	Workload Planning	Robin Ferguson
14:00	Discussion and agreement	All
14:20	Coffee	
14:40	Responding to public incidents and queries	Rob Ebbins
15:00	Discussion and agreement	All
15:20	Presentation on maintaining technical skills	Rob Ebbins
15:40	Discussion and agreement	All
16:00	End review discussion - clarification of issues	All
17:00	Close	

Return to hotel - evening meal and working up report

Friday 09 March

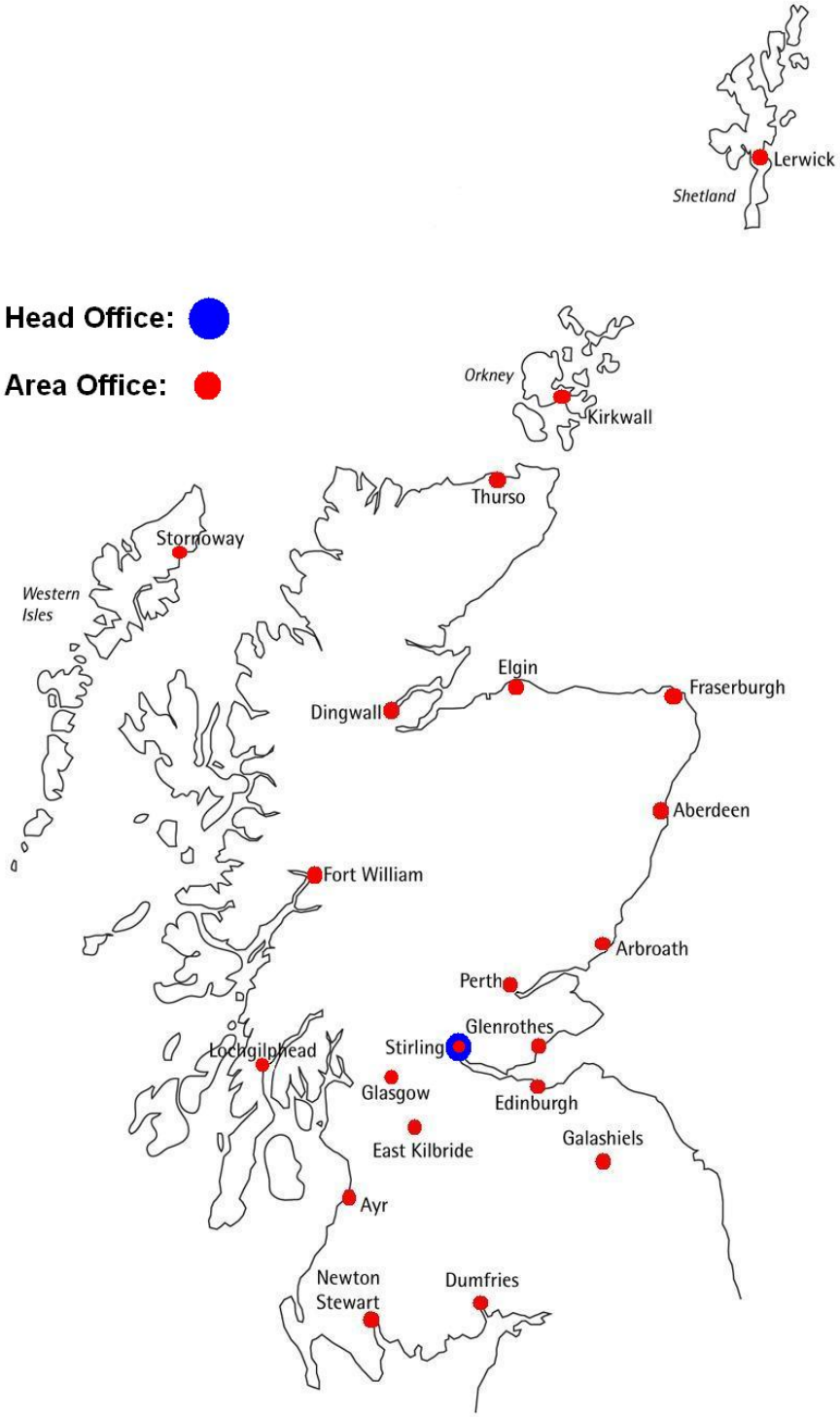
Taxi to Lomond Court, Stirling leaving the Point Hotel at approximately 9am

10:00	Pre-meeting - Lomond Court (Inc. Coffee)	
11:30	Presentation to SEPA managers	
12:30	Buffet Lunch	
14:30	Close & Depart for Edinburgh Airport/City	

Annex 7.

SEPA office locations.

Note: the review took place in SEPA's Edinburgh office (Riccarton).



Annex 8
Basic SEPA Organogram