



# ENVIRONMENTAL BRIEFING

## Civil Sanctions – changes to variable monetary penalties

### Summary

Environmental regulators including the Environment Agency (EA) and Natural England are empowered to use various options when an environmental offence has been committed. These range from advice and operational restrictions to various civil sanctions, including monetary penalties, through to criminal prosecution. For regulators, it is easier and cheaper to pursue offending companies through the civil sanctions route and recent changes to rules for variable monetary penalties (VMPs) means that more offences can be dealt with this way and the penalties can be significantly higher.



Prior to December 2023, VMPs were capped at £250,000 for environmental breaches. This cap has now been removed and the scope of offenses covered expanded to include breaches of the Environmental Permitting (England and Wales) Regulations 2016. This means that penalties are now unlimited and will be determined using the same guidelines used in criminal cases but VMPs can be imposed directly by the regulators rather than through the court process. Until now, VMPs have been issued relatively infrequently and have tended to be modest but this is expected to change with the removal of the limit and the increase in the scope.

The EA now has broader authority to hold various industries accountable using VMPs for environmental harm, including breaches to many environmental permits. Penalties will be proportional to the company's size and the offense committed. VMPs also require a lower evidential burden, although the regulator must still be satisfied 'beyond reasonable doubt' that an offence has been committed and there is also a right of appeal. The changes are aimed primarily at tackling offending water companies, however the new regime will affect all holders of environmental permits.

### Key Points

- The removal of the VMP limit has improved the capacity of regulators to take enforcement action against companies and individuals who have committed environmental offences.
- Penalties are now unlimited and cover many environmental permits held by Cemex so we must focus more than ever on environmental compliance.
- Operators of permitted sites must ensure that the conditions of all permits are clearly understood by relevant personnel through appropriate training. Compliance and monitoring must be paramount.
- Special attention should be paid to high-risk activities such as water discharges and the storage and disposal of waste.
- Any interaction with a regulator should be treated seriously. Advice must be sought where the EA investigates incidents where there appears to have been breaches of environmental regulations.