

## RESPONSE TO F0196322

### Request Timeline

Date	Status
21/11/2023	EIR Request received [statutory deadline 20/12/2023]
13/12/2023	Clarification requested
13/12/2023	Clarification received [statutory deadline 16/01/2024]
13/12/2023	EIR Response issued

### Requested Information

[...]

1. Documents that describe the monitoring regime (including legal limits) for analysing the chemicals and other pollutants in waste water sludge by Scottish Water and private contractors. This should include the range of chemicals tested for and the frequency of sampling. Specifically, does the testing include organic pollutants such as polychlorinated biphenyls (PCBs) and perfluorooctanesulfonic acid (PFOS).
2. Documents that describe the monitoring regime (including legal limits) for sludge spread by farmers on their land. This should include the range of chemicals tested for and the frequency of sampling.
3. Documents that describe the monitoring regime (including legal limits) for fertilisers produced in Scotland. This should include the range of chemicals tested for and the frequency of sampling.

4. Reports produced in the last three years (financial or calendar, whichever is easier) covering the monitoring of 1-3 above.
5. The policy on sludge landspreading permits and the number granted over the past three years (financial or calendar, whichever is easier).
6. Documents that discuss the policy that SEPA should adopt in relation to waste water sludge monitoring and the regulations that apply.

## Clarification Received

Q4. Your interpretation reports will be fine.

## Response

SEPA has handled your request under the Environmental Information (Scotland) Regulations 2004 (EIRs).

- 1. Documents that describe the monitoring regime (including legal limits) for analysing the chemicals and other pollutants in waste water sludge by Scottish Water and private contractors. This should include the range of chemicals tested for and the frequency of sampling. Specifically, does the testing include organic pollutants such as polychlorinated biphenyls (PCBs) and perfluorooctanesulfonic acid (PFOS).**

Please refer to the Sludge Use in Agriculture Regulations at:

[www.legislation.gov.uk/ukxi/1989/1263/contents/made](http://www.legislation.gov.uk/ukxi/1989/1263/contents/made)

Legal limits for rates of application of metals to land are in the 'Sludge Table' in these regulations, but there are no legal maximum limits for concentrations of metals in sludge.

Additional monitoring of sludge is undertaken under the [assuredbiosolids.co.uk/wp-content/uploads/2020/07/BAS-Standard-Issue-5-10th-July-2020.pdf](http://assuredbiosolids.co.uk/wp-content/uploads/2020/07/BAS-Standard-Issue-5-10th-July-2020.pdf), which go

beyond the requirements set out in the Sludge (Use in Agriculture) Regulation. The Biosolids Assurance Scheme is a water industry standard, and its requirements are not legally binding, but are fulfilled by all operators producing sludge that is spread to land in Scotland, because all operators are members of the Scheme. Organic pollutants such as polychlorinated biphenyls (PCBs) and perfluorooctanesulfonic acid (PFOS) are not included in monitoring regimes for sewage sludge and there are no legal limits for any organic pollutants in sewage sludge in Scotland.

Regulation 6(1)(b) applies.

**2. Documents that describe the monitoring regime (including legal limits) for sludge spread by farmers on their land. This should include the range of chemicals tested for and the frequency of sampling.**

The monitoring regime for sludge used on agricultural land, including frequency of testing required and legal limits for rates of application of metals to land are in the 'Sludge Table' in the Sludge (Use in Agriculture) Regulations 1989 [www.legislation.gov.uk/uksi/1989/1263/contents/made](http://www.legislation.gov.uk/uksi/1989/1263/contents/made), The Biosolids Assurance Scheme [assuredbiosolids.co.uk/wp-content/uploads/2020/07/BAS-Standard-Issue-5-10th-July-2020.pdf](http://assuredbiosolids.co.uk/wp-content/uploads/2020/07/BAS-Standard-Issue-5-10th-July-2020.pdf) includes additional monitoring requirements for sewage sludge.

Regulation 6(1)(b) applies.

**3. Documents that describe the monitoring regime (including legal limits) for fertilisers produced in Scotland. This should include the range of chemicals tested for and the frequency of sampling.**

SEPA do not enforce the Fertiliser Regulations and therefore cannot describe the monitoring regime for these. SEPA do however regulate the use of fertilisers on land, via General Binding rule 18 of the Water Environment (Controlled Activity) (Scotland) Regulations 2011 [www.legislation.gov.uk/ssi/2011/209/contents/made](http://www.legislation.gov.uk/ssi/2011/209/contents/made). SEPA also regulate the spreading of industrial waste materials to land for 'agricultural benefit' under a paragraph 7 exemption under Schedule 1 of the Waste Management

Licensing (Scotland) Regulations 2011

[www.legislation.gov.uk/ssi/2011/228/contents/made](http://www.legislation.gov.uk/ssi/2011/228/contents/made).

Monitoring required for these materials is set out in the SEPA Technical Guidance Notes for paragraph 7 exemptions, which can be found at:

[www.sepa.org.uk/regulations/waste/activities-exempt-from-waste-management-licensing/](http://www.sepa.org.uk/regulations/waste/activities-exempt-from-waste-management-licensing/)

Regulations 6(1)(b), 9 and 10(4)(a) apply.

**4. Reports produced in the last three years (financial or calendar, whichever is easier) covering the monitoring of 1-3 above.**

SEPA does not hold any reports on either the monitoring of chemicals in wastewater treatment sludge carried out by either Scottish Water or private contractors, the monitoring of sludge spread on land by farmers, or the monitoring of fertilisers produced in Scotland. Regulation 10(4)(a) applies.

**5. The policy on sludge landspreading permits and the number granted over the past three years (financial or calendar, whichever is easier).**

There is no policy on sludge land spreading permits in Scotland. Operators must follow the requirements of the Sludge (Use in Agriculture) Regulations and demonstrate to SEPA that they have done so, by making accurate and timely annual sludge register submissions. Regulation 10(4)(a) applies.

**6. Documents that discuss the policy that SEPA should adopt in relation to waste water sludge monitoring and the regulations that apply.**

We do not hold any documents that discuss the policy that SEPA should adopt in relation to waste-water sludge monitoring. As discussed in point 1 above SEPA follow the requirements of The Sludge (Use in Agriculture) Regulations 1989 ([www.legislation.gov.uk/ukSI/1989/1263/contents/made](http://www.legislation.gov.uk/ukSI/1989/1263/contents/made).) These regulations aim

to control the build-up of potentially toxic elements in soil and restrict planting, grazing and harvesting of certain crops following the application of sludge to agricultural land. The regulations require sludge producers to supply SEPA with details of land which has received sludge including the respective soil and sludge analysis. SEPA audit the information provided by sludge producers including carrying out soil testing on a risk assessed basis, to ensure compliance with the sludge use in agriculture regulations.

We recommend you contact the Scottish Government for more information. Contact details are provided in 'Application of Regulation/Exceptions' section below.

Regulations 10(4)(a) and 14(1)(b) apply.

Further information regarding the regulations and any exceptions applied to this information can be found below.

## **Application of Regulations and Exceptions**

### **Section 39(2)**

The information you are requesting is environmental information. We have applied Section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA). We are therefore handling your request under the Environmental Information (Scotland) Regulations 2004 (EIRs).

### **Regulation 6(1)(b) Publicly Available and Easily Accessible**

Where we have advised above that information is publicly available & easily accessible Regulation 6(1)(b) applies, the text of which is reproduced below;-

*6(1) Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that*

*request unless- (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

### **Regulation 9 – Advice and assistance**

Where we have issued additional information or advice this is provided in line with SEPA's duty to advise and assist under Regulation 9 of The Environmental Information (Scotland) Regulations 2004.

### **Regulation 10(4)(a) – Information not held**

Where we have advised above that SEPA does not hold this information it is excepted under Regulation 10(4)(a) of the Environmental Information Regulations 2004. The text of which is reproduced below;

*(4) A Scottish public authority may refuse to make environmental information available to the extent that;- (a) it does not hold that information when an applicant's request is received.*

The exception in regulation 10(4)(a) is subject to the public interest test in regulation 10(1)(b) of the EIRs. As SEPA does not hold the information in question there is no conceivable public interest in requiring that the information be made available.

### **Regulation 14(1)(b) – Other authority**

As confirmed above SEPA does not hold this information. In accordance with the terms of the EIRs regulation 14(1)(b), The text of which is reproduced below.

*14(1) Where a Scottish public authority has received a request to make environmental information available and does not hold that information but believes that another public authority holds the information requested then it shall (b) supply the applicant with the name and address of that other authority,*

We advise that you contact :

General Enquiries Scottish Government  
St. Andrew's House  
Regent Road

Edinburgh

EH1 3DG

Tel: 0300 244 4000

Email: [ceu@gov.scot](mailto:ceu@gov.scot)

[www.gov.scot/about/contact-information/how-to-request-information](http://www.gov.scot/about/contact-information/how-to-request-information)

### **What to expect when making a Request for Information**

Each request for information, under The Environmental Information (Scotland) Regulations 2004 or the Freedom of Information (Scotland) Act 2002, is formally logged by the authority. The request falls within a process that has two internal stages carried out by the authority; a right of appeal to the Scottish Information Commissioner followed by an appeal to the Court of Session on a point of law only.

- Stage 1 – Request for information
- Stage 2 – Formal Review
- Stage 3 – Appeal for decision by Scottish Information Commissioner (OSIC)
- Stage 4 – Appeal to the Court of Session on a point of law only.

Each enquiry will have a unique Reference Number which should be quoted when you contact us.

### **How you will be kept informed**

You will receive an acknowledgement for your request and Formal Review. We aim to reply to all enquiries promptly, within 20 working days. You will receive a response along with the requested information and/or an explanation regarding any withheld information. We may also contact you if we require clarification or if we are issuing a fees notice.

### **What happens once your enquiry has been responded to?**

If you are not happy with the response or have failed to receive a response, you have the right to request a Formal Review from SEPA.

Guidance on your rights and how to ask for a review is on the Scottish Information Commissioner's website; <http://itspublicknowledge.info/YourRights/Askingforareview.aspx>

We will ensure that all personal data is processed, recorded and retained in accordance with the requirements of the Data Protection Act 2018 throughout the handling of each request. You have a right to see information about yourself via submitting a Subject Access Request under the Data Protection Act 2018.

### **What to do if you are not happy with how your enquiry and review were handled**

If you are unsatisfied with our Formal Review response or have failed to receive a response, you can then appeal to the Scottish Information Commissioner via the links below.

[www.itspublicknowledge.info/appeal](http://www.itspublicknowledge.info/appeal)

<http://www.itspublicknowledge.info/home/ContactUs/ContactUs.aspx>

Should you wish to appeal against the Scottish Information Commissioner's decision, you have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of the decision.