

Case ID : IESS.22.022

Description : Consideration of the delayed implementation of recommendations contained within the *Review of the Storage and Spreading of Sewage Sludge on Land in Scotland*.

Case Summary :

<p>What was the issue?</p>	<p>A representation was received alleging nuisance to a community near Falkirk arising from the application of sewage sludge to agricultural land. The representation also described a lack of clarity as to the authority responsible for dealing with the statutory nuisance created by odour.</p> <p>The representation made reference to the Scottish Government’s 2016 Review of Storage and Spreading of Sewage Sludge to Land in Scotland¹ (“the Sludge Review”).</p> <p>The Sludge Review was undertaken in response to a number of public complaints to SEPA and local authorities about the use of sewage sludge – the complaints were principally concerning odour attributed to spreading and storing of sewage sludge.</p> <p>The Sludge Review made a number of recommendations, generally grouped into main themes of improved licensing, adoption of ‘the Safe Sludge Matrix’, improved monitoring of activities and clearer approach to dealing with statutory nuisance caused by odour.</p> <p>The Scottish Government indicated that the recommendations of the Sludge Review requiring legislative change would be addressed within the Integrated Authorisation Framework (IAF). The IAF is intended to integrate the authorisation, procedural and enforcement arrangements relating to the existing water, waste, radioactive substances and pollution prevention and control regimes (PPC). The IAF will be delivered under the Environmental Authorisation (Scotland) Regulations 2018².</p>
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¹ [Sludge review: final recommendations - gov.scot \(www.gov.scot\)](http://www.gov.scot)

² [Environmental Authorisation \(Scotland\) Regulations 2018](#).

	<p>The consultation on proposed amended regulations and accompanying guidance implementing the IAF had been due to begin in October 2022, was further postponed to January 2023 and then to an unspecified date in 2023.</p> <p>The representation did not dispute the science, environmental impacts or breadth of the recommendations in the Sludge Review. It focused on the delay in implementing these recommendations, which were first made in 2016. The delay in implementation was leading to concern that the issues prompting the Sludge Review were not being adequately or timeously addressed, and that the same odour nuisance was still ongoing at the time of the representation, prompting the representation.</p> <p>The outcome sought was for ESS to investigate the effectiveness of the current legislation and make recommendations to ensure that the Sludge Review recommendations were implemented without further delay.</p>
<p>What did ESS do ?</p>	<p>ESS reviewed the information presented with the application, which included :</p> <ul style="list-style-type: none"> • May 2018 report compiled by the James Hutton Institute from a workshop meeting with the community experiencing odour nuisance as a result of sewage spreading • ‘The Impacts on Human Health and Environment Arising from the Spreading of Sewage Sludge to Land’ report by the James Hutton Institute • The Sludge Review • ‘A Comparison of Odour Emission Rates from Three Different Types of Sewage Sludge Cakes’ odour emissions assessment prepared by RSK ADAS on behalf of the James Hutton Institute • Correspondence with MSPs and the Scottish Government <p>ESS also made enquiries with the Scottish Government, which included:</p> <ul style="list-style-type: none"> • asking which of the Sludge Review recommendations would require changes to legislation, and be within scope of the IAF consultation; and which did not require legislative change in order to be implemented. • asking for confirmation of when the consultation would take place on the amended regulations

required to bring the Sludge Review recommendations into legislation.

In response to ESS enquiries, the Scottish Government described the scale of the task to implement the Sludge Review as follows :

“Further regulations to amend the Environmental Authorisations (Scotland) Regulations 2018 are required to enable the next stage of standardisation, simplification and streamlining of the process of complying with environmental legislation in Scotland and these proposed regulations were seen as the right vehicle for updating the sewage sludge legislation in line with the Sludge Review recommendations.

However, as part of this wider move of environmental regulation to the IAF, the approach is not simply to change one or two provisions but instead it will be necessary to revoke the Sludge (Use in Agriculture) Regulations 1989 (Sludge Regulations) and the Waste Management (Scotland) Regulations 2011 (WML Regulations) in their entirety and move all ‘waste management’ activities, including sludge management, into the IAF .

In addition, the work involves not just bringing the waste regulations into IAF, but also water and PPC so it is a substantial exercise.

It is intended that the amendment regulations will also be supported by a new Authorisation Guide, produced by SEPA, setting out the types of authorisation (General Binding Rules, Notification, Registration, Permit) that will be required for each type of activity.

It is this combination of amendment regulations and the supporting Authorisation Guide that will deliver the legislative recommendations of the Sludge Review. The draft amendment regulations and the Authorisation Guide will be consulted on at the same time.”

In the correspondence accompanying the representation, the Scottish Government acknowledged setbacks in implementing the recommendations of the Sludge Review, citing the Covid-19 pandemic as a factor in the postponements of the IAF consultation rollout.

The Scottish Government confirmed that all of the Sludge Review recommendations would effectively be included into

	<p>the consultation. There were no recommendations which could therefore have been implemented sooner.</p> <p>The Scottish Government have indicated to ESS that they will progress the consultation into the draft amendment regulations and Authorisation Guide during 2023 Quarter 2.</p>
<p>What was ESS' conclusion</p>	<p>One of the factors that ESS must consider before exercising our statutory powers is the extent to which our role avoids overlap with other oversight bodies. ESS noted that the current statutory nuisance regime could address the community's odour complaint and that an alternative oversight body exists to consider any dissatisfaction in this connection.</p> <p>In light of this, and that the representation did not dispute the nature of the Sewage Sludge review recommendations or the findings of the James Hutton Institute 'Impacts on Human Health' report, ESS recommended that the community raise the complaint with the relevant oversight body, and noted that the delayed IAF consultation did not affect their statutory right to take this action.</p> <p>ESS also considered that the inclusion of the Sludge Review recommendations into the IAF was reasonable, on the grounds that the reform of legislation will improve upon the current arrangements for licensing and control of polluting substances; and align environmental regulations controlling the use of sewage sludge.</p> <p>ESS will also undertake monitoring and analysis, as identified in our current Strategic Plan. The latest evidence base and what this means for the effectiveness of environmental law, including those around application of organic waste material, is likely to be considered as part of our work over the period of the current Strategic Plan</p>