

██████████  
Senior Investigations Officer  
Environmental Standards Scotland  
Ìrean Àrainneachdail na h-Alba

**ENVIRONMENTAL**  
**Standards Scotland**

4 April 2023

**Subject: Alternate Remedy – Case Reference IESS.22.022.**

Dear ██████,

Thank you for the representation you submitted to Environmental Standards Scotland (ESS) on 4 November 2022 regarding implementation of the Scottish Government's Review of the Storage and Spreading of Sewage Sludge on Land in Scotland ("the Sludge Review") recommendations.

I have reviewed the information provided and have concluded that, given the current ongoing work, it would be more appropriate for you to pursue the concerns raised with an alternative oversight body.

You have advised me that the community at the heart of your representation feel frustrated by the apparent inability of any regulatory authority to assume responsibility for the odour nuisance over a number of years as a result of the use of sewage sludge in their locality. In this connection, you noted the outcome of the Sludge Review and that the recommendations of this review had yet to be implemented. The outcome you sought was for ESS to investigate with a view to strengthening the applicable law relating to the use of sewage sludge.

Having carefully considered what you have said, my understanding is that your concern lies in the length of time taken to implement the recommendations, as opposed to whether the recommendations themselves go far enough.

#### Delay and the James Hutton Institute's report findings

As you are aware, the James Hutton Institute completed a report as a recommendation of the Sludge Review. An assessment of the hazards this report addressed indicates that the storage and spreading of sewage sludge to land pose minimal risks to human health and well-being. However, it does note perceived risk of exposure to nuisance odour arising from inappropriate spreading practices.

**Environmental Standards Scotland Enquiries**  
[enquiries@environmentalstandards.scot](mailto:enquiries@environmentalstandards.scot)  
Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD  
0808 1964000

I also note that the spreading of sewage sludge represents a very small proportion of overall organic material spread to land, and is subject to existing legislation concerning transport, storage and safe application<sup>1</sup>. The Sludge Review<sup>2</sup> recommendations indicate that the use of sludges is beneficial, and not problematic if managed appropriately.

In response to my enquiries on timescales, the Scottish Government has confirmed that all of the Sludge Review recommendations will be brought into the Integrated Authorisation Framework (IAF) consultation. Their decision to include the recommendations of the Sludge Review as part of a wider reform of legislation is considered to be reasonable on the following basis.

The reform of legislation is intended to simplify the current complex landscape. The IAF will bring together the existing (and currently separate) procedural, authorisation, regulatory and enforcement arrangements of SEPA's four main regimes (waste, water, pollution prevention and control, and radioactive substances). The inclusion of the recommendations of the Sludge Review into the IAF will build on existing legislation to protect the environment and human health, broadening the scope of regulatory bodies' powers. The Scottish Government have indicated a timeline of 2023 Quarter 2 for the regulations to be drafted and consultation on the IAF to begin.

While there has been a clear delay in implementing the recommendations, I have been advised that work is currently being undertaken by the relevant authorities to implement the Sludge Review recommendations, and that the consultation on this will take place in relatively short order. In light of this, and the fact that you do not appear to dispute the nature of the recommendations or the findings of the James Hutton Institute report, in my view an investigation by ESS into the matters raised within your representation would effectively amount to a replication of the work which has already been carried out in this area.

Furthermore, ESS will also undertake monitoring and analysis – including on a number of analytical priorities, as identified in our current Strategic Plan.<sup>3</sup> 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.

### Alternative oversight bodies

One of the factors that we must consider before exercise our statutory powers is the extent to which our role avoids overlap with other oversight bodies. One of the bodies specifically named under our governing legislation is the Scottish Public Services Ombudsman (SPSO).

Part of SPSO's role is to consider complaints of maladministration. Maladministration is not defined in legislation but case law confirms that it can cover things like failure to follow relevant law, policy, procedure or guidance. Whilst I appreciate that the community's

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<sup>1</sup> The Sludge (Use in Agriculture) Regulations 1989  
The Water Environment (Controlled Activities) (Scotland) Regulations 2011  
The Waste (Scotland) Regulations 2012

<sup>2</sup> [Sludge review: final recommendations - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/sludge-review-final-recommendations/pages/1.aspx)

<sup>3</sup> <https://www.environmentalstandards.scot/wp-content/uploads/2022/12/Environmental-Standards-Scotland-Approved-Strategic-Plan-20221201.pdf>

concerns have already been raised with the relevant regulatory bodies, in my view should the community be dissatisfied with how its concerns have been handled, the appropriate oversight body for complaints of this kind is SPSO. If the community has not done so already, it is open to them to raise a formal complaint with the regulatory authorities and refer the matter to SPSO should it remain dissatisfied with the response. SPSO may be contacted by phone at 0800 377 7330, or via their website [here](#). It may also be possible to raise a complaint with the [Drinking Water Quality Regulator for Scotland](#), in particular, complaints about the performance of Scottish Water.

### Conclusion

Whilst I sincerely do not wish to delay matters further, given my view about the proportionality of investigating your representation, and that there exists an alternative oversight body to consider the community's concerns, I have decided that your representation should not be taken forward.

If you have any questions or queries please do not hesitate to contact me at the above e-mail address. I wish you and the community well in your efforts to resolve what is clearly an upsetting problem.

Yours sincerely,



Senior Investigations Officer.

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