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Senior Investigation Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

██████████
Via email - ██████████

04 April 2023

Case Reference IESS.23.012 – Lead Shot Impacts

Dear ██████████,

I have now reviewed the information you have sent to support your representation, which I again thank you for submitting to Environmental Standards Scotland (ESS). I understand that you are concerned that the use of lead shot at Birchwood Farm will degrade your private water supply and the surrounding environment. As I have seen, you have brought your concerns to both Aberdeenshire Council and to SEPA, who have both indicated that they cannot investigate matters further and that the issue should be brought to the other party. To support my assessment of your case, I have been in touch with SEPA to understand their obligations and past actions.

I have evaluated whether there is a systemic issue relating to your case, which would be compatible with ESS' investigation powers. If there were some sort of legal gap where no public authority was responsible for the contaminant impacts of lead from a shooting range, or if there was evidence that a public authority was systemically being ineffective or non-complaint with the applicable environmental laws, that would be within ESS' remit to investigate. However, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 stipulates that ESS cannot use its powers with regards to individual regulatory decisions made by public authorities pertaining to a specific case. This is to prevent overlap

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with other oversight and appeal bodies, which I will discuss further below. My research indicates that the decisions made by SEPA and Aberdeenshire Council are individual regulatory decisions.

SEPA has provided me a summary of their previous responses in relation to the shooting range and your private drinking water supply. Prior to your recent FOI/EIR information requests regarding whether the lead deposition is a controlled waste activity (which they stated was not), SEPA indicated that in 2017/2018 they considered your drinking water risks with reference to the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR), which is within SEPA's remit to investigate and enforce. SEPA indicated that due to lead concentrations in your potable water supply complying with The Private Water Supplies (Scotland) Regulations 2006 at that time, they concluded that there was no evidence to indicate that groundwater was being impacted by the clay pigeon shooting activity. This represents their individual regulatory decision with your case with reference to the CAR regulations.

Aberdeenshire Council has duties under the Environmental Protection Act 1990 (EPA 1990) to manage and investigate contaminated land. They have stated this pertains to historical contamination only, with SEPA being responsible for contamination from ongoing activities. This ties in with my understanding (having worked previously in the field of land contamination); further, the Scottish Government states the EPA 1990 "was introduced to provide an improved system for the identification and remediation of land where historical contamination is causing unacceptable risks to human health or the wider environment."

The Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 gives duties to local authorities in the protection of the quality of private water supplies. In the correspondence you have provided, I cannot see Aberdeenshire Council having commented on your case in the context of these duties. The Drinking Water Quality Regulator for Scotland has provided a guidance document for local authorities which is available here: <https://www.dwqr.scot/media/b1jh0y0o/pws-regulations-guidance-consolidated-ver-30-may-2018.pdf>. Part 3 summarises enforcing authorities' duties with regards to risk assessment of water supplies.

You have noted an increase in the lead concentration in your supply over three years, rising from <0.2 µg/L to 1.1 µg/L. However, the most recent concentration falls below the allowable

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threshold in drinking water of 10 µg/L. SEPA has indicated this factored into their reasoning to not take action under CAR. It may explain Aberdeenshire Council's position as well, though I have not confirmed this with them. In touching again on the subject of individual regulatory decisions, these authorities appear to have considered your lead concentrations being below standards as a reason to not intervene, and ESS as an organisation cannot challenge or override their assessments with regards to your individual case.

While I know you are concerned that the continued lead deposition may cause increased concentrations of lead in your groundwater in the future, I do note that there are proposals forming to ban and/or control lead shot. The Health and Safety Executive (HSE) initially received a request in April 2021 from the Secretary of State for Environment, Food and Rural Affairs (Defra), with the agreement of the Scottish and Welsh Governments, to prepare a restriction report assessing the use of lead in ammunition under the UK Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulations. The consultation process has been extended by six months as indicated here:

<https://press.hse.gov.uk/2023/01/05/hse-extends-lead-in-ammunition-restriction-process-by-six-months/>.

While you may be disappointed ESS is not able to intervene on your behalf, there are other organisations which may be able to help you:

- You may wish to approach SEPA again with your most recent testing results to assess under their CAR duties, to see if they are willing to take further action in light of the increase of lead concentrations you have noted. If you are dissatisfied with SEPA's action or lack of action, or, about the standard of service provided by SEPA, then you can consider submitting a customer service level complaint at: <https://www.sepa.org.uk/about-us/complaints-handling-procedure/> As indicated on this page, you can bring the matter to the Scottish Public Services Ombudsman (SPSO) if you remain dissatisfied after they have responded to your complaint. While I see you have complained to SEPA previously, this was in relation to how they responded to your information requests, and not in relation to how they assessed your case with respect to CAR.
- I see you have already raised a service complaint to Aberdeenshire Council regarding their decision to not investigate the land under EPA 1990, who have upheld their

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decision. This may also be elevated to the SPSO if you disagree, but again I note the intention of the EPA 1990 is to deal with legacy contamination.

- You may wish to approach Aberdeenshire Council with regards to their duties following the Human Consumption (Private Supplies) (Scotland) Regulations 2017. This could also be followed by a complaint and bringing the matter to the SPSO, if not resolved.
- One other potential alternate remedy available to you is the Drinking Water Regulator of Scotland, who are positioned to look at individual cases and whether the actions/decisions of enforcing authorities are appropriate. Further information is available at <https://www.dwqr.scot/about-us/complaints/>

I hope the above is useful and explains the position of ESS. If you have any queries please let me know.

Yours sincerely,



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