

- ██████ reported the problem to SEPA requesting that it investigate and take enforcement action against Scottish Water (SW). Subsequently, ██████ lodged a stage one and stage two complaint, neither of which were upheld by SEPA.
- ██████ allege that there has been persistent breaches of the licence held by SW, specifically licence condition 4.4.1(b) which requires that any discharge shall not cause 'the significant deposition of sewage solids on the banks, bed or shore of the receiving waters'. ██████ state that the test results referred to above are evidence that condition 4.4.1(b) has been breached.
- ██████ believe that there has been a consequent failure on SEPA's part to enforce the conditions of the licence. The outcome sought in the representation is for ESS to investigate the lack of enforcement action by SEPA and for ESS to ensure that SEPA complies with its statutory duty to enforce CAR licences.

SEPA's responses to the concerns raised

In SEPA's first response to ██████ report, it explained that, under the Water Framework Directive, the Faecal Indicator Organisms are not one of the required ecological, chemical, or physical parameters used to define water quality in rivers. Accordingly, in SEPA's view, the test results were not indicative of a breach of licence condition or of a significant deposition of sewage solids on the banks, bed or shore of the receiving waters.

SEPA's response to the stage one complaint submitted by ██████ confirms that the CAR licence authorises discharges from CSOs into the Water of Leith and that, consequently, bacteria will be present in the silt and water samples. SEPA explained that the same bacteria can be derived from a number of other sources and the exact origin(s) remains unknown. In addition, SEPA advised that the presence of the bacteria is not evidence of a licence breach nor a measure of sewage solids. SEPA concluded that, on the balance of the evidence provided by ██████, the information did not demonstrate a breach of the CAR licence.

SEPA's stage two response provided the following investigation findings to each of the three points raised by ██████:

Point 1 - Sewage solids are widely recognised within the wastewater industry as material screened out at waste water treatment works inlets and consists of paper, rags, faecal material, plastics, wipes, and grit from sewerage networks. Silt is not a recognised as a significant component of sewage solids.

Point 2 - Silt is not a sewage solid within the context of a CAR licence. If there had been a discharge from an unscreened CSO there would also likely be recognisable sewage litter visible within the Water of Leith. The definition of sewage solids as understood by SEPA is a very long standing one and widely recognised throughout the wastewater collection and

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treatment industry. Silts are inorganic in nature and universal in origin, most frequently found in runoff from agricultural and other rural land.

Point 3 - There is no evidence of any pollution incident requiring a follow up investigation. At best the sample results submitted can be regarded as indicative of the presence of microbial indicators commonly found in general land runoff, arising from cross-connections of foul into surface water drains, and potentially some inputs to the Water of Leith directly from the sewerage network. Other sources of faecal contamination, rather than solely the sewerage network, of mammalian origin such as livestock and wildlife are also very likely. A SEPA investigation was not merited based on the information supplied in the complaint.

SEPA's conclusion was that the evidence provided of silt and faecal indicators microorganisms within the Water of Leith did not demonstrate a breach of this particular licence condition.

Our response

The information provided in the representation relates to an individual regulatory decision in respect of [REDACTED] report of pollution. As set out in our governing legislation², ESS cannot take enforcement action in respect of individual regulatory decisions. In other words, it cannot overturn SEPA's decision in this specific case.

Notwithstanding this, your representation centred on the way SEPA assesses the terms of licence condition 4.4.1(b), which I understand is a generic condition contained in most licences – and therefore may have wider application to the circumstances of this particular case. Essentially, your view is that SEPA takes an overly narrow interpretation of what constitutes a 'sewage solid'. In your communications with SEPA, you said that no authority had been provided for its position and you argue that silt should be classed as a sewage solid.

I understand that 'sewage solids' is a widely used term with references back to the 1930's. More recently, the UK Government publication 'Implementation of the European Union Urban Waste Water Treatment Directive'³ refers to sewage solids as a term which '*includes sewage litter but also, usually, visible faecal matter, vegetable and animal matter flushed to sewers from domestic and commercial premises or from surface drainage*'.

Sewage litter is defined in the same document as '*the artificial, manufactured, solid matter present in waste water, such as cotton buds, condoms, sanitary-ware, disposable nappies, razors, safety-pins and many other items that have been flushed down toilets or put down drains and manholes*'. In addition, the document refers to suspended solids as a term used

² [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ [Waste water treatment in the United Kingdom - 2012 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

'to describe the matter, both organic and artificial, such as sewage litter, suspended in water'.

I have also considered SEPA's guidance in this area and can confirm that silt is not classed as a sewage solid.

For the following reasons no further action will be taken by ESS in respect of your representation:

- I have not found any evidence for the proposition that silt is a sewage solid and it appears that SEPA's response and guidance is consistent with the commonly understood definition of sewage solids.
- Accordingly, it does not appear that SEPA has failed to comply with its duties or to apply environmental law correctly.

I appreciate you may find this response disappointing however I can confirm that the information you have provided may be used to assist ESS in its wider monitoring function.

In the meantime, should you wish to submit further evidence on this particular issue, or should you have any queries regarding any of the above, please do not hesitate to contact me.

Yours sincerely,



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