Directorate for Energy and Climate Change

Scottish Government
Riaghaltas na h-Alba
gov.scot

E: [redacted]

Emailed to:

[redacted]
Environmental Standards Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HD

13 November 2026

Dear [redacted],

Storm Overflow - an assessment of spills, their impact on the water environment and the effectiveness of legislation and policy, August 2024

Thank you for your letter of 9 October 2026 and for the constructive engagement between our organisations regarding Environmental Standards Scotland's recommendations on sewer overflow regulation.

We welcome the areas of common understanding that have emerged through our correspondence. We remain committed to improving transparency, strengthening environmental outcomes and ensuring that Scotland's wastewater infrastructure remains fit for the future.

Having considered the matters raised in your latest correspondence, we would like to set out the following commitments.

1. Specific guidance on storm overflow spills

We recognise the importance of ensuring that the regulatory framework is clearly understood.

To this end, Scottish Government will work with SEPA and Scottish Water to develop and publish a concise public-facing statement explaining:

- the legislative basis for sewer overflow regulation;
- the respective responsibilities of Scottish Ministers, SEPA and Scottish Water;
- the role of the water industry investment group;
- how sewer overflows are assessed and prioritised;
- how climate change is taken account of in new or upgraded sewer design.

- how compliance is assessed within the existing regulatory framework including:
    - providing greater clarity on how regulatory judgements are reached.
    - Improving transparency regarding the consideration of climate change within decision-making.
    - Enhancing understanding of how concepts such as “normal local climatic conditions” are interpreted and applied.
    - Explaining that discharges cannot take place outside of generally understood exceptional circumstances
    - Explaining more clearly the role of Best Technical Knowledge Not Entailing Excessive Cost (BTKNEEC) in informing regulatory decisions.
    - Removing references to superseded guidance.

Scottish Government will convene discussions with SEPA and Scottish Water by January 2027 and aims to publish this explanatory material by September 2027.

However, we remain of the view that it would not be appropriate in the statement to establish a fixed national definition of either "normal local climatic conditions" or "exceptional circumstances".

As you know we have reviewed the case law in this area. The interpretation advanced by the Commission in Case C-301/10 sought, in effect, to establish an absolute obligation to avoid storm overflow discharges except in narrowly defined exceptional circumstances. The Court did not accept that interpretation. Instead, the Court recognised that the Directive relies upon broad concepts such as *'sufficient performance*' and *'best technical knowledge not entailing excessive costs (BTKNEEC)'*.

The Advocate General expressly noted that the relevant provisions contain terms *'for which no precise definition has been given'* and are *'not framed in terms of precise numerical or quantitative criteria*'. We therefore do not consider that the judgment supports the creation of nationally prescribed definitions of 'normal local climatic conditions'. Rather, the judgment supports the exercise of expert regulatory judgement within the framework established by the legislation.

Whether a discharge from a sewer overflow is permissible depends upon the circumstances of the individual asset and catchment. Relevant considerations may include local rainfall patterns, sewer network characteristics, receiving water sensitivities, treatment capacity and observed environmental effects. Such assessments are therefore necessarily site-specific.

We consider that the application of environmental law and permit requirements in individual cases is properly a matter for SEPA exercising its independent regulatory functions. We do not consider that creating nationally prescribed thresholds or definitions would be consistent with that regulatory approach.

2. Historic guidance

We acknowledge the concerns raised regarding the continued existence of the 1998 guidance and references to it within supporting documents.

Ministers agree that the document no longer reflects the contemporary regulatory framework.

Accordingly:

- **Scottish Government will work with SEPA to identify and update any remaining regulatory or explanatory material that may create uncertainty regarding the current framework.**
- **Any necessary action to clarify, withdraw or replace references to that guidance will be concluded by December 2027.**

3. Climate resilience

We agree that future climate conditions must be appropriately considered in wastewater infrastructure planning.

We can confirm that SEPA and Scottish Water will refer to the Urban Pollution Manual when undertaking sewer modelling and designing new or upgraded sewer systems. We will confirm this in the public-facing statement proposed above.

The implementation of the recast Urban Waste Water Treatment Directive, ongoing investment planning and wider water policy development provide important opportunities to strengthen long-term resilience. However as you know we are also very concerned about the costs that alignment could create for customers through a series of complex stages of integrated network mapping and infrastructure development. A critical part of preparing for alignment will be to ensure we spread those costs fairly across generations.

In support of this work:

- **Scottish Government will publish, by March 2028, a roadmap setting out the intended approach to considering climate resilience requirements arising from the recast Directive. The timescale will allow us to take account of the emerging position from Europe.**
- **Officials will continue engagement with SEPA, Scottish Water and wider stakeholders during 2027 to ensure future investment planning appropriately reflects projected climatic conditions.**

4. Application of BTKNEEC

We continue to regard BTKNEEC as an important component of investment decision-making. As set out in my previous letter It is the role of Scottish Water to propose projects for investment in its business plan and to provide the business case and feasibility work for those. That plan informs the regulatory settlement for the 6 year period.

As part of its oversight of the delivery of the business plan, the Water Industry Investment Group (WIIG) will have visibility of BTKNEEC considerations. In order to respect the statutory duties of each party, decisions remain the role of Scottish Water informed by regulatory requirements.

The role of WIIG is to provide visibility of the overall investment programme and to monitor how the balance of investment is being made across water, wastewater and drainage projects to meet the Ministerial Objectives.

However information from WIIG is publicly available and we do agree that it can be used to better articulate the basis of assessments and the associated views of the group.

To improve transparency:

- **Scottish Government will discuss with Scottish Water as decision maker, WICS, as investment group Chair, and relevant regulators, during the 2027 investment planning cycle, opportunities to use the WIIG platform to provide clearer public explanation of how BTKNEEC considerations inform sewer overflow investment decisions.**
- **An update on progress will be provided to ESS by December 2027, once the new arrangements for the regulatory period are embedded.**

We believe that these commitments address the underlying objectives identified by ESS by improving transparency and public understanding, while preserving the important distinction between policy responsibilities and SEPA's independent regulatory role.

We welcome continued engagement as this work progresses.

Yours sincerely



Jo Blewett
Deputy Director for Water Industry and Corporate Operations