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Dear Scottish Government,

ERCS response to Environmental Authorisations (Scotland) Regulations 2018: proposed amendments

The Environmental Rights Centre for Scotland (ERCS) did not submit a formal response to the *Environmental Authorisations (Scotland) Regulations 2018: proposed amendments* consultation, since many questions are out of scope for our organisation and do not relate directly to our work. However, through sustained work with advice clients directly impacted by sewage sludge, we have developed an acute knowledge of the risks arising from sewage sludge spreading on agricultural land, and the failures of the existing regulatory regime to mitigate harm. This letter summarises our key concerns and proposes remedies to rectify the situation.

Our comments relate primarily to Question 1 of the consultation, asking if there any other regulatory measures relating to the spreading of sewage sludge to land that should be considered for inclusion in the Regulations. Key points outlined below are discussed in further detail in Table 1, which summarises the 2016 Sludge Review recommendations, compares them to amendments made for the Environmental Regulations 2024, and provides additional recommendations based on ERCS's analysis of the existing regulatory regime.



Monitoring & Enforcement

The biggest concern for community members who have previously been impacted negatively by the practice of sewage sludge spreading is effective enforcement. A review of monitoring and enforcement should be conducted after the new authorisation regulations have been in place for a period of time (e.g. 1 year). It is not clear what the repercussions are for not complying with conditions of the authorisation such as monetary fines or rescinding authorisations. Monetary fines and existing barriers to access to justice may not allow for effective enforcement. ERCS propose that SEPA are given powers to stop sewage sludge activities such as transport, storage and spreading from operators who are non-compliant with authorisations and can immediately remove it.

ERCS are concerned that enforcement of the new Schedule 18 will not be completely covered by costs gained from charging for authorisations. The Scottish Government must therefore provide details on where it will gather the additional resources required for effective enforcement.

Animal Health

While conventionally treated sewage sludge is not permitted on grazing land, enhanced treated sludge is. Animal health has not been considered as part of the amendments and there are risks associated with sewage sludge spreading on land where animals are grazing. ERCS believe that further research is needed to consider the impacts on animal health from sewage sludge, and what impact this may have on animals and animal products used for human consumption.

Pre-application community engagement

Paragraph 3.2.6 of the consultation document refers to SEPA's intention/duty to publish a public participation statement with more details on when it will require pre-application consultation. It is difficult to comment on this provision with sight of this statement. Further detail is needed on the circumstances in which the power will be used.

Duty to carry out periodic inspections

Minor changes are proposed to waste activities in Schedule 2, inserting a new Schedule 11 to the 2018 Regulations. Paragraph 5 states the amendments will not include the minimum inspection frequencies from the Waste Management Licensing Regulations 2011. In its place, there is a duty on SEPA to carry out appropriate periodic inspections in relation to waste management activities. ERCS recommends that if this is to be done, the periodic inspection frequency should be stated in the conditions of the authorisation. We also propose that on-the-spot inspections are carried out alongside this, to ensure that there is compliance with the authorisations at all times.

We hope the comments above, along with recommendations outlined in Table 1, can inform the development of a more robust and effective regulatory framework.

Yours sincerely,

Dr Shivali Fifield
Chief Officer, Environmental Rights Centre for Scotland



Table 1. 2016 Sludge Review recommendations compared with Environmental Regulations 2024 amendments, and ERCS response.

2016 Sludge Review Recommendations		Reference in the Environmental Regulations 2024 amendments	ERCS response
Spreading Practice	The requirements of the Safe Sludge Matrix should be incorporated into law in Scotland. We acknowledge that some discussions with the UK Government are likely to be necessary, and that the Safe Sludge Matrix itself will first require updating.	The sewage sludge matrix will be incorporated into law but there is no mention of the 24-year-old document being updated. The amendments will not be carrying forward <i>The Sludge (Use in Agriculture) Regulations 1989</i> Article 6(a) that untreated sludge can be injected or worked into the soil. SEPA will be required to ensure no untreated sewage sludge, including septic tank sludge, is applied to agricultural land.	It is strongly recommended that the Safe Sludge Matrix be updated before it is put into law to ensure it is fit for purpose.
Complaints & Reporting of Incidents	SEPA should be the lead agency for incidents and complaints relating specifically to sewage sludge, with a single point of contact, but continued cooperation between SEPA and local authorities. Data on these complaints should continue to be collected by SEPA. This can be achieved without any changes to legislation, via non-statutory guidance to SEPA and local authorities	SEPA will be the lead agency for authorisations for sewage sludge handling, storage, transportation and use of sewage sludge. A single point of contact for incidents and complaints relating specifically to sewage sludge will be imposed, subject to cost recovery via charging. At SEPA's request, the following information must be provided: <ul style="list-style-type: none"> (a) Quantities of waste produced, and the quantities supplied for use in agriculture (b) Composition and properties of the waste sludge in relation to parameters referred to Table 1 of the 2024 amendment (Copper, Nickel, Cadmium, Zinc, Lead and Mercury concentrations) (c) The names and addresses of the recipients of the waste and the place where the waste is to be used. 	Records are to be provided at SEPA's request but it is unclear whether these records are needed to be provided prior to authorisation. It is recommended that these records are collected prior to giving authorisation and that they are made available for local communities who may be affected by the use of sewage sludge. It is suggested that SEPA also keep a record of Scottish Water treatment plants and associated Public Private Partnerships that produce sewage sludge for agricultural land application. Point (a) states that at request quantities supplied for use in agriculture should be provided. This is the only reference specific to agriculture. ERCS suggest that this be changed to soil improvement, to be consistent with the rest of the new Schedule 18, or



			for it to also include use on non-agricultural land.
Regulation of Operators	<u>Agricultural spreading</u> An operator’s licence including a “fit and proper person” test should be introduced for all operators who are involved in the handling, storage, transportation and spreading of material on agricultural land. We recommend that “whole project life” licences for long-term site restoration projects also incorporate a fit and proper person test.	The transport, storage and use of sewage sludge is subject to environmental authorisations and that all Authorised Persons can demonstrate they are a ‘Fit and Proper’ person.	We welcome this addition.
	<u>Non-Agricultural spreading</u> “Whole project life” licences for long-term site restoration projects (replacing the current exemptions) should be introduced, to enable effective long-term planning of projects and tighter, closer, more resource-efficient regulation of these projects. SEPA can recover costs through its regulatory charging scheme.	There is no mention of non-agricultural spreading of sewage sludge in the amendments. The regulations appear to apply to all applications to land for the purpose of soil improvement.	It is recommended that the length of time for spreading and cumulative impact from other activities such as the use of pesticides is considered when granting authorisations for sewage sludge spreading.
Power to stop problematic or offensive activity	SEPA should have the power to have an “exempt” activity, such as storage of sewage sludge, stopped immediately and the sludge removed, whilst ensuring that an operator’s “right of appeal” is not lost.	No power is stated in the amendments.	Cessation of operation in the event of a breach of conditions that poses an immediate danger to human health or an adverse effect upon the environment is present under the New Schedule 19 – Industrial Emissions Activity. There is precedent in the amendments for this. It is recommended that in the case of an operator’s non-compliance with their authorisation, SEPA have powers to stop activities regarding sewage sludge and immediately remove it.
Agricultural land - On-site storage	SG officials and SEPA should investigate the practicalities of reducing the onsite agricultural use storage time limit for sewage sludge from 6 months, with a view to introducing risk-based case by case variance of time limits. The issue of material (sewage sludge) quality should be	Under the amendment of Schedule 9, Chapter 2 – Water, Paragraph 18, it is stated that fertiliser (including sewage sludge) cannot be stored: <ol style="list-style-type: none"> 1. 10m of water. 2. 50m of drinking water and uncapped boreholes. 	The recommendation of a case-by-case time limit for storage should be considered concerning level of odour from the sewage sludge and proximity to residents. The storage guidance from SEPA’s Paragraph 8



	part of any such risk-based case, with proximity to dwellings also being taken into account where this is an issue.	<ol style="list-style-type: none"> 3. Waterlogged or frozen land. 4. on soil <40cm and overlying gravel or fissured rock unless in an impermeable container. 5. sloped to water unless buffered. <p>Liquid sewage sludge needs to be in a no escape system. Dewatered sewage sludge must be securely contained to prevent run-off or in a heap protected from the ingress of water. It must be applied within 6 months of storage commencement.</p>	Exemption should be included in the regulations. This includes the 250m minimum buffer from drinking water, wells and boreholes in comparison to the 50m in the amendments. It should also include the requirement that the site of a previous field stockpile cannot be reused within 24 months of the previous site being cleared.
More frequent monitoring of activity	There should be tighter monitoring of operator practice by SEPA, allowing them to intervene where necessary, subject to cost recovery via charging.	The amendments make it possible for SEPA to charge for authorisations to fund regulatory activity in the area of sewage sludge application.	In theory, this allows for tighter monitoring but does not ensure it. We recommend a clear monitoring methodology for authorisations regarding sewage sludge spreading.
Sewage Sludge - Material quality	Scottish Water or the relevant operator should ensure that the material is checked by staff at the sludge processing facility before it leaves, and material that is considered particularly odorous will not be spread near dwellings, and will be dug into the soil immediately after spreading.	<p>SEPA must ensure that sewage sludge is sampled or tested –</p> <ol style="list-style-type: none"> 1. at intervals no more than six months, and where changes occur in the characteristics of the wastewater being treated. 2. Samples are tested after processing and before delivery for use. 3. Samples are tested for pH, dry matter and organic matter content, Nitrogen, Phosphorous and heavy metals (Copper, Nickle, Cadmium, Zinc, Lead and Mercury). <p>No consideration is made in the amendments for spreading near dwellings or odour, including methods of application to reduce odour.</p>	The consultation intends to consider further potential amendments as a consequence of findings from an evaluation of the Sewage Sludge Directive by the European Commission. This includes a review of the list of contaminants regulated including notably organic compounds, pathogens, pharmaceuticals and microplastics. It is strongly recommended that regulations stay in line with EU law and emerging evidence regarding the potential environmental hazards of sewage sludge. Anti-microbial resistance is a significant threat to human health and the economy. Sewage sludge is a cause for AMR and the dangers of AMR remain unclear. It is



			<p>suggested that further consideration for the risk of AMR in sewage sludge is required.</p> <p>Despite countless public complaints of sewage sludge odour and the Scottish Government's (2018) Odour Emissions Assessment, there are no considerations for odour in the amendments.</p> <p>This report has four recommendations that should be added to the amendments.</p> <ol style="list-style-type: none">1. Selecting application sites which are remote from residential settlements and housing.2. Restricting applications to small areas of land at any one time.3. Not applying limed cake to grassland or other areas which preclude ploughing-in or cultivation other than in very remote locations.4. Ploughing- in or incorporating immediately after land spreading so that only minimal areas of spread material are exposed between spreading and incorporation.
	Scottish Water or the relevant operator should undertake analysis-based review to understand the composition of	No requirement is mentioned in the amendments.	This is likely a separate issue to bring to Scottish Water outside of these authorisations.



	sludges from its sewage treatment facilities, to identify the reasons for the greater problems associated with some facilities.		
	SEPA should review its guidance to staff to ensure consistency in the way regulations are enforced.	This issue should be addressed with the introduction of an Integrated Authorisation Framework.	
Additional recommendations			
Communication, co-ordination and informant management	SEPA and SG should develop guidance to cover respective roles of all those in the sludge supply chain, to include communication between all links in the chain. This guidance should also link / refer to other guidance as well as relevant regulation.	This issue should be addressed with the introduction of an Integrated Authorisation Framework.	
	Operators should have procedures in place to deal with enquiries, incidents etc, including contact points for local people, and clear, understandable information material to assist with responses to queries. Where relevant this should also include proactive community engagement, e.g. around timings. To be addressed via guidance.	No mention relevant to this recommendation is made in the amendments. A single point of contact for sewage sludge activities will assist with enquiries, incidents and response.	Proactive engagement can potentially be captured in the new amendment of schedule 1: Pre-application community engagement . However, this requirement is at the discretion of SEPA's request and is likely for large potentially polluting activities requiring permits. It is unlikely to occur for sewage sludge use. ERCS recommend that communities are aware of sewage sludge spreading in close proximity to their dwellings and are able to notify SEPA of any issues and receive appropriate assistance.
	Management of data on sludge movement, management and incidents at SEPA and Scottish Water should be improved and data from local authorities should be collected.	SEPA will now record all data.	Considering the long record of community complaints surrounding sewage sludge use, it is recommended that an incidents record be kept and made public upon request.
	Scottish Water and SEPA should improve communication with all contractors handling sewage sludge in relation to transportation, storage and spreading of sewage sludge to	SEPA will be the lead agency for authorisations for sewage sludge handling, storage, transportation and use of sewage sludge.	



	ensure that all operators maintain optimum standards of practice.		
Improving legislation	As part of the Better Environmental Regulation Programme, establish one regulatory system for organic waste to land, including the agricultural and non-agricultural application of sludge.	This will be achieved through the Integrated Authorisation Framework.	
	Review land type definitions of “use in agriculture” and “non-agricultural land”, in order to clarify the legal duties of landowners, farmers and operators in relation to the use of sewage sludge on different types of land.	Amendments do not specify sewage sludge use on agriculture and non-agricultural land. Rather it states it is for soil improvement.	New Schedule 18, 9(a) states that at request quantities supplied for use in agriculture should be provided. This is the only reference specific to agriculture. It is suggested that this be changed to soil improvement to be consistent with the rest of the new Schedule 18, or for it to also include use on non-agricultural land.
	Considers introducing a requirement to demonstrate that “ecological improvement” and/or (where relevant) ‘benefit to agriculture’ have been achieved in line with original restoration project proposal, and possibly require a bond similar to that of landfill sites to ensure restoration sites are not just left.	There is no requirement for proven ‘ecological improvement’ in the amendments. Amendments state that waste is not to be applied in excess of the amount required to maintain the soil phosphorus at acceptable agronomic levels and in excess of the crop requirement for nitrogen. It must not be applied to soil that exceeds the heavy metals limits in Table 1 or would exceed it through application. Soil is to be tested one year prior to first application.	It is suggested to include this recommendation from the 2016 Sludge Review.
	As part of the Better Environmental Regulation Programme, consider the most appropriate means of regulating lime treatment of sewage sludge as currently undertaken through waste mobile plant licencing.	This is not considered in these amendments.	It is suggested to include this recommendation from the 2016 Sludge Review.