

PE2117/A: Ban the use of toxic chemicals along our coasts

Scottish Government written submission, 10 October 2024

I am writing to you to set out for the Committee the Scottish Government's initial views, as agreed by the Cabinet Secretary for Net Zero and Energy, on the petition that was published on 16 September 2024 (PE2117: Ban the use of toxic chemicals along our coasts) and that is currently under consideration.

Scottish Government considers this to be a regulatory matter. A rigorous GB regulatory framework is in place to prevent or minimise harm to people and wildlife from the use of biocides (pesticides used for purposes other than the protection of crops) where these are used in amenity settings and used according to instructions provided with the product's authorisation (and, in this case, in accordance with the Scottish Environment Protection Agency's permitting regime). This regulatory framework reflects both reserved and devolved competence (see appendix). With this robust framework in place, in this case, we do not believe there is a role for the Government or a reason for Scottish Ministers to intervene.

The petition calls for all chemicals with specific labelling to be banned from use on coastal jetties or slipways. Labelling reflects the intrinsic properties of a substance or chemical product in isolation. It is not the only factor in understanding the risk a product may pose for people or wildlife. "Risk" is based on the combination of intrinsic properties and a relevant receptor's exposure to the product; here, relevant receptors (also called "non-target organisms") are aquatic organisms that might be exposed to the product. The product Algae Remover Concentrate contains 6.9% of the active ingredient sodium hypochlorite (the same active ingredient as is found in household bleach) and 93.1% water. It has been authorised as safe for this use under relevant GB legislation by the Health and Safety Executive (HSE), acting as competent authority on behalf of Scottish Ministers. This authorisation requires the user to follow conditions of use that mean exposure to "non-target organisms" remains low enough to prevent such organisms from being placed at risk.

SEPA also permit the activity under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR; see annex for further information) which in practice means these conditions of use should be enforced at the product's site of use. This particular activity is considered by SEPA to be low risk so falls under the registration duty under CAR. This requires the operator to follow the schedule issued by the (HSE) under which the product's GB approval for use as a biocide has been granted. The schedule indicates 'Harbour Slipways and Piers' as areas of suitable use. It sets out the name and formulation of the product, the content as well as the method and rate of application. Details of the schedule (No 9815) are attached separately with this letter.

I hope the Committee will find this information useful in relation to this petition, and I am happy to provide further information if required in advance of its consideration.

Environmental Quality and Resilience Division

Appendix

Further information on classification and labelling

The labelling "very toxic to aquatic life with long lasting effects" and associated "Dead Fish" pictogram come from requirements of the GB Classification, labelling and Packaging Regulation. This is reserved legislation that encompasses devolved interests (environmental protection and public health). To recognise this, decisions on classifications and other decisions resulting from the legislation are subject to the consent of Devolved Government Ministers. Under this regulation, any chemical product placed on the GB market must be labelled according to its classification which is based on the product's intrinsic hazardous properties. The results of (generally laboratory) toxicity testing, undertaken for the purposes of marketing chemical products under other Regulations, is used for this classification and covers physical hazards and toxicity hazards for people and the environment. This classification relates to the intrinsic properties of the product. It is designed to work in concert with instructions for safe use of the product. Classification and associated warning labels guide the user on how to use a product safely, for example to wear gloves or dilute a spent product before releasing it to drain.

Further information on biocide authorisations

Products marketed as biocides will usually include classifications reflecting a product's hazards for the environment because these products usually have inherent toxicity, whereby their "active ingredient" is designed to give the product its ability to kill or control the "target organism".

Under relevant legislation (which again is reserved but includes devolved aspects such that decisions are subject to the consent of Devolved Government Ministers) the HSE, acting as competent authority on behalf of Scottish Ministers, evaluates pesticidal product for specific uses, where the "applicant" (supplier or manufacturer) must demonstrate that the use they have applied for authorisation for does not present a risk to "non-target organisms" or people. If this cannot be demonstrated, then either conditions of use must be applied to reduce the level of risk to acceptable levels, or the product cannot be authorised for use. In this case I note that the product has been authorised for use on jetties and slipways until December 2024.

Further information on Water Regulation

The [European Community \(EC\)'s Water Framework Directive \(WFD\)](#) was transposed in Scotland by primary legislation by way of the [Water Environment and Water Services \(Scotland\) Act 2003 \(WEWS Act\)](#).

The Water Environment and Water Services Act (Scotland) 2003 (WEWS) gave Ministers powers to introduce regulatory controls over activities in order to protect and improve the water environment.

The water environment includes:

- groundwater,
- wetlands (directly associated with surface and groundwater bodies);
- rivers;
- lochs;
- transitional waters (estuaries and saline lagoons); and
- coastal waters (3nm from territorial baseline).

WEWS defines the purpose of the regimes and therefore provides the basis of

interpreting the powers in the Water Environment (Controlled Activities) (Scotland) Regulations 2011 – more commonly known as the [Controlled Activity Regulations \(CAR\)](#) – that apply regulatory controls over the following activities which may affect Scotland's water environment.

The CAR regulations enable the Scottish Environment Protection Agency (SEPA) to implement the objectives of the Water Framework Directive, and provide in effect a framework for the protection of the water environment in Scotland. The framework introduced flexible, proportionate and risk-based controls over abstraction, discharges, impoundment and building, engineering and other works that impact on the physical quality of aquatic habitats.

In short, they represent a fundamental step to ensuring effective protection and improvement of the water environment, whilst at the same time, reducing the regulatory burden on Scotland's business community.

In order to ensure proportionate risk-based controls over activities that may affect the water environment, the regulations provide for three levels of CAR authorisation:

- General Binding Rules (GBRs)
- Registrations
- Licences

General Binding Rules

GBRs represent a set of mandatory rules which cover specific low risk activities. Activities complying with the rules do not require an application to be made to SEPA, as compliance with a GBR is considered to be compliant with an authorisation and protective of the environment. SEPA uses its statutory role in the land use planning system to highlight GBRs that may apply to a given proposal.

Registrations

These allow for the registration of small-scale activities that individually pose low environmental risk but, cumulatively, can result in greater environmental risk. Operators must apply to SEPA to register these activities. A registration will include details of the scale of the activity and its location, and there will be a number of conditions that must be complied with.

Licences

These allow for site-specific conditions to be set to protect the water environment from activities that pose a higher risk. Licences can cover linked activities on several sites over a wide area, as well as single or multiple activities on a single site.