

Mark Roberts
Chief Executive
Environmental Standards Scotland
Irean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Irean Àrainneachdail na h-Alba

Edward Mountain MSP
Net Zero, Energy and Transport Committee
Scottish Parliament
Edinburgh
EH99 1SP

11 December 2023

Dear Convener,

Thank you for your letter of 14 November 2023 seeking information on Environmental Standards Scotland's work on sewage discharge into the water environment.

In its first Strategic Plan, Environmental Standards Scotland identified sewage discharge into the aquatic environment as one of its priorities for analysis.¹ We identified this as a priority for analysis because of:

- the lack of publicly available data on spills from storm overflows in Scotland
- investigations into the issue in England, and
- clear indication that public concern over the topic was increasing

To date, our analysis has primarily focused on deepening our understanding of what is known about: the nature and extent of sewage discharge from storm overflows in Scotland;

¹ Environmental Standards Scotland Strategic Plan, 2022-25. Available at [Strategic Plan 2022-25 - Environmental Standards Scotland](#).

the potential impact of storm overflow discharges on the environment and human health; and the effectiveness of existing legislation and guidance regulating this issue.

We are currently finalising our analysis and plan to publish a report on the topic in early 2024. We will send a copy of the report to the Committee when it is published. In addition, our Strategic Plan identified water quality in the context of river basin management planning objectives as another priority. We will start this work during 2024.

With regard to the status of Environmental Standards Scotland's investigations, we have received three representations relating to sewage discharges. While each of the representations relate to Scottish Water assets, the representations raised concerns about the Scottish Environment Protection Agency (SEPA) and its alleged failures to take action in specific cases. The three representations related to:

- visible pollution in the form of sewage debris from waste water treatment works
- allegations of persistent breaches of a licence held by Scottish Water, specifically the licence condition that any combined sewer overflow discharge shall not cause "the significant deposition of sewage solids on the banks, bed or shore of the receiving waters"
- Scottish Water's alleged failure to ensure that one of its pumping stations meets an agreed flow rate condition

The matters raised within the representations related to individual regulatory decisions by SEPA. As set out in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, Environmental Standards Scotland cannot take enforcement action in respect of public bodies' individual regulatory decisions. However, we considered whether the information provided to us in the representations raised any broader, systemic issues in respect of how SEPA implements its duties under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 ('the 2011 Regulations').

We scrutinised the legislative framework for SEPA's enforcement powers. We also scrutinised SEPA's policies, procedures and supporting information. We concluded that, in one case (visible pollution in the form of sewage debris), while the legislative framework

Environmental Standards Scotland

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

0808 1964000

gave SEPA discretion over how it responds to reports of such pollution, the guidance on how it implements this discretion could be improved. We accordingly made recommendations to SEPA for improvement.

SEPA accepted and implemented the recommendations. We therefore consider that informal resolution has been achieved and that SEPA has taken reasonable corrective actions in response to our conclusions and recommendations. The summary report of our work on this case can be found here: [Enforcement of Controlled Activities Regulations \(CAR\) Licences Informal Resolution Report - Environmental Standards Scotland](#)

I hope this information is helpful to the Committee.

Yours sincerely,

Mark Roberts
Chief Executive