

From: (Redacted)
To: (Redacted)
Subject: FW: Tarbolton - authorisation to increase spend on site survey work (if required)
Date: 09 February 2021 18:38:36

From: (Redacted)
Sent: 17 January 2020 16:24
To: (Redacted)
Cc: (Redacted)
Subject: Tarbolton - authorisation to increase spend on site survey work (if required)

(Redacted), thanks for further advice and discussion last evening. To confirm that, in light of the fact that you may need to respond swiftly to issues that arise on site on Monday (notably potential minor remedial work needed to avoid further substantive delays to the agreed timeline for site investigations), we are content to authorise SEPA to increase spend by up to a maximum additional £7.5K over and above previously authorised spend. Such spend would only be utilised to address minor work needed to repair pipes and/or move some additional leachate before substantive site survey work can progress, if you consider that additional work is business critical to avoid substantive delay. I have discussed and agreed this with (Redacted).

If total projected additional costs exceed £7.5K then please do not proceed without further direct discussion. We do not currently have any scope to release any additional funding so our assumption is SEPA will be able to deliver the work within the refreshed envelopes. As noted, if site investigations indicate more substantive concerns then we can regroup and review SEPA's future approach.

I trust this provides you with sufficient flexibility to be able to respond speedily to issues that arise on Monday and to take any immediate decisions that are required. Please note a change in mobile number if you do need to contact me urgently on Monday and over the course of next week if I am not available on landline – interim alternative number (Redacted)

We will amend relevant documentation in relation to award and conditions of payment. (Redacted), could you assist with this on the back of your previous work with (Redacted)?

(Redacted)

(Redacted)
Head of Zero Waste Unit
Environmental Quality and Circular Economy Division
Environment and Forestry Directorate
Scottish Government
3H(S) Victoria Quay
Edinburgh EH6 6QQ
Tel: (Redacted)

From: (Redacted)
Sent: 16 January 2020 21:08
To: (Redacted)

Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted)

No problem and thanks for getting back to me.

I will try to get a ball park between now and Monday but if we could agree in advance a provisional £5k, only if required, and we would not proceed if costs were any greater without discussion and agreement?

Thank you for pragmatic approach.

For information, 8 loads of leachate were removed from the landfill on Wednesday and we have approx. 5 loads left within the agreed costs which are all planned for Friday. Again, if were felt we needed one or two more loads to complete (up to max cost of approx. £2.5k) my view is we should proceed if you are comfortable with that?

Many thanks

^(Redacted)

From: (Redacted)

Sent: 16 January 2020 19:44

To: (Redacted)

Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted), sorry I hadn't a chance to reply to your earlier email. I would agree that if it's just missing or repairs needed then we should try and take the opportunity to get that sorted and get some value from the visit. I will be around Monday and although I have various meetings could have brief discussion if needed - best number (Redacted) Suggest we work on the basis that the most likely scenario is that repairs will be needed and provide approval in advance for any increase in costs within a particular threshold, if for whatever reason it's not possible to speak at the time. Appreciate it's difficult to project but if for example an extra 2 - 3 days on site were needed then have you a sense what a likely increase in costs might be in the region of? Unless costs are astronomical, even if more substantive work is needed it's hard to see how we can't see this work through.

^(Redacted)

Sent with BlackBerry Work (www.blackberry.com)

From: (Redacted)

Sent: 16 Jan 2020 19:01

To: (Redacted)

Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted)

I'm conscious that we've not had a chance to speak this week.

I'm on leave tomorrow but happy to take a call on the mobile (Redacted) otherwise 1st thing Monday morning as we expect the contractors to be on site then and the decision may be upon us. I am tentatively scheduled to provide an update to Philpa Whitford Mp between 9 and 10 tomorrow but would be available before then (including tomorrow).

Many thanks

(Redacted)

(Redacted)
Head of Environmental Performance
SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ
E: (Redacted)
T: (Redacted)
M: (Redacted)

From: (Redacted)
Sent: 14 January 2020 13:48
To: (Redacted)
Subject: RE: Tarbolton Community Meeting

Hi (Redacted)

Sorry for delay in replying, I called just now for a quick chat.

The removal of leachate by tanker to clear the roadway will commence tomorrow and planned to continue until Friday 17th Jan.

The contractor is due to attend site to undertake the drainage survey on Mon 20th and Tuesday 21st Jan. We have specified that they should provide final reports to us by 14th Feb at the latest but hope to have them before that. At that stage we'd be in a position to meet to discuss next steps.

One aspect I wanted to discuss with you is that the contractor has indicated that they may or may not be able to undertake a full pressure test depending on the condition of the pipe (and they won't know that until they start the test). If there are major deficiencies we will have to think again. If there are minor repairs required which could feasibly be carried out whilst the contractor is on site I'd be keen that we can take a view on those quickly in order that we get something out of the exercise rather than nothing.

However, if required, such repairs would likely extend the duration of the visit by a day or two and would increase the cost. How would you want to play that – would we be able to have that discussion if the situation arises in the early part of next week and make a quick decision?

Happy to discuss by phone when you're available.

Also, it would be good to agree lines for the meeting on the 31st Jan but that's probably best done after we know whether the site work has been successful or not.

Many thanks

(Redacted)

T: (Redacted)
M: (Redacted)

From: (Redacted)
Sent: 08 January 2020 14:21
To: (Redacted)
Subject: RE: Tarbolton Community Meeting

Thanks ^(Redacted), noted. Have you managed to firm up dates with contractors for the planned works?
(Redacted)

From: (Redacted)
Sent: 08 January 2020 11:57
To: (Redacted)
Subject: FW: Tarbolton Community Meeting

Hi ^(Redacted)

Just for information, confirmation of date from Brian Whittle's office for meeting on 31st January, further details on timing to follow.

We can agree specific SG-related lines and be as clear as possible on timelines in advance as discussed previously.

Many thanks

(Redacted)

From: (Redacted)
Sent: 08 January 2020 11:54
To: (Redacted)
Cc: (Redacted)
Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted)

That's great, thanks for confirming the date.

And yes, very happy for you to make the arrangements.

Many thanks

(Redacted)

(Redacted)
Head of Environmental Performance
SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ
E: (Redacted)
T: (Redacted)
M: (Redacted)

From: (Redacted)

Sent: 08 January 2020 11:51

To: (Redacted)

cc: (Redacted)

Subject: RE: Tarbolton Community Meeting

Dear ^(Redacted),

Thanks for your e-mail.

Brian would like to set up a meeting on Friday 31st January with representatives from SEPA, NHS Ayrshire & Arran, South Ayrshire Council, local MSPs and selected representatives of the community (including a couple of the constituents Brian has been working with).

Subject to a venue we'd like to hold the meeting in Tarbolton, either around 10am or in the early afternoon.

Are you happy for Brian's office to make the arrangements?

Regards,

(Redacted)

(Redacted) | Communications Officer
Whittle MSP | Member of the Scottish Parliament for South of Scotland Region

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From: (Redacted)

Sent: 08 January 2020 08:25

To: Whittle B (Brian), MSP <Brian.Whittle.msp@parliament.scot>

Subject: RE: Tarbolton Community Meeting

Dear Brian

Happy New Year and hope you had a good break.

Have you had any further thoughts on the dates proposed below for a community meeting?

Many thanks

(Redacted)

(Redacted)

Head of Environmental Performance
SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ

E: (Redacted)

T: (Redacted)

M: (Redacted)

From: (Redacted)

Sent: 16 December 2019 15:55

To: Brian.Whittle.MSP@Parliament.scot

Subject: Tarbolton Community Meeting

Dear Brian

Thanks for the offer of chairing a Tarbolton community meeting.

I would be available on either Friday 24th or 31st January if either date suits?

I'd also recommend inviting the NHS Public Health Team, contact details are:

- **(Redacted)**
Consultant in Public Health Medicine
NHS Ayrshire and Arran
Afton House
Ailsa Hospital
Dalmellington Road
Ayr KA6 6AB
(Redacted)
(Redacted)

Many thanks

(Redacted)

(Redacted)
Head of Environmental Performance
SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ
E: (Redacted)
T: (Redacted)
M: (Redacted)

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From: (Redacted)
To: (Redacted)
Subject: FW: Tarbolton Community Meeting
Date: 09 February 2021 18:33:34

From: (Redacted)
Sent: 08 January 2020 14:21
To: (Redacted)
Subject: RE: Tarbolton Community Meeting

Thanks ^(Redacted), noted. Have you managed to firm up dates with contractors for the planned works?
(Redacted)

From: (Redacted)
Sent: 08 January 2020 11:57
To: (Redacted)
Subject: FW: Tarbolton Community Meeting

Hi ^(Redacted)

Just for information, confirmation of date from Brian Whittle's office for meeting on 31st January, further details on timing to follow.
We can agree specific SG-related lines and be as clear as possible on timelines in advance as discussed previously.

Many thanks

(Redacted)

From: (Redacted)
Sent: 08 January 2020 11:54
To: (Redacted)
cc: (Redacted)
(Redacted)
Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted)

That's great, thanks for confirming the date.

And yes, very happy for you to make the arrangements.

Many thanks

(Redacted)

(Redacted)

Head of Environmental Performance

SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ

E: (Redacted)

T: (Redacted)

M: (Redacted)

From: (Redacted)

Sent: 08 January 2020 11:51

To: (Redacted)

cc: (Redacted)

(Redacted)

Subject: RE: Tarbolton Community Meeting

Dear (Redacted)

Thanks for your e-mail.

Brian would like to set up a meeting on Friday 31st January with representatives from SEPA, NHS Ayrshire & Arran, South Ayrshire Council, local MSPs and selected representatives of the community (including a couple of the constituents Brian has been working with).

Subject to a venue we'd like to hold the meeting in Tarbolton, either around 10am or in the early afternoon.

Are you happy for Brian's office to make the arrangements?

Regards,

(Redacted)

(Redacted) | Communications Officer

Whittle MSP | Member of the Scottish Parliament for South of Scotland

Region

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From: (Redacted)

Sent: 08 January 2020 08:25

To: Whittle B (Brian), MSP <Brian.Whittle.msp@parliament.scot>

Subject: RE: Tarbolton Community Meeting

Dear Brian

Happy New Year and hope you had a good break.

Have you had any further thoughts on the dates proposed below for a community meeting?

Many thanks

(Redacted)

Head of Environmental Performance

SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ

E: (Redacted)

T: (Redacted)

M: (Redacted)

From: (Redacted)

Sent: 16 December 2019 15:55

To: Brian.Whittle.MSP@Parliament.scot

Subject: Tarbolton Community Meeting

Dear Brian

Thanks for the offer of chairing a Tarbolton community meeting.

I would be available on either Friday 24th or 31st January if either date suits?

I'd also recommend inviting the NHS Public Health Team, contact details are:

- **(Redacted)**
 Consultant in Public Health Medicine
 NHS Ayrshire and Arran
 Afton House
 Ailsa Hospital
 Dalmellington Road
 Ayr KA6 6AB
(Redacted)
(Redacted)

Many thanks

(Redacted)

(Redacted)

Head of Environmental Performance

SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ

E: (Redacted)

T: (Redacted)

M: (Redacted)

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From: (Redacted)
To: (Redacted)
Subject: FW: Request for Tarbolton Consultants Report
Date: 09 February 2021 17:34:01
Importance: High

From: (Redacted)
Sent: 06 November 2019 09:08
To: (Redacted)
Cc: (Redacted)
Subject: RE: Request for Tarbolton Consultants Report
Importance: High

I think if you could provide what you have asap this morning and ideally by return that would help and even if ballpark I think it would be sufficient to enable us to consider in order to provide formal confirmation to you that funding will be available to proceed. FYI Mr Whittle will be asking a PQ in chamber later so it would be important I think to be able to be definitive that this work is going to take place and approx. timescale if possible.

We also received a letter from SAC yesterday noting that SEPA had advised SAC that all matters were referred to SG given delay in site survey work. Assume by that you meant you were keeping us advised?

(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted)

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(Redacted)

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From: (Redacted)
To: (Redacted)
Subject: FW: Tarbolten
Date: 09 February 2021 18:30:47

From: (Redacted)
Sent: 19 December 2019 17:47
To: (Redacted)
Subject: RE: Tarbolten

Hi (Redacted)

Thanks, yes, all went as planned with the exception of release of FOI material (which was scheduled for release on Tuesday) and which is going to take a little longer than anticipated, likely into early January.

I've only had a response from one company, Enva Scotland Limited to express disappointment etc. I placed a follow up call to Jeanne Freemans office today which went without incident and had spoken with Brian Whittle on Monday and invited him to come back to me after he'd seen the detail, but nothing so far.

Other than that, there has been no response so far.

Sorry not to respond to your email on Tues. Yes, agree that it would be good to present a clear timetable at any community meeting, I think that would be very helpful.

We are firming up dates with contractors for works by end of this week hopefully and can pick up again in the New Year once that is all nailed down – does that sound OK?

We should also start to think about getting a date in the diary to discuss in Feb. Again, can pick up in January.

I will keep an eye on emails tomorrow and happy to take calls if needed but am finishing up now until the 27th and then off again until the 6th Jan.

Wishing you a Merry Christmas Janet and hope you too have a lovely break.

Many thanks

(Redacted)

From: (Redacted)
Sent: 19 December 2019 17:26
To: (Redacted)
Subject: Tarbolten

Hi (Redacted), just checking in before I finish up for leave tomorrow. Assume you have proceeded as planned with the issuing of correspondence etc. If there's any update including any initial reaction then feel free to get in touch tomorrow and otherwise we can pick up early Jan. Hope you have a well deserved break over Christmas.

(Redacted)

(Redacted)
Head of Zero Waste Unit
Environmental Quality and Circular Economy Division
Environment and Forestry Directorate
Scottish Government
3H(S) Victoria Quay
Edinburgh EH6 6QQ
Tel: (Redacted)

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From: (Redacted)
To: (Redacted)
Subject: FW: Tarbolton Community Meeting
Date: 09 February 2021 18:27:09

From: (Redacted)
Sent: 17 December 2019 19:41
To: (Redacted)
Subject: RE: Tarbolton Community Meeting

Hi ^(Redacted), content for SEPA to front up and to feedback. We'd want though to have a clear timetable for site survey report and planned subsequent discussion between ourselves and the council to be set out at that meeting.

(Redacted)

From: (Redacted) >
Sent: (Redacted)
To: (Redacted) >
Subject: FW: Tarbolton Community Meeting

Dear ^(Redacted)

Just for information, Brian Whittle MSP called this afternoon for an update on Tarbolton landfill site, specifically on the work to improve the situation.

Brian said that the topic is being raised more regularly at his community surgeries and offered to chair a community meeting for SEPA and other to provide an update. He felt this should be in January even though SG won't be in a position to have taken a view on site management options by that time.

I'm presuming that you would be happy for SEPA to front up that meeting but please let me know if you would wish SG to be represented.

Many thanks

(Redacted)

From: (Redacted)
Sent: 16 December 2019 15:55
To: Brian.Whittle.MSP@Parliament.scot
Subject: Tarbolton Community Meeting

Dear Brian

Thanks for the offer of chairing a Tarbolton community meeting.

I would be available on either Friday 24th or 31st January if either date suits?

I'd also recommend inviting the NHS Public Health Team, contact details are:

- Dr (Redacted)
Consultant in Public Health Medicine
NHS Ayrshire and Arran
Afton House
Ailsa Hospital
Dalmellington Road
Ayr KA6 6AB
(Redacted))
(Redacted)

Many thanks

(Redacted)

(Redacted)
Head of Environmental Performance
SEPA, Strathallan House, Castle Business Park, Stirling, FK9 4TZ
E: (Redacted)
T: (Redacted)
M: (Redacted)

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From: (Redacted)
To: (Redacted)
Subject: FW: Transcript Portfolio Questions - Tarbolten and community recycling
Date: 09 February 2021 17:39:36

From: (Redacted)
Sent: 06 November 2019 18:28
To: (Redacted)

cc: (Redacted)

Subject: Transcript Portfolio Questions - Tarbolten and community recycling

For ease, transcripts below.

4. Brian Whittle (South Scotland) (Con):

To ask the Scottish Government what action it is taking to address issues regarding pollution management at the Tarbolton landfill site. (S5O-03714)

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):

Legal duties regarding the management and condition of the site are the responsibility of the owner or operator. In this case, legal obligations under the permit are on-going and rest with the official receiver, which is the liquidator of the company.

Although the official receiver currently remains responsible for site management, Scottish Environment Protection Agency officers continue to undertake an intensive programme of monitoring. Nevertheless, SEPA has arranged for scoping work to be done to establish the likely costs and practicalities of options for management and mitigation works at the site.

Brian Whittle:

The cabinet secretary will be aware that I have raised the issue several times in the chamber, because it is raised at every surgery that I hold. The four-year-old twins of a constituent of mine are now not permitted to play outside; they report that they can smell pollutants on their clothes. I have sent video evidence indicating that the situation is terrible and is getting worse. Is not it time that the Scottish Government stepped in to make the site safe for the health of people in the surrounding area? It could then seek to establish responsibility and seek recompense.

Roseanna Cunningham:

I entirely appreciate how horrific the situation is for the people who are most directly affected by it and I have discussed the issue with Brian Whittle.

I have outlined where the legal responsibilities currently lie. The solution is not as simple as us stepping in and taking over—notwithstanding that we are the Government—because we have to act legally.

I am conscious that work has been done by SEPA very recently. SEPA is there on the ground as the Government agency that is monitoring and working on the issue. I know that it is concerned about the additional remedial work that has to be done before it can continue its work. I confirm that that will be funded in the immediate future, so I very much hope that there will be progress.

However, that does not remove from the equation the fact that the site is in private ownership and is in the hands of the liquidator. It is a tricky situation, which I know Brian Whittle understands. I also know that he is—quite rightly—concerned about the impact on local people, as are we all.

8. Bob Doris (Glasgow Maryhill and Springburn) (SNP):

To ask the Scottish Government how it supports community recycling initiatives in Glasgow. (S5O-03718)

Roseanna Cunningham:

The Scottish Government supports community recycling through different funding streams, such as Zero Waste Scotland's resource-efficient circular economy accelerator programme and the climate

challenge fund, which support projects involving waste and circular economy activities, including recycling. Community groups can also get tailored support and advice for recycling initiatives from Zero Waste Scotland.

Bob Doris:

I draw the cabinet secretary's attention to an ambitious plan by the newly formed Springburn youth forum, in my constituency, to reclaim a patch of neglected land outside Springburn academy as a seating area for students at lunchtime, and to co-locate community recycling facilities that could also act as a community hub to encourage recycling across the wider area. Will the cabinet secretary offer her support for such innovative plans, and does she think that such initiatives should be encouraged more widely, not only in my constituency, but right across Scotland?

Roseanna Cunningham:

I certainly do. That sounds like an extremely interesting project. If Bob Doris wishes to invite me to come and visit, I would be happy to do so.

(Redacted)

(Redacted)

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(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted)

(Redacted)

From: [REDACTED]
Subject: Tarbolton next steps
Date: 23 June 2020 13:26:28

Hi [REDACTED],

I had a quick catch up with [REDACTED] this morning, she's going to come back to you on the Tarbolton sub this afternoon.

I think the next consideration will be the meeting with South Ayrshire Council and SEPA on 1 July.

Would you be able to make a start on a short briefing for [REDACTED] for this meeting? [REDACTED] is already quite familiar with the subject, so I think it would be something quite short that recaps the position, and covers key lines to take (which hopefully will be informed heavily by the sub). I've also asked [REDACTED] to forward 1 July meeting invite so we're able to listen in.

I understand there will be an SG/SEPA pre-meet to go in diaries (I don't think date has been confirmed yet).

Hope that makes sense – happy to chat further if any Qs.

Thanks,

[REDACTED]

Scottish Government | [REDACTED] | Enfor : Environmental Quality & Circular
Economy | [REDACTED] | [REDACTED]@gov.scot

[REDACTED]

From: [REDACTED]
Sent: 21 August 2019 13:49
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]; [REDACTED]
Subject: FW: Tarbolton Landfill

Hi [REDACTED],

Still slowly clearing my old emails from my inbox!

SANA [REDACTED] also escalated this landfill issue to me. I would be very grateful if you could review the situation to see if this is being given the appropriate focus.

Many thanks,
[REDACTED]

[REDACTED]
Salmon and Recreational Fisheries Team,
Marine Scotland, Area 1B North, Victoria Quay, Edinburgh, EH6 6QQ
Tel: 0131 244 [REDACTED] (W) [REDACTED] (M)

From: [REDACTED]<[REDACTED]@ayrshireriverstrust.org>
Sent: 19 June 2019 11:03
To: [REDACTED]<[REDACTED]@sepa.org.uk>
Cc: [REDACTED]<[REDACTED]@gov.scot>
Subject: Tarbolton Landfill

Re : Tarbolton Landfill in Liquidation

[REDACTED]

We are increasingly concerned by the lack of progress to improve the situation at Tarbolton Landfill. Has SEPA developed any plan or had any success with Scottish Government to develop a plan to restore the site to a non polluting environment?

This week we visited an unauthorised discharge from this site and noticed leachate spilling into an unnamed tributary of the Biggary Burn to the east of the landfill boundary. The trees on the banks of this burn were dead downstream of the leachate input but upstream were healthy.

We've previously asked whether it is safe for our staff to work instream on the Fail and River Ayr in locations downstream of the landfill but as yet received no confirmation from SEPA of whether there are human health risks for those accessing the watercourses. We intend to survey fish populations on the Fail at various locations shortly and are seeking reassurances from SEPA that it is safe to do so.

I noted that the impacts from the landfill have now been recorded as far downstream as Failford where the Fail meets the Ayr. Has SEPA assessed the impact on any fish species and invertebrate communities? Has there been monitoring on the Ayr downstream of the confluence? If so, what are the results?

We just discovered a massive infestation of Giant Hogweed on the landfill site that threatens a long term strategy of eradication that Ayrshire Rivers Trust has been delivering over the last decade or more across the River Ayr

catchment. We would like to prevent this extensive infestation from becoming any worse now that we are aware of it. Can Ayrshire Rivers Trust access the site to spray this plant to prevent seeding? Would there be any opportunity for cost recovery through any funding sources available to SEPA? Effectively it is the landowner's legal responsibility to prevent the spread of the plant to neighbouring properties under the Wildlife and Natural Environment (Scotland) Act 2011, however as the company are in liquidation, I doubt there any chance that their or the liquidator's permissions can be achieved in time to prevent the spread of this plant. We could however spray the affected areas quickly to prevent further spread but we would require some authorisation to deliver this.

I look forward to hearing from you at the earliest possible convenience time is of the essence.

Regards

[Redacted]

[Redacted]



Ayrshire Rivers Trust

1 Gibbs Yard
Scottish Agricultural College
Auchincruive
Ayr KA6 5HW
Tel [Redacted]
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Our Ref: ██████████ Your Ref: ██████████

Date: 27 March, 2019

██████████
██
sent by email

SEPA
Strathallan House
Castle Business Park
STIRLING
FK9 4TZ

Dear ██████████,

Tarbolton Landfill Site

I understand my Service Lead - Legal and Licensing agreed changes you requested yesterday to the Confidentiality Agreement which had been forwarded on 18 February 2019 and has forwarded the Albion report to you today. I had understood that SEPA had hoped, after the last community meeting, to instruct a further report and it is disappointing that it appears that this has not happened as yet.

There is, as you are aware, a great deal of concern locally at the lack of any remedial action being proposed by the Regulator to deal with the lack of any compliance at the Site with the conditions of the PPC permit. I have been asked for an update on the situation at the site and therefore detail below a number of questions which I would be grateful if you could address.

In your letter of 31 January 2019 your interpretation of your remit takes a very restricted approach to both your remit/ purpose and powers under the Regulatory Reform (Scotland) Act 2014 ('the Act'). This conflicts with advice we have obtained that this approach is not consistent with how SEPA's powers and duties are generally set out in the Act and does not recognise the steps that SEPA could be taking to start to address the issues at the Site.

SEPA's Role and Responsibilities

- Your letter of 31 January states that:

'SEPA's role is to regulate the operator carrying out activities under a permit.'

This is in our view a very narrow interpretation of SEPA's role and not one that is consistent with SEPA's statutory function or the enforcement powers given to SEPA in legislation.

- As noted [on your website](#), Section 16 of the Regulatory Reform (Scotland) Act 2014 sets out SEPA's statutory purpose:

'protecting and improving the environment, including (without prejudice to that generality) (a) regulating environmental activities, [and] (b) implementing EU obligations, and international obligations, relating to protecting and improving the environment'.

Section 17/

Section 17 states that 'protecting and improving' includes '**preventing deterioration (or further deterioration) of, and protecting and enhancing, the status of ecosystems**'

landfill sites, the issue in this case is concerned with preventing or managing impacts on the environment (including ecosystems) and therefore does fall within SEPA's statutory purpose and therefore its remit. It is our view that SEPA does have the necessary powers to tackle the issues at Tarbolton should SEPA wish to exercise these powers.

- Your letter of 31 January refers to SEPA's enforcement powers under Regulation 57. These are considered in more detail below. These powers sit within Part 6 of the Regulations. The first Regulation in Part 6, Regulation 51, sets out SEPA's duties regarding compliance. It states:

'SEPA must take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of a permit are complied with.'

It is of significance that this duty is aimed at ensuring compliance with permit conditions generally, rather than simply ensuring that operators comply with conditions. This is consistent with SEPA's wider statutory functions as a Regulator for protecting the environment. The key issue is that PPC conditions are complied with, rather than who ensures compliance. It would appear from your response that you have not considered the use of your section 57 powers in the context of this duty.

I would therefore be grateful if you could confirm how SEPA is complying with its section 51 duty in relation to the decision not to take any form of enforcement action to date or make a claim in the liquidation.

Enforcement

- On page 7 of the letter you have stated that SEPA has not taken any decision to take enforcement action by issuing an enforcement notice under Regulation 54. There is no detail provided of the decision making process SEPA has followed and I would be grateful if you could confirm this and explain why no enforcement action has been taken to date and what criteria SEPA are using to make that decision.

It is our understanding that SEPA has a statutory duty to take such action as necessary to ensure the conditions of the PPC permit are being complied with.

Given SEPA's continued inaction, Councillors have asked whether there has been a decision not to take enforcement action. If this is the case they would like to understand why? The explanation for the lack of enforcement action to date provides no detail and whilst the Council acknowledge that the exercise of the enforcement powers is discretionary I am being asked to explain to members why SEPA is choosing not to proceed with enforcement action. Please could you therefore explain this and also do so by reference to the duty imposed by Regulation 51 and your wider statutory functions.

Use of Regulation 57 Powers

- There is no wording in Regulation 57 which says the powers should be utilised only in emergencies.
- Regulation 57(1) gives SEPA powers to remove **an imminent risk of serious pollution**.
- Regulation 57(2) gives SEPA powers to arrange for steps to be taken **to remedy pollution caused by** the committing of a criminal offence under Regulation 67 (eg. carrying out activities without a permit, **failure to comply with the conditions of a permit**, failing to comply with an enforcement notice).

- The statement that your powers under Regulation 57 are only '**intended to deal with short term emergency situations**' therefore can be seen from the above to be incorrect. It is therefore of concern that this is the statement that was issued to members of the public.
- From the information you provided it is apparent that there have been continuing breaches of the PPC permit. Even if SEPA did and does not consider action under Regulation 57(1) as appropriate, action could be taken by under Regulation 57(2). Could you please explain why SEPA is not prepared to exercise these powers?
- Regulation 57(4) allows SEPA to recover the costs of taking steps under Regulation 57(1) and (2).
- It is our view that SEPA's failure to utilise its powers under Regulation 57 is inconsistent with SEPA's duty to ensure compliance with the permit conditions under Regulation 51.

Disclaimer of the Permit

- Thank you for confirming that SEPA's position is that the permit remains in effect, notwithstanding the purported disclaimer of the Official Receiver. Please can you confirm if any steps have been taken to contest the disclaimer by the Official Receiver?
- I note that, on page 2 of the letter, you have stated that SEPA has not yet taken a decision whether to raise legal proceedings in relation to the purported disclaimer, and is still considering its position. It is 6 months since the Official Receiver ('OR') confirmed this – please can you now confirm your decision and the reasons. The OR is in receipt of QC's advice from the liquidator but is only willing to disclose selected extracts which is concerning as the Council would expect to see this advice in context and not extracts that suggest there are alternative interpretations or other reasons for not disclosing the full opinion.
- Please could you therefore confirm what legal advice on the disclaimer or the extracts of the QC's opinion SEPA has obtained. Have SEPA taken any substantive steps in the last 6 months on this issue?
- On page 8, SEPA's position regarding the ongoing status of the permit is not clear. It would seem correct that if the permit ceases to exist then Part 2A of the 1990 Act would apply. However, it is unclear as to when, if at all, SEPA would consider the permit to cease to have effect. Please could you confirm if the dissolution of the company would, in SEPA's view, lead to the permit ceasing to exist or not at that point.
- If, as stated Part 2A does apply, it would appear that the provisions for designation of contaminated land as a 'special site' are appropriate in this case. Please could you therefore, as Regulator, confirm your position on this point?

Financial Provision

- SEPA have not yet confirmed what they consider the potential costs of carrying out the necessary works at Tarbolton would be. Without that information, it does not appear possible to make a judgment on whether the amount of money available in the company is a material consideration in making decisions regarding enforcement action, use of Regulation 57 powers, and contesting disclaimer of the permit.
- It would therefore seem prudent in the interim for SEPA to take action pursuant to Regulation 57, and to issue an enforcement notice under Regulation 55, at the very least to give SEPA a position in the liquidation which it may not otherwise have.

- In the absence of action, SEPA appears to be waiving its right to a claim in the liquidation. Again it is unclear how that decision can be reconciled with SEPA's statutory remit and duties under Regulation 51.
- Paragraph 15 of your letter had stated that the financial provision appendix states that the PPC permit was granted in 2007. The public registers record that the permit was granted in 2002. Your response on this issue would therefore seem to be incorrect, and I would be grateful if you could therefore answer the original question we asked in our earlier letter.

'Abandonment'

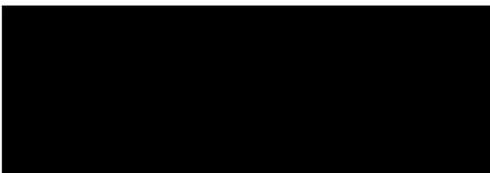
- SEPA have referred in correspondence with the Council and separately with the public to 'abandonment' of the site. It is not clear why SEPA is using this term. The Regulations do not recognise the concept of 'abandonment' of a PPC permit or a licenced site, nor does SEPA.

The Council also recognise that this is a difficult situation for the environment, community and all stakeholders. However, as we have set out above SEPA has powers as the Environmental Regulator which would allow it to begin to address the adverse effects on the environment. This case concerns an ongoing failure for a site licensed by SEPA to comply with the conditions of a PPC permit, which SEPA acknowledges is having an adverse impact on the environment. Regulation 51 contains the relevant SEPA duty, backed by SEPA's powers at Regulation 57. In the circumstances SEPA would appear to be best placed to deal with the ongoing issues arising from the failures in compliance with the PPC permit.

I would be grateful if you could respond to the points raised above so we can answer the questions that have been put to the Council by members of the public, Councillors and some MSPs.

I look forward to hearing from you.

Kind regards



Chief Executive's Office

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Our Ref:

Your Ref:

Date: 8 August, 2019



Don McGillivray
Deputy Director: Environmental Quality and Circular Economy
Environment and Forestry Directorate
Scottish Government
3H(S) Victoria Quay
EDINBURGH
EH6 6QQ

Dear Mr McGillivray

Tarbolton Landfill Site

The last time we corresponded with the Government was in relation to the meeting which took place with representatives of SEPA, Council representatives and representatives of your department in January of this year. Since this time, the Council shared its expert report with SEPA in February and understands that SEPA, with funds provided by your department, commissioned a second expert report.

The Council is writing to you now because we are concerned at the lack of progress in this matter. The Council wrote to SEPA in March (copy letter attached) and asked a number of questions around the actions being proposed at the site and the steps that SEPA as regulator was proposing to take at the site. In view of residents' concerns, the Council asked SEPA to provide detailed reports to the community and that they keep the community and the Council reassured that the risks proposed by the site remain at acceptable levels without any interventions at the landfill site.

You will recall that the liquidator has disclaimed responsibility for the site but that SEPA continues to dispute this disclaimer. No legal action appears to be proposed by SEPA to break this deadlock. The net effect appears to be that there are no interventions being taken to address the environmental damage which is continuing at the landfill site and which, according to SEPA's latest report, is continuing to worsen.

The Council still awaits a response to its letter of 27 March to SEPA requesting answers to a number of questions on the actions SEPA intends to take as Regulator to address the lack of action by the Liquidator and the interventions and longer term strategy it is proposing for the landfill site. The Council has asked SEPA on a number of occasions to provide a copy of the report commissioned by SEPA so we can understand the recommendations made by the experts to address the environmental damage, but a response is still awaited.

Reports have suggested that the Council, SEPA and the Scottish Government are in discussion on the potential remedial actions needed at the site. This, as we have explained above, is misrepresentative of the current situation. The Council has had no response to our questions nor have we been provided with a copy of the expert's report. Our position remains that, as Regulator under the PPC regime, SEPA have the powers required to intervene to begin to take the necessary actions to tackle the contamination at the landfill site and bring the risks posed by the site to the environment within the acceptable level of risks for this type of landfill site.

Residents, MSPs and Councillors are now pressing for answers on the progress that SEPA as Regulator is proposing for tackling the contamination and risks proposed by this landfill site. Residents advise that, despite a request for an earlier meeting to address their concerns, the next meeting with SEPA is not scheduled until October.

Please could you assist us by asking SEPA to respond to the questions we raised in March, provide a copy of the expert's report and confirm the action they are proposing as Regulator to take to tackle the contamination at the landfill site.

Yours sincerely

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