

ANNEX A

A small amount of information has been withheld under Regulation 11(2) – Personal Data as it contains personal information and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulations (GDPR) and in Section 34(1) of the Data Protection Act 2018. This exception is not subject to the ‘public interest test’.

ANNEX B

Document 1:

From: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Sent: Wednesday, February 1, 2023 9:29 AM
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: Carmichael K (Katriona) <[REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>; [REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Sludge Review Representation ESS.22.022.

Dear [REDACTED: REGULATION 11(2)],

Thanks very much for this, and for your suggestion to keep me updated – I would appreciate that.

Best wishes,
[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
(She/Her)
Senior Investigations Officer [REDACTED:
REGULATION
11(2)]@environmentalstandards.scot
[REDACTED: REGULATION 11(2)]

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0808 1964000 | www.environmentalstandards.scot
Address: Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD

From: [REDACTED: REGULATION 11(2)]@gov.scot>
Sent: 27 January 2023 16:29
To: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Cc: Carmichael K (Katriona) <[REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>; [REDACTED:

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REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Sludge Review Representation ESS.22.022.

[REDACTED: REGULATION 11(2)], thanks very much for your follow up email.

Although there are some uncertainties, I would estimate that the consultation on draft regulations may be progressed in quarter 2, based on existing planning assumptions and subject to minister's decisions.

I can keep you informed of progress and any change to planning assumptions, if that would be helpful.

Regards,

[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
Head of Zero Waste Unit
Circular Economy Division
[REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Sent: 25 Jan 2023 12:53
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Subject: Sludge Review Representation ESS.22.022.

Dear [REDACTED: REGULATION 11(2)],

Thanks again for your letter of 23rd December. You advised that in order to progress the changes to regulations, a consultation to the draft regulations would be published this year. I understand that this has been a significant task for your team, and that the work is ongoing to prepare the draft regulations. I also appreciate that you may not wish to commit to a specific date given the delays you have experienced due to Covid-19, but are you able to provide an approximate completion timetable for this year, by quarter for example ?

Many thanks,
[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
(She/Her)
Senior Investigations Officer [REDACTED:
REGULATION
11(2)]@environmentalstandandards.scot
[REDACTED: REGULATION 11(2)]

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Documents 2 and 3:

From: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Sent: Friday, December 23, 2022 9:12 AM
To: [REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Cc: Carmichael K (Katriona) <[REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Section 23 Information Request - Sludge Review - IESS.22.022.

Thank you very much for sending this on [REDACTED: REGULATION 11(2)]. We'll get back to you if we have any further queries.

Kind regards
[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)] (He/His)
Head of Investigations, Standards and
Compliance [REDACTED: REGULATION
11(2)]@environmentalstandards.scot
[REDACTED: REGULATION 11(2)]

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

From: [REDACTED: REGULATION 11(2)]@gov.scot>
Sent: Friday, December 23, 2022 7:08 AM
To: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Cc: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>; Carmichael K (Katriona) <[REDACTED: REGULATION 11(2)]@gov.scot>; [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Section 23 Information Request - Sludge Review - IESS.22.022.

[REDACTED: REGULATION 11(2)]

Please find attached a response to the queries set out in your letter of 9 December.

Please let me know if you require any further clarification or additional information.

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Regards.

[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
Head of Zero Waste Unit
Circular Economy Division
[REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]
Sent: 09 December 2022 13:59
To: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Cc: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Subject: RE: Section 23 Information Request - Sludge Review - IESS.22.022.

[REDACTED: REGULATION 11(2)], thank you for your letter. I can confirm receipt. We will consider the request and respond within 15 business days of the date of the letter.

Regards.

[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
Head of Zero Waste Unit
Circular Economy Division
[REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Sent: 09 December 2022 13:25
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@environmentalstandards.scot>
Subject: Section 23 Information Request - Sludge Review - IESS.22.022.

Dear [REDACTED: REGULATION 11(2)],

ESS has received a representation regarding the 2016 Sludge Review, and I have understood from Katriona Carmichael that you might be best placed to provide an update.

I would be very grateful if you could provide a response to the attached letter within 15 business days.

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If you have any questions about the information request please let me know, I will be happy to discuss.

Kind Regards,
[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]
(She/Her)
Senior Investigations Officer [REDACTED:
REGULATION
11(2)]@environmentalstandards.scot
[REDACTED: REGULATION 11(2)]

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Document 2a:

[REDACTED: REGULATION 11(2)]
Senior Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

[REDACTED: REGULATION
11(2)]@environmentalstandards.scot

[REDACTED: REGULATION 11(2)],
Head of Zero Waste Unit.

9 December 2022

**Subject: Provision of Information to Environmental Standards Scotland (ESS)
Sludge Review representation – Case Reference IESS.22.022**

Dear [REDACTED: REGULATION 11(2)],

Victoria Quay, Edinburgh EH6 6QQ www.gov.scot



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I am writing to inform you that ESS has received a representation expressing concerns about the Scottish Government's 2016 review of the storage and spreading of sludge to land ("the Sludge Review"). Specifically, the representation is concerned over the delay in implementation of the recommendations made by the Sludge Review. ESS is a newly established environmental oversight body, whose role is to consider Scottish public authorities' compliance with environmental law and the effectiveness of environmental law.

I believe this matter is within ESS' remit, and I would appreciate your assistance to help me determine whether this is an issue that ESS should consider further. I am requesting your reasonable assistance under the public bodies co-operation duties as set out in section 23(1) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021.

To provide background to my request, I note the following summary points following my preliminary review of the representation:

- The Sludge Review was completed in 2016, but the recommendations requiring changes to legislation have not been implemented.
- ESS understands that the Sludge Review recommendations requiring changes to legislation will be embedded into the consultation on the Integrated Authorisation Framework ("the IAF").
- The representer has already made a request to the Scottish Government regarding the slippage of the IAF consultation.
- In response to the inquiry made of the Scottish Government, the representer was advised that the consultation is due to begin in early 2023.
- The outcome sought in the representation is for ESS to carry out an investigation into the effectiveness of the current legal regime on sewage sludge, issue an improvement report with specific recommendations to ensure that sewage sludge is effectively regulated, and to ensure that the Scottish Government strengthens the applicable law relating to the use of sewage sludge.

I note that the Scottish Government has acknowledged that there have been Covid-19 related delays in the progression of the IAF, however the representation raises broader concerns over the review and enforcement of sewage sludge regulations.

So that I can determine what action, if any, should be taken by ESS, I would be grateful if you could:

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- clarify which of the Sludge Review recommendations require a change to legislation;
- clarify which legislation requires to be changed, how this will be done and the timescales for when this is to be achieved; and
- provide a progress report on the implementation of the Sludge Review recommendations which do not need changes to legislation.

Responses to the above queries should be submitted to representations@environmentalstandards.scot or by post. Please reference our case number (IESS.22.022) in your return correspondence.

I would be grateful if you could provide the requested assistance within 15 business days of the date of this letter. If you have any questions or queries, please do not hesitate to contact me at the above e-mail address.

Yours sincerely

[REDACTED: REGULATION 11(2)]
Senior Investigations Officer

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Document 2b:

Environment and Forestry Directorate

Circular Economy Division



Scottish Government
Riaghaltas na h-Alba
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T: [REDACTED: REGULATION 11(2)]
E: [REDACTED: REGULATION 11(2)]@gov.scot

[REDACTED: REGULATION 11(2)]
Senior Investigations Officer
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

E-mail:

[REDACTED: REGULATION 11(2)]@environmentalstandards.scot

Your ref: IESS.22.022

23 December 2022

**PROVISION OF INFORMATION TO ENVIRONMENTAL STANDARDS
SCOTLAND (ESS) SLUDGE REVIEW REPRESENTATION – CASE
REFERENCE: IESS.22.022**

Dear [REDACTED: REGULATION 11(2)]

Thank you for your letter of 9 December 2022 regarding a representation you have received relating to the delay in implementation of the 2016 sewage sludge review recommendations.

You have specifically asked me to:

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- clarify which of the Sludge Review recommendations require a change to legislation;
- clarify which legislation requires to be changed, how this will be done and the timescales for when this is to be achieved; and
- provide a progress report on the implementation of the Sludge Review recommendations which do not need changes to legislation.

In relation to your first query, the key recommendations arising from the Review of the Storage and Spreading to Land of Sewage Sludge in Scotland (“the Sludge Review”) that require a change to legislation are:

- The requirements of the Safe Sludge Matrix should be incorporated into law in Scotland.
- 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.
- “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 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.
- Scottish Government officials and SEPA should investigate the practicalities of reducing the on-site 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 part of any such risk-based case, with proximity to dwellings also being taken into account where this is an issue.

Your second query asks for clarification on which legislation requires to be changed, how this will be done and the timescales for when this is to be achieved.

As you may be aware, the legislative proposals recommended in the Sludge Review are being embedded within the planned Integrated Authorisation Framework (IAF) regulations currently being prepared.

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The Regulatory Reform (Scotland) Act 2014 enabled the creation of a new Integrated Authorisation Framework for environmental authorisations and The Environmental Authorisations (Scotland) Regulations 2018 came in to force on 1 September 2018 establishing the new framework and incorporating Radioactive Substances as the first 'regulated activity'.

There are at present unnecessary differences in fundamental areas across Pollution Prevention and Control (PPC), Waste, and Water environmental authorisation regimes in Scotland and as a result, the legislative framework and regulatory procedure is inconsistent and administratively cumbersome both for SEPA and operators.

Further regulations to amend the Environmental Authorisations (Scotland) Regulations 2018 are required to enable the next stage of standardisation, simplification and streamlining of the process of complying with environmental legislation in Scotland and these proposed regulations were seen as the right vehicle for updating the sewage sludge legislation in line with the Sludge Review recommendations. However, as part of this wider move of environmental regulation to the IAF, the approach is not simply to change one or two provisions but instead it will be necessary to revoke the Sludge (Use in Agriculture) Regulations 1989 (Sludge Regulations) and the Waste Management (Scotland) Regulations 2011 (WML Regulations) in their entirety and move all 'waste management' activities, including sludge management, into the IAF. In addition, the work involves not just bringing the waste regulations into IAF, but also water and PPC so it is a substantial exercise.

It is intended that the amendment regulations will also be supported by a new Authorisation Guide, produced by SEPA, setting out the types of authorisation (General Binding Rules, Notification, Registration, Permit) that will be required for each type of activity.

It is this combination of amendment regulations and the supporting Authorisation Guide that will deliver the legislative recommendations of the Sludge Review. The draft amendment regulations and the Authorisation Guide will be consulted on at the same time.

Subject to Ministers' approval, it is expected that a consultation of the draft regulations will be published next year and stakeholders will have the opportunity to comment on the proposals relating to sewage sludge.

With regard to timescales, as you will appreciate combining 3 authorisation regimes into one integrated authorisation framework is a significant task and unfortunately due to Covid-19 and other priority work there has been a delay in progressing the IAF work. However, we are working on finalising draft amendment regulations for consultation and as quickly as possible to

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enable the consultation process to commence along with SEPA's consultation on the Authorisation Guide.

Your third query sought a progress report on the implementation of the Sludge Review recommendations which do not need changes to legislation.

I have attached an annex to this letter with a table outlining progress with the implementation of all of the individual Review recommendations which I hope you find useful in clarifying the overall position.

I hope this is helpful. Please do let me know if you require any further clarification or additional information.

Yours sincerely

[REDACTED: REGULATION 11(2)]
Head of Zero Waste Unit

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ANNEX

Recommendation

Progress/Position

1	<p>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</p>	<p>The Safe Sludge Matrix is currently voluntary and our intention is to make appropriate parts of it mandatory. This will be achieved as part of the wider transition of 'waste management' into the Environmental Authorisations (Scotland) Regulations 2018 ("the IAF"). Specifically, subject to final decisions on the scope of draft regulations and consultation, the planned new regulations will require SEPA to include conditions in permits sufficient to ensure that no untreated sludge is applied to agricultural land and the relevant restrictions are applied to conventional and enhanced treated sludge. This goes beyond EU requirements which allow untreated sludge to be used where it is injected or worked into the soil.</p>
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2	<p>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.</p>	<p>Currently, where there are complaints about odour, responsibility is split between SEPA and Local Authorities. SEPA only have the power to act when sludge is in storage on a farm but have to pass complaint to LAs where the odour is from spreading. As it is not often clear what the source of the odour is until after inspection, this arrangement is unsatisfactory for the public and enforcement authorities alike. It has not been possible to address this through an administrative 'single point of contact' approach – the underlying legal powers need to be addressed. By bringing sludge use in agriculture into the IAF, SEPA will be empowered to take action to protect the environment across the sludge supply chain through transport, storage, and use making it easier for the public to raise concerns about odour and avoid issues 'falling in the cracks' between SEPA and Local Authorities.</p>
3	<p>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</p>	<p>Creating an operator permit with an associated fit and proper person test will provide for more effective regulation for all parties. An integrated, operator based, approach will allow better understanding of waste to land, better application of environmental standards, reduce</p>

	that “whole project life” licences for long-term site restoration projects also incorporate a fit and proper person test	administrative burden, streamline reporting, and improve enforcement powers. By authorising the person in control of the activity rather than individual parcels of land, we target regulatory activity in the right place. Under the IAF, the intention is that all Authorised Persons will need to be ‘Fit and Proper’. SEPA has produced guidance on how it will apply this test in practice.
4	“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	As part of the IAF consultation, SEPA will describe its proposals for site-based Permits for long term restoration projects. This will allow for restoration objectives to be set at the outset and monitored though the life of the project. Unlike the exemptions which simply ‘expire’ at the end of one year, this Permit will remain in place with an Authorised Person responsible until the project is complete and SEPA has accepted a surrender application.
5	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.	The new Regulatory Notice in Part 9 of the 2018 Regulations will provide a more effective tool to intervene where sludge storage and use is causing environmental harm including being able to require an activity to cease and require the removal of sludge where necessary. This will come into effect when ‘waste management’ has transitioned into the IAF.

6	SG officials and SEPA should investigate the practicalities of reducing the on-site 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 part of any such risk-based case, with proximity to dwellings also being taken into account where this is an issue.	SEPA will consult on the permit template for sludge storage and use and the intention is that this will include conditions regarding timescales. The likelihood of odour complaints from storage is more strongly linked to sludge type (e.g. limed sludge tends to have greater odour potential than enhanced treated sludge) than simply storage duration. It is also important that sufficient storage time is provided so that sludge can be used at the right time of year to provide benefit when the soil / crops need it.
7	There should be tighter monitoring of operator practice by SEPA, allowing them to intervene where necessary, subject to cost recovery via charging.	By bringing sludge in agriculture into the IAF, it will be possible for SEPA to charge for Permits to fund regulatory activity in this area. This will come into effect when 'waste management' has transitioned into the IAF.
8	Scottish Water or the relevant operator should ensure that	Scottish Water implemented appropriate remedial actions almost immediately after

	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.		the recommendations were published. Confirmation that these actions are still in place or have been updated, should be sought directly from Scottish Water as this information is not held centrally.
9	Scottish Water or the relevant operator should undertake analysis-based review to understand the composition of sludges from its sewage treatment facilities, to identify the reasons for the greater problems associated with some facilities.		Scottish Water implemented appropriate remedial actions almost immediately after the recommendations were published. Confirmation that these actions are still in place or have been updated, should be sought directly from Scottish Water as this information is not held centrally.
10	SEPA should review its guidance to staff to ensure consistency in the way regulations are enforced		SEPA has produced updated enforcement policy and guidance . Bringing sludge in agriculture into the IAF extends SEPA's powers to the whole sludge supply chain and enables the use of new Regulatory Notices and civil penalties to tackle issues and drive compliance.
11	The Sludge Review Group should continue to meet until the Review's recommendations have been delivered		The delay in progressing the IAF due to Covid-19 and other priority work has forced the group to stand down. It can be recalled if required at a later date.
12	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		Roles and responsibilities will change when 'waste management' transitions into the IAF. Guidance for the public will be updated to reflect the changes when appropriate.

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13	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, eg around timings. To be addressed via guidance		Although this was to be covered by guidance, it would be unenforceable. By bringing sludge use into permitting, SEPA will be able to operators to have Environmental Management Plans as part of the permit and this will include incident management provisions.
14	Management of data on sludge movement, management and incidents at SEPA and Scottish Water should be improved and		Work is progressing to introduce a mandatory digital waste tracking system across the UK which will provide a comprehensive way to see what is happening to waste produced in the UK.

	data from local authorities should be collected		The system will help support more effective regulation of waste, help businesses comply with their duty of care with regards to waste and provide regulators with information about where and how waste is created, who is handling it, what is done to it, and where it ends up. Digital Waste Tracking will provide much better data on the movement of sludge.
15	Scottish Water and SEPA should improve communication with all contractors handling sewage sludge in relation to transportation, storage and spreading of sewage sludge to ensure that all operators maintain optimum standards of practice.		Bringing sludge management into the IAF enables a much stronger relationship with operators and greater influence on how they develop and use their land bank.

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16	<p>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</p>	<p>The intention is that Regulations and SEPA's permits under the IAF will create an integrated approach to waste to land, including sludge. The soil protection values etc which currently only apply to sludge will apply across all waste types.</p> <p>For example –</p> <p>Paragraph 7(4)(d) of Schedule 1 to the 2011 Regulations contains a condition such that wastes must not be mixed with any material which would not itself provide benefit. The intention is that this provision will be carried forward into the IAF regulations and applied across all waste types, including sludge.</p> <p>Article 8 of the Sludge Directive requires that sludge is used in a way that takes account of the nutrient needs of the plants and that the quality of the soil and of the surface and ground water is not impaired. This is transposed through Regulation 3(7) of the 1989 Regulations. The intention is that IAF regulations will carry this forward for all waste types.</p> <p>Regulation 3(5) of the 1989 Regulations requires that the pH value of the soil shall not be less than 5 if sludge is to be applied. The intention is that IAF regulations apply this across all waste types.</p>
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17	Review land type definitions of “use in agriculture” and “nonagricultural 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	The intention is that new regulations will provide greater clarity about which provisions apply in which circumstances / land types.
18	Consider 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.	SEPA will provide guidance on use of waste in restoration projects. As part of a permit application, restoration objectives appropriate to the project will be agreed and the permit, and responsibility for compliance, will remain in place until the project is complete.
19	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	As part of the transition to the IAF, the intention is that SEPA will ensure that lime treatment of sludge is regulated via site-based permits with appropriate planning consent and public participation.
20	Guidance on the aspects of planning regulation that are relevant to land restoration projects should be reviewed in order to ensure clarity on the level of restoration required, and how it is ascertained when that restoration has been achieved	We will revisit this once the IAF regulations and Authorisation Guide have been implemented.
21	An updated version of the 2008 SNIFFER report should be commissioned as soon as possible, and published by winter 2016.	A research project from the James Hutton Institute was commissioned by the Scottish Government and published in October 2021.

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