

Regulatory Committee

10.00am, Monday, 30 September 2024

Water of Leith Water Quality-Response to adjusted Motion raised by Cllr Nols-McVey to City of Edinburgh Council on 8 February 2024

Executive/routine
Wards

All

1. Recommendations

- 1.1 The Regulatory Committee is asked to:
 - 1.1.1 Note this report and discharge the motion agreed by the Council on 8 February 2024; and
 - 1.1.2 Refer this report to Transport and Environment Committee for noting.

Gareth Barwell

Interim Executive Director of Place

Contact: Andrew Mitchell, Head of Regulatory Services

E-mail: andrew.mitchell@edinburgh.gov.uk | Tel: 0131 529 4208

Water of Leith

2. Executive Summary

- 2.1 This report provides details of actions carried out by officers in response to the motion agreed by the Council on 8 February 2024 (Appendix 1). This report discharges the motion.

3. Background

- 3.1 On 8 February 2024, the Council approved an [adjusted motion](#) by Councillor Nols-McVey in respect of the Water of Leith Basins Water Quality.
- 3.2 The motion asked for information from the Scottish Environmental Protection Agency (SEPA) and Environmental Standards Scotland (ESS) and to explain the Council's process for investigating statutory nuisance.

4. Main report

Scottish Environmental Protection Agency (SEPA) and Environmental Standards Scotland (ESS) responses:

- 4.1 Officers wrote to SEPA and ESS on 22 May 2024 (Appendices 2 and 3), seeking the information specified in the motion. SEPA and ESS replied to those letters (Appendices 4 and 5) and those replies are summarised below.

SEPA response

- 4.2 SEPA's full response is attached at Appendix 4 and its response to each point in the motion is summarised below.
- 4.3 The motion requested details of the outcome of bacterial testing in the Water of Leith basin, River Almond and Figgate Burn basins, with current contamination levels.
- 4.3.1 SEPA carries out bacterial testing at each designated bathing water both before and throughout the bathing season (15 May to 15 September), the results of which can be found at [SEPA's Bathing Waters webpages](#).

- 4.3.2 The Water of Leith and River Almond are not sampled as they are not associated with a bathing water, however the Figgate Burn is monitored in association with Portobello's Bathing Waters. Portobello bathing waters 2023 classifications met the necessary standard for the bathing water. Results for Portobello waters at the mouth of Figgate Burn are provided at Appendix 4.
- 4.3 A link to recent sample results is provided at paragraph 10.1 below.
- 4.4 The motion requested details of whether the sewage-contaminated silt constitutes illegal deposition of sewage solids under Scottish Water's CAR licence:
- 4.4.1 Sewer Network Licences issued under [The Water Environment \(Controlled Activity\) \(Scotland\) Regulations 2011](#) ('CAR'), and the regulations preceding 2011 allow for the discharge from combined sewer overflows under specific conditions, such as heavy rainfall and/or snow melt within the drainage area. Beyond that, each instance would require to be investigated by the Regulator before it could be determined if it was illegal.
- 4.5 The motion requested details of how a timeline can be established for ongoing water quality monitoring and testing for Combined Sewer Overflow (CSO) discharges. This would not be an issue that Council services can take forward:
- 4.5.1 SEPA undertakes water quality monitoring as part of River Basin Management Plans for Scotland. Information for each year can be found in the [water classification hub](#).
- 4.5.2 River Basin Management Plans include the Water of Leith and River Almond. Bacterial testing is not included as these are not designated as bathing water or shellfish waters.
- 4.6 The motion requests details of what enforcement action can be taken against Scottish Water if they are found to have failed to comply with the CAR licence terms. This would be a matter for SEPA and some general information is provided below:
- 4.6.1 SEPA has a range of enforcement tools available and uses an [Enforcement Policy](#) and [Guidance on the Use of Enforcement Action](#) in its decision making. [The Lord Advocate's Guidelines to SEPA](#) also support its enforcement decision making.
- 4.7 The motion requests an update on the installation of various screens, chambers, pipeworks and monitors on 28 of Edinburgh's CSOs earmarked in the 'Improving Urban Waters Routemap':
- 4.7.1 Scottish Water produced its "Improving Urban Waters Routemap" and has committed to delivering a solution by the end of 2027, subject to adequate funding.
- 4.8 The motion requests any other relevant parallel activity from the Edinburgh and Lothians Strategic Drainage Partnership (ELSDP). SEPA is part of ELSDP, which is driving a strategic approach to water management in Edinburgh.

ESS response

- 4.9 The full response from ESS is attached at Appendix 5 and is summarised below. ESS is an independent oversight body whose main functions are to monitor and investigate public authorities' compliance with environmental law, the effectiveness of the law and how it is implemented and applied in Scotland.
- 4.11 ESS has looked in to alleged breaches of Waste Water Treatment Works licence conditions and the way SEPA implements its duties under CAR and completed an Informal Resolution Report setting out the relevant regulatory framework and SEPA's responsibilities in terms of enforcement.
- 4.12 ESS response to the letter sent by the Council explains that it is of the view that sewage-contaminated silt does not constitute illegal deposition of sewage solids.
- 4.13 ESS has undertaken work on sewage discharge into the aquatic environment, with a particular focus on discharges from storm overflows, including combined sewer overflows. ESS will publish a report in due course. ESS is also conducting work on threats to the marine environment and will shortly begin work on understanding water quality issues with an initial focus on Scotland's progress against River Basin Management Plan objectives.
- 4.14 ESS has completed a high-level summary of key published information about the current position, recent trends and performance and progress towards relevant targets and standards in the area of water in Scotland

Investigating Statutory Nuisance

- 4.15 Officers from the Council's Environmental Health Service make a subjective determination of what represents Statutory Nuisance and what would be more appropriately dealt with via civil action as a common law nuisance, or as a private matter under Section 82 of the Environmental Protection Act 1990. This means that not every complaint of nuisance made to the Council will be taken on as a case of statutory nuisance.
- 4.16 Matters which could constitute a Statutory Nuisance are defined in the Environmental Protection Act 1990. Scottish Government guidance sets out that the Statutory Nuisance regime and, unlike common law nuisance, a statutory nuisance must deal with harm to people, not property. Determining the existence of Statutory Nuisance must take certain factors into account, including: strength, frequency, persistence, nature, duration, locality, impact and time of occurrence. All of these factors must be considered when reaching a determination.
- 4.17 Officers investigated a complaint about water quality in the Water of Leith basin and considered it not to constitute Statutory Nuisance for the following reasons:
- 4.17.1 The circumstances at the river were concluded not to be a nuisance as it is not in a foul condition nor is it obstructed in terms of section 79(1) of the Environmental Protection Act 1990, and no statutory nuisance definitions were met (that is prejudicial to health or a nuisance);

4.17.2 No specific bacteriological standards are relevant to the water in the lower basins of the Water of Leith, as they are not bathing waters (as defined by the Bathing Waters (Scotland) Regulations 2008). As no specific bacteriological standards exist for the Water of Leith basin, any sample results are not relevant to determining whether a statutory nuisance exists (see paragraph 4.18 below); and

4.17.3 The presence of bacteria in river water or silt in the river would not result in the river being 'prejudicial to health'. It is not a bathing or recreational water, nor is it extracted for use as a drinking water.

4.18 The Council has no role in regulating water quality or discharge of sewage outwith the nuisance provisions in the Environmental Protection Act 1990. As such, when the Council has determined that there is no evidence of Statutory Nuisance conditions, officers would not serve an enforcement notice. It is important to note that the Act only provides the power to serve a notice to an inspector who has 'reasonable cause to believe' that a Statutory Nuisance exists.

4.19 For completeness, in the event of service of an enforcement notice, the Council would need to be able to satisfy itself that a Statutory Nuisance existed and be able to specify reasonable and practicable measures to abate the nuisance. Both elements must be satisfied in order to serve a notice. Further, in a situation where an activity is specifically regulated by another statutory regime - for example by SEPA - it would be highly unusual to issue a statutory nuisance notice when the issue could be managed within the licensed activity.

Portobello Central – July 2024

4.20 Members may be aware that since the motion (Appendix 1) was passed, an incident occurred regarding water quality at Portobello Central for a short period in July 2024. Council officers worked with SEPA to take appropriate action, and the issue was resolved. Water sampling at the site will continue throughout the bathing season as part of routine testing.

4.21 SEPA will continue to investigate any high bacterial results and will take action to tackle any pollution sources identified. The Chief Executive has asked that the Service Director for Operational Services and the Head of Regulatory Services meet with Scottish Water and SEPA following this incident.

5. Next Steps

5.1 The Service Director for Operational Services is attending the Water of Leith Basins Stakeholder Group on behalf of the Council.

5.2 SEPA is part of the ELSDP, which is driving a strategic approach to water management in Edinburgh. The Council is represented on that group by the Service Director for Operational Services, who will be able to advise members of the work

being taken forward in Edinburgh – noting that the Council’s focus is on the removal of detritus from CSOs and wider surface-water drainage.

- 5.2 The Chief Executive has agreed to discuss July’s Portobello incident with Scottish Water and SEPA.

6. Financial impact

- 6.1 There is no direct financial impact to the Council’s budget from this report

7. Equality and Poverty Impact

- 7.1 The report does not deal with issues directly relevant to these issues.

8. Climate and Nature Emergency Implications

- 8.1 Not applicable.

9. Risk, policy, compliance, governance and community impact

- 9.1 The Council’s approach to Statutory Nuisance contributes to the strategic priority to create good places to live and work in Edinburgh.
- 9.2 In relation to the Council’s powers under the Environmental Protection Act 1990, the exercise of powers to serve notice gives the person subject to the notice the right of appeal to the sheriff. Historically the Council has been subject to two appeals following notices served in relation to Seafield Waste Water Treatment Plant, albeit on matters unconnected to this report, and was unsuccessful in defending those notices at appeal.

10. Background reading/external references

- 10.1 [SEPA bathing water sample results at Portobello Central](#)

11. Appendices

- 11.1 Appendix 1 – Motion from meeting of City of Edinburgh Council on 8 February 2024.
- 11.2 Appendix 2 – Letter dated 22 May 2024 to Environmental Standards Scotland.
- 11.3 Appendix 3 – Letter dated 22 May 2024 to Scottish Environmental Protection Agency.
- 11.4 Appendix 4 – Letter dated 14 June 2024 from Environmental Standards Scotland.

11.5 Appendix 5 - Letter dated 5 July 2024 from Scottish Environmental Protection Agency.

Appendix 1

Decision

To approve the following adjusted Motion by Councillor Nols-McVey:

- 1) To note ongoing concerns around water quality in the Water of Leith basins, River Almond, and Figgate Burn basins.
- 2) To further note with concern that Surfers Against Sewage had identified high levels of dangerous bacteria in the Figgate Burn, causing contamination to a popular beach and swimming destination. Surfers Against Sewage had also claimed that there was no reporting of contamination caused by overflow pipes at beaches such as Portobello.
- 3) To note the Council's declaration of a Nature Emergency at its meeting of 9th February 2023, and the well-documented disbenefits for ecosystems and biodiversity of sewage in the waterways.
- 4) To also note the inextricable link between Scotland's sewage scandal and the climate emergency with extreme weather increasing the risk of sewage overflows, as seen in communities in Edinburgh.
- 5) To call on the Scottish Environmental Protection Agency (SEPA) and on Environmental Standards Scotland to carry out monitoring of water quality and report this data to the Council.
- 6) To request a report within 3 cycles including any information obtained through environmental agencies or obtainable by the Council's own services to test for sewage bacteria in the Water of Leith basins, River Almond, and Figgate Burn basins.

This report should outline:

- a) the outcome of bacterial testing in the Water of Leith basins, River Almond, and Figgate Burn basins, with current contamination levels
- b) whether the sewage-contaminated silt constitutes illegal deposition of sewage solids under Scottish Water's CAR licence.
- c) how a timeline can be established for ongoing water quality monitoring and testing for CSO discharges.
- d) what enforcement action can be taken against Scottish Water if they are found to have failed to comply with the CAR licence terms.
- e) an update on the installation of various screens, chambers, pipeworks and monitors on 28 of Edinburgh's CSOs earmarked in the 'Improving Urban Waters Routemap'.
- f) any other relevant parallel activity from the Edinburgh & Lothians Strategic Drainage Partnership

- 7) To further agree the report include information on the Council's complaints process regarding statutory nuisance using legal frameworks proactively to address community concerns and the investigatory process following complaints from the community.
- 8) To request the Convener of the Transport and Environment Committee write to the relevant Environment minister outlining support for a Clean Water Act, including upgrades to the Victorian sewage network and a clamp down on discharges, and with an ambition to ensure every CSO was monitored and a blue flag system which incentivised cleaner fresh water for all.

Environmental Standards Scotland

Date 22 May 2024

Our ref:

By email to enquiries@environmentalstandards.scot

Dear Sirs

**City of Edinburgh Council – 8 February 2024
Water Quality – Water of Leith, River Almond, Figgate Burn**

On 8 February 2024 the City of Edinburgh Council agreed a motion, the terms of which are set out in Appendix 1 below, with respect to water quality in the Water of Leith basins, River Almond, and Figgate Burn basins.

The motion asked the Council to note certain concerns raised by ‘Surfers Against Sewage’, the Council’s declaration of a Nature Emergency on 9 February 2023, and links with the climate emergency.

The terms of the motion then call on the Scottish Environmental Protection Agency (SEPA) and on Environmental Standards Scotland (ESS) to carry out monitoring of water quality and provide the data from that monitoring to the Council. This would enable Council officers to provide a further report to councillors in August 2024 which would outline:

- The outcome of bacterial testing in the Water of Leith basins, River Almond, and Figgate Burn basins, with current contamination levels;
- Whether the sewage-contaminated silt constitutes illegal deposition of sewage solids under Scottish Water’s CAR licence;
- How a timeline can be established for ongoing water quality monitoring and testing for CSO discharges;
- What enforcement action can be taken against Scottish Water if they are found to have failed to comply with the CAR licence terms;
- An update on the installation of various screens, chambers, pipeworks and monitors on 28 of Edinburgh’s CSOs earmarked in the ‘Improving Urban Waters Routemap’;
- Any other relevant parallel activity from the Edinburgh & Lothians Strategic Drainage Partnership.

In order to assist me in preparing the requested follow up report, I would be grateful if you could confirm whether it will be possible for ESS to provide the Council with the information outlined in the bullet points above.

Andrew Mitchell, Head of Regulatory Services, Directorate of Place

I would be very grateful for your assistance. Please do not hesitate to contact me on this matter if you feel a discussion would be helpful.

Yours faithfully

A handwritten signature in black ink that reads "A Mitchell". The signature is written in a cursive style with a large initial "A".

Andrew Mitchell
Head of Regulatory Services

Appendix 1

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Scottish Environmental Protection Agency

Date 22 May 2024

Our ref:

By email to contact@sepa.org.uk

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Andrew Mitchell
Head of Regulatory Services

Appendix 1

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Jamie McGrandles
Head of Investigations, Standards and
Compliance
Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

Jamie.McGrandles@environmentalstandards.scot

By e-mail

Andrew Mitchell
Head of Regulatory Services
City of Edinburgh Council

14 June 2024

Dear Mr Mitchell,

Request for information

Thank you for your letter of 22 May 2024 setting out the terms of the Council's motion of 8 February 2024. The motion calls for the Scottish Environment Protection Agency (SEPA) and Environmental Standards Scotland (ESS) to carry out monitoring of water quality and report this data to the Council.

It may be helpful at this point to explain the statutory role of ESS. ESS is an independent oversight body whose main functions are to monitor and investigating public authorities' compliance with environmental law, the effectiveness of the law and how it is implemented and applied in Scotland. The way in which ESS implements its functions is set out in our strategic plan ([Strategic Plan 2022-25 - Environmental Standards Scotland](#)). In summary, our work is guided by the representations we receive and the analytical priorities we identify.

We have received a number of representations which relate to, or touch upon, a number of the subjects within the bullet points in your letter. For example, we have looked into alleged breaches of Waste Water Treatment Works licence conditions and the way SEPA

Environmental Standards Scotland Enquiries

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
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implements its duties under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 ([Enforcement of Controlled Activities Regulations \(CAR\) Licences Informal Resolution Report - Environmental Standards Scotland](#)). Our report sets out the relevant regulatory framework and SEPA's responsibilities in terms of enforcement. We have also looked into whether sewage-contaminated silt constitutes illegal deposition of sewage solids. Although we did not issue a report on this (the representation was not taken any further), our view was that it did not.

In respect of our analytical priorities, we have undertaken work on sewage discharge into the aquatic environment, with a particular focus on discharges from storm overflows, including combined sewer overflows. We have prepared a report on our findings in this connection which will be published after the pre-election period. We are also conducting work on threats to the marine environment and will shortly begin work on understanding water quality issues with an initial focus on Scotland's progress against River Basin Management Plan objectives.

We also published a baseline evidence review in September 2022 which provides a high level summary of key published information about the current position, recent trends and performance and progress towards relevant targets and standards in the area of water in Scotland ([Baseline-Evidence-Review-Water-FINAL-20231025.pdf](#) ([environmentalstandards.scot](#))).

I hope this information is helpful to you. Please do not hesitate to contact me if you require any further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J McGrandles', with a stylized flourish at the end.

Jamie McGrandles
Head of Investigations, Standards and Compliance

Andrew Mitchell
Head of Regulatory Services
The City of Edinburgh Council
249 High Street
Edinburgh
EH1 1YG

Our Ref: 20240705CECWQ
Your Ref:

If emailing, mark FAO:
Katrina Wilson

5 July 2024

Dear Mr Mitchell

Water Quality – Water of Leith, River Almond, Figgate Burn

We write in response to your letter dated 22 May 2024, *Water Quality – Water of Leith, River Almond, Figgate Burn*, which provides the terms of the 9 February motion which calls on the Scottish Environment Protection Agency (SEPA) to carry out monitoring of water quality and provide data from that monitoring to the City of Edinburgh Council.

In December 2023 SEPA responded to a related enquiry from the City of Edinburgh Council, letter attached, providing details on Water Quality Impacts, Unsatisfactory Intermittent Discharge (UID) Improvements, and Monitoring & Publication of Data specifically in relation to Sewage Discharges in the City of Edinburgh Council Area.

In response to the bullet points in your letter:

- *The outcome of bacterial testing in the Water of Leith basins, River Almond, and Figgate Burn basins, with current contamination levels;*

SEPA carry out bacterial testing at each designated bathing water throughout the bathing season, from 1 June to 15 September, with a pre-season sample taken between 15 May and 31 May, the results of which can be found at SEPA's [Bathing Waters](#) pages. "Associated samples" are also taken from watercourses which could have an impact on a designated bathing water during this time.

Continued...



Chair
Lisa Tennant

CEO
Nicole Paterson

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SEPA
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Holytown
Motherwell
ML1 4WQ

Tel: 03000 99 66 99
www.sepa.org.uk

Mitchell
The City of Edinburgh Council
Edinburgh

5 July 2024

The Water of Leith and River Almond are not sampled as they are not associated with a bathing water, however the Figgate Burn is monitored in association with Portobello's Bathing Waters. The Figgate Burn results for May and June 2024 are as follows:

Location	Date	Time	Escherichia coli – E-Coli (EC)	Intestinal enterococci (IE)
Portobello @ Mouth of Figgate Burn, Edinburgh	05/06/2024	11:30	400 (EC)	<100 (IE)
Portobello @ Mouth of Figgate Burn, Edinburgh	15/05/2024	11:15	300 (EC)	<100 (IE)

Both Portobello bathing waters (Central and West) 2023 classifications met the necessary standard (sufficient) for the bathing water.

- *Whether the sewage-contaminated silt constitutes illegal deposition of sewage solids under Scottish Water's CAR licence;*

Sewer Network Licences issued under The Water Environment (Controlled Activity) (Scotland) Regulations 2011 (CAR), and the regulations preceding 2011, allow for the discharge from combined sewer overflows under specific conditions, such as heavy rainfall and/or snow melt within the drainage area.

- *How a timeline can be established for ongoing water quality monitoring and testing for CSO discharges;*

SEPA undertake water quality monitoring as one of the measures to determine the status of a waterbody, as part of the [River Basin Management Plans for Scotland](#). The overall status of a waterbody is determined using various factors, including water quality. The current overall status, and the water quality status, of a waterbody can be found in the [water environment hub](#). Information for each year since 2007 can be found in the [water classification hub](#).

The River Basin Management Plans include the Water of Leith and River Almond. Bacterial testing is not included as there is no impact on a designated bathing water or shellfish water.

- *What enforcement action can be taken against Scottish Water if they are found to have failed to comply with the CAR licence terms;*

SEPA has a range of enforcement tools available and use our [Enforcement Policy](#) and [Guidance on the use of Enforcement Action](#) in our decision making. [The Lord Advocate's Guidelines to SEPA](#) also supports our enforcement decision making.

Continued...

5 July 2024

Mitchell
The City of Edinburgh Council
Edinburgh

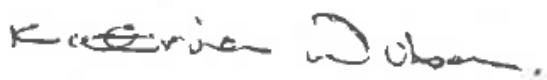
- *An update on the installation of various screens, chambers, pipeworks and monitors on 28 of Edinburgh's CSOs earmarked in the 'Improving Urban Waters Routemap'.*

Scottish Water produced their "[Improving Urban Waters Routemap](#)" and have committed to delivering solution by the end of 2027, subject to adequate funding. For the most recent and up-to-date information, contact them directly.

- *Any other relevant parallel activity from the Edinburgh & Lothians Strategic Drainage Partnership.*

SEPA is part of ELSDP, which is driving a strategic approach to water management in Edinburgh. The City of Edinburgh Council is represented on that group by Gareth Barwell, Director of Operational Services, who will be able to provide an update on the work being taken forward in Edinburgh – noting that the CEC focus is on the removal of detritus from CSOs and wider surface-water drainage. If you wish for a response on the CSO programme more widely, Scottish Water are best-placed to respond.

Yours sincerely



Katrina Wilson
Unit Manager – Environmental Performance

Enc: Letter – Sewage Discharges in City of Edinburgh Council Area dated 21 December 2023