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Don Staniford  
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Your ref: 202000021335  
Our ref:  
11 May 2020

Dear Don Staniford ,

## **REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)**

Thank you for your email and letter dated 17 March 2020 requesting information from us via the relevant FOI and Environmental Information regulations.

You asked,

"Please provide information on Imidacloprid (BMK08/Ectosan/D10 Aquatic Blast) including discharges and disposals via Benchmark's 'CleanTreat' since 2014. Background details on this FOI request are available online and attached as a PDF. Please therefore provide the information requested which may involved re-visiting previous FOI request."

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39 (2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances

of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

### Response to your request

While our aim is to provide information whenever possible, in this instance we are unable to provide the information you have requested because an exception under regulation 10(4)(a) (Information not held) of the EIRs applies to that information. The reasons why this exception applies is explained in the Annex to this letter.

### Your right to request a review

If you are unhappy with this response to your EIRs request, you may ask us to carry out an internal review of the response, by writing to The Director of Marine Scotland, Area 1B South, Victoria Quay, The Shore, Edinburgh, EH6 6QQ, or by emailing [Directormarinescotland@gov.scot](mailto:Directormarinescotland@gov.scot). Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.>

## **ANNEX**

### **REASON FOR NOT PROVIDING INFORMATION**

#### Exception applied

Under the terms of the exception at regulation 10(4)(a) of the EIRs (Information not held), the Scottish Government is not required to provide information which it does not have. The Scottish Government does not have the information you requested with regard to discharges and disposals via Benchmark's CleanTreat system in Scotland as no discharges or disposals have taken place. The Scottish Government does not have any further information relating to meetings with Benchmark with regard to Imidacloprid (BMK08/Ectosan/D10 Aquatic Blast) since your last requests on the 23 October 2019 (FoI/19/02443) and the 5 December 2019 (FoI/19/02626). The Scottish Government does not have marine discharge licences or similar documentation for the legal disposal of Imidacloprid as none have been issued by Marine Scotland.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about discharges to the Marine Environment, clearly we cannot provide information which we do not hold.



Yours sincerely

Kate Webb

**Business Casework Officer - Licensing Operations Team - Marine Planning & Policy**

