

Annex 1 – F0191198 - Formal Review – Findings and Formal Review Outcome

Question	Original response (F0190091)	Points raised by enquirer at Formal Review	Findings presented to Review Group	Outcome of Formal Review (F0191198)										
<p>[1.] Please provide information on the discharge of salmon farming well boats since 1 January 2018.</p> <p>[2] Please include details, maps, photos, grid references, licences and any other information relating to where, when, what and how salmon farming well boats discharge their effluents.</p> <p>[3.] For example, there is apparently a marked/ designated area off Oban where discharges take place. Please provide information relating to any designated places around Scotland where salmon farming well boats are permitted to discharge effluents.</p> <p>[4.] Please provide</p>	<p>Questions [1] – [5]</p> <p>We confirm that SEPA does not hold the requested information in 1-5 above. This information is therefore excepted under Regulation 10(4)(a) of the EIRs. The text of which is reproduced below;</p> <p>(4) A Scottish public authority may refuse to make environmental information available to the extent that;</p> <p>(a) it does not hold that information when an applicant's request is received.</p> <p>The exception in regulation 10(4)(a) is subject to the public interest test in regulation 10(1)(b) of the EIRs. As SEPA does not hold the information in question there is no conceivable public interest in requiring that the information be made available.</p> <p>Under the terms of Regulation 9 of the EIRs, SEPA has a duty to provide advice and assistance, we advise that well boats are licenced by Marine Scotland. In accordance with Regulation 14(1)(b) of the EIRs, we advise you to contact Marine Scotland directly for this information. The contact details are;</p> <p>Marine Scotland Mailpoint 11 1B South Victoria Quay, Edinburgh, EH6 6QQ marinescotland@gov.scot https://www.gov.scot/about/contact-information/how-to-request-information/</p>	<p><i>Please consider this a formal request for a review of F:0191091.</i></p> <p><i>Could you please double-check your response which seems clearly inadequate and incomplete?</i></p> <p><i>[Questions 1-5]</i></p> <p><i>Scottish Salmon Watch has huge difficulty in believing that SEPA does not have information in relation to points 1-5.</i></p> <p><i>For example, in the Scotland's Aquaculture database which Scottish Salmon Watch understands that SEPA has responsibility for it states that "NB This dataset does not include treatments carried out on wellboats. The full annual SPRI data returns inclusive of wellboat information can be found here": http://aquaculture.scotland.gov.uk/data/fish_farms_monthly_biomass_and_treatment_reports.aspx</i></p> <p><i>Sadly, SPRI data for 2018 is still not available (which is shocking in itself): https://www.sepa.org.uk/environment/environmental-data/spri/</i></p> <p><i>However, SEPA has surely inputted and accessed well boat data for 2017 (and perhaps for some or all of 2018) from Marine Scotland or other parties since 1 January 2018.</i></p> <p><i>More specifically, there would surely be correspondence with Marine Scotland, the Scottish Government and other parties in relation to well boat data as presented via Scotland's Aquaculture and/or the SPRI.</i></p> <p><i>Hence, please double-check your records and response to Scottish Salmon Watch's FOI dated 23 October 2019 which, inter alia, asked for:</i></p> <p><i>Please provide information in relation to what quantities of effluent are discharged - including any data on discharges of toxic chemicals, diseased waters and other materials.</i></p> <p><i>Please include any correspondence, emails, Cabinet Briefings, data, sampling results, testing and other information relating to salmon farming well boat discharges since 1 January 2018.</i></p> <p><i>[Question 6]</i></p> <p><i>Finally, in relation to SEPA's refusal to provide information on Benchmark's CleanTreat which SEPA admits to possessing "a</i></p>	<p>1. Scope of Formal Review</p> <p>The enquirer contacted SEPA on 11 November 2019 seeking a Formal Review of SEPA's failure to release information held by SEPA in a response to the request for information originally received on 23 October 2019.</p> <p>The issues considered in this Formal Review are outlined in the table below:</p> <table border="1" data-bbox="1478 516 2273 928"> <thead> <tr> <th>Question</th> <th>Issues considered in the Formal Review</th> </tr> </thead> <tbody> <tr> <td>Response to Questions 1 - 5</td> <td> <ul style="list-style-type: none"> Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. </td> </tr> <tr> <td>Response to Question 6</td> <td> <ul style="list-style-type: none"> Whether regulation 10(5)(f) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. </td> </tr> </tbody> </table> <p>2. Handling of the original request</p> <p>The Formal Review Officer reported that the original request contained six questions.</p> <p>Questions [1]-[5] related to information relating to wellboat discharges. Question [6] sought information on the Cleantreat treatment system.</p> <p>The response was sent to the enquirer on 11 November 2019.</p> <p>3. Findings</p> <table border="1" data-bbox="1478 1398 2309 1902"> <thead> <tr> <th>Issue</th> <th>Findings</th> </tr> </thead> <tbody> <tr> <td>1. Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information – Questions [1] – [5].</td> <td> <ul style="list-style-type: none"> The scope of regulation 10(4)(a) of the EIRs was considered in relation to the withheld information. <p>Questions [1], [4] and [5]</p> <ul style="list-style-type: none"> The Formal Review Officer reported that feedback was sought from colleagues regarding data on wellboat discharges submitted for SPRI. It was confirmed that SEPA <u>does hold data</u> on wellboat discharges for 2018 submitted by Marine Scotland for inclusion in SPRI. </td> </tr> </tbody> </table>	Question	Issues considered in the Formal Review	Response to Questions 1 - 5	<ul style="list-style-type: none"> Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. 	Response to Question 6	<ul style="list-style-type: none"> Whether regulation 10(5)(f) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. 	Issue	Findings	1. Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information – Questions [1] – [5].	<ul style="list-style-type: none"> The scope of regulation 10(4)(a) of the EIRs was considered in relation to the withheld information. <p>Questions [1], [4] and [5]</p> <ul style="list-style-type: none"> The Formal Review Officer reported that feedback was sought from colleagues regarding data on wellboat discharges submitted for SPRI. It was confirmed that SEPA <u>does hold data</u> on wellboat discharges for 2018 submitted by Marine Scotland for inclusion in SPRI. 	<p>The Group noted the points raised by the enquirer in his request for a Formal Review.</p> <p>The Group then considered the findings of the Formal Review.</p>
Question	Issues considered in the Formal Review													
Response to Questions 1 - 5	<ul style="list-style-type: none"> Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. 													
Response to Question 6	<ul style="list-style-type: none"> Whether regulation 10(5)(f) of the EIRs is applicable to the withheld information. Thereafter consider releasability of withheld information. 													
Issue	Findings													
1. Whether regulation 10(4)(a) of the EIRs is applicable to the withheld information – Questions [1] – [5].	<ul style="list-style-type: none"> The scope of regulation 10(4)(a) of the EIRs was considered in relation to the withheld information. <p>Questions [1], [4] and [5]</p> <ul style="list-style-type: none"> The Formal Review Officer reported that feedback was sought from colleagues regarding data on wellboat discharges submitted for SPRI. It was confirmed that SEPA <u>does hold data</u> on wellboat discharges for 2018 submitted by Marine Scotland for inclusion in SPRI. 													

Annex 1 – F0191198 - Formal Review – Findings and Formal Review Outcome

Question	Original response (F0190091)	Points raised by enquirer at Formal Review	Findings presented to Review Group		Outcome of Formal Review (F0191198)
<p>companies. Please include information relating to "high level talks to facilitate trials of the [CleanTreat] system in Scotland".</p>	<p>(f) the interests of the person who provided the information where that person- (i) was not under, and could not have been put under, any legal obligation to supply the information; (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and (iii) has not consented to its disclosure</p> <p>The release of the information in question would be likely to prejudice substantially the third party. The Public Interest Test was carried out in relation to the information to be withheld under Regulation 10(5)(f) of the EIRs. In this case, we recognise that Regulation 10(2)(b) requires SEPA to apply a presumption favour of disclosure. The public interest in favour of disclosure is outweighed by that in favour of withholding. Requests for such information are considered by SEPA on a case by case basis. In this case, it was determined that the public interest would not be served by the release of the information at this time.</p> <p>We confirm that SEPA has attended meetings with Benchmark on 9 October 2018, 11 April 2019, 30 May 2019, 20 September 2019 and 30 September 2019</p>			<p>used as the basis of a search of the Marine Scotland licence website.</p> <ul style="list-style-type: none"> • Recommendation that the exception under the terms of Regulation 10(4)(a) should be upheld in relation to Questions [2] and [3], as SEPA does not hold the requested information. <p><i>See further detail below.</i></p>	<p>[2] and [3], as SEPA does not hold the requested information.</p>
			<p>2. <i>Consideration of the applicability of the exception under the terms of regulation 10(5)(f) to the withheld information – Question [6].</i></p>	<ul style="list-style-type: none"> • The Formal Review Officer reported that the content of the collated information had been reviewed. It was noted that the information included correspondence received by SEPA, sent by SEPA and internal correspondence. • Recommendation that the exception under the terms of Regulation 10(5)(f) should not be upheld in relation to Question [6]. 	<p>The Group agreed with the recommendation that exception under the terms of Regulation 10(5)(f) should not be upheld in relation to Question [6].</p>
			<p>3. <i>Consideration of the applicability of the exception under the terms of regulation 10(5)(e) to the withheld information</i></p>	<ul style="list-style-type: none"> • The Formal Review Officer reported that 57 items had been collated in relation to Question [6]. • Feedback was sought from colleagues as to the nature of the collated information. • Feedback was sought and received from relevant third parties and considered during the Formal Review. • Recommendation that the exception at regulation 10(5)(e) of the EIRs should be applied to the collated information held by SEPA and that the information would continue to be withheld. • <i>See further detail below.</i> 	<p>The Group agreed with the recommendation that the exception at regulation 10(5) (e) of the EIRs should be applied to the collated information held by SEPA in relation to Question [6] and that the information would continue to be withheld.</p>
			<p><u>Information withheld and not released with this response</u></p> <p>We have identified information and documents that cannot be released into the public domain at this time. The table below outlines the types of information and the exception that is being applied. Further information on the</p>		

Annex 1 – F0191198 - Formal Review – Findings and Formal Review Outcome

Question	Original response (F0190091)	Points raised by enquirer at Formal Review	Findings presented to Review Group	Outcome of Formal Review (F0191198)									
			<p>reasons for withholding the information is provided below, with details of each exception.</p> <table border="1" data-bbox="1484 352 2264 657"> <thead> <tr> <th>Type of information</th> <th>Number of documents</th> <th>Outcome</th> </tr> </thead> <tbody> <tr> <td>A. Information relating to wellboat discharges - Questions [2] and [3].</td> <td>N/A</td> <td>Information not held Withheld under regulation 10(4)(a) of the EIRs</td> </tr> <tr> <td>B. Information relating to Cleantreat – Question [6].</td> <td>57</td> <td>Withheld in full under regulation 10(5)(e) of the EIRs</td> </tr> </tbody> </table> <p>Application of exceptions under the terms of the EIRs</p> <p><i>A. - Application of Regulation 10(4)(a) - Information not held – Questions [2] and [3].</i></p> <p>This disclosure of the information is excepted under Regulation 10(4) (a) of the EIRs. The text of which is reproduced below;</p> <p style="margin-left: 40px;">(4) A Scottish public authority may refuse to make environmental information available to the extent that;</p> <p style="margin-left: 80px;">(a) it does not hold that information when an applicant's request is received.</p> <p>The Formal Review Officer outlined the scope of exception at Regulation 10(4)(a) of the Environmental Information (Scotland) Regulations 2004.</p> <p>The detailed briefing prepared by the Office of the Scottish Information Commissioner was also consulted - http://itspublicknowledge.info/Law/FOISA-EIRsGuidance/EIRsexceptionbriefings/Regulation10(4)(a)Informationnotheld.aspx.</p> <p>The exception in regulation 10(4)(a) is subject to the public interest test in regulation 10(1)(b) of the EIRs. As SEPA does not hold the information in question there is no conceivable public interest in requiring that the information be made available.</p> <p>Recommendation that the exception under the terms of Regulation 10(4)(a) of the EIRs should be applied to the information requested in Questions [2] and [3].</p> <p><i>B. - Commercial interests – Regulation 10(5)(e) of the EIRs – Question 6</i></p> <p>Regulation 10(5)(e) states that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or</p>	Type of information	Number of documents	Outcome	A. Information relating to wellboat discharges - Questions [2] and [3].	N/A	Information not held Withheld under regulation 10(4)(a) of the EIRs	B. Information relating to Cleantreat – Question [6].	57	Withheld in full under regulation 10(5)(e) of the EIRs	
Type of information	Number of documents	Outcome											
A. Information relating to wellboat discharges - Questions [2] and [3].	N/A	Information not held Withheld under regulation 10(4)(a) of the EIRs											
B. Information relating to Cleantreat – Question [6].	57	Withheld in full under regulation 10(5)(e) of the EIRs											

Annex 1 – F0191198 - Formal Review – Findings and Formal Review Outcome

Question	Original response (F0190091]	<i>Points raised by enquirer at Formal Review</i>	Findings presented to Review Group	Outcome of Formal Review (F0191198)
			<p>industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.</p> <p>The Formal Review Officer outlined the scope of exception at Regulation 10(5) (e) of the Environmental Information (Scotland) Regulations 2004.</p> <p>The relevant section of the briefing prepared by the Office of the Scottish Information Commissioner was also consulted - http://itspublicknowledge.info/Law/EIRs/EIRsExceptions.aspx</p> <p>The Formal Review Officer reported on the tests set down by the Scottish Information Commissioner on the application of Regulation 10(5) (e) of the EIRs. It was confirmed that details of the specified treatment were not publicly available and that they were commercial in nature.</p> <p>Feedback had been sought from the third party who confirmed that disclosure of information would cause substantial prejudice to their commercial interests.</p> <p>In the specific circumstances of this request, SEPA considers that the release of the correspondence and documentation would cause a substantial prejudice to the commercial undertaking and economic interest. SEPA therefore contends that the public interest in the release of the information is outweighed by the public interest in maintaining the exception under the terms of Regulation 10(5)(e) of the EIRs</p> <p>Recommendation that information relating to the requested information should continue to be withheld, at this time, under the terms of Regulation 10(5) (e) of the Environmental Information (Scotland) Regulations 2004, after the application of the Public Interest Test, as noted above.</p>	