

Our ref: 05.0623

19 April 2024

Lorna Slater MSP
Minister for Green Skills, Circular Economy and Biodiversity
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

Sent by email only to: ministerforgsceb@gov.scot

Dear Ms Slater,

**Request for direction to SEPA to address incineration overcapacity
The Pollution Prevention and Control (Scotland) Regulations 2012**

We refer to the above, to the letter from Friends of the Earth Scotland to you dated 26 September 2023 and to your response by letter dated 30 October 2023. Copies of those letters are enclosed for ease of reference.

The letter of 26 September 2023 asked you to exercise the power under Regulation 60 of The Pollution Prevention and Control (Scotland) Regulations 2012 ('the 2012 Regulations') to direct SEPA to refuse PPC permits for new incinerators.

Your letter of 30 October 2023 did not directly respond to that request.

The purposes of this letter are twofold. First, we draw your attention to the worsening problem of incineration overcapacity. Second, we ask you to clearly confirm whether you are willing to exercise your power to direct SEPA to stop incineration overcapacity from increasing further.

Background – the incineration overcapacity problem

As explained in the letter of 26 September 2023, the independent review of the Role of Incineration in the Waste Hierarchy in Scotland 'Stop, Sort, Burn, Bury?' found that if all or most of the planned incineration capacity is built there is a risk of incineration overcapacity from 2026 or 2027.



The review found that the Scottish Ministers should limit further development of incineration capacity, and recommended the development of an indicative cap for the amount of residual waste treatment needed that declines over time.

Although the Scottish Ministers have acted to prevent new incinerators from being granted planning permission, that 'planning moratorium' is not sufficient by itself to prevent incineration capacity from increasing.

Incineration overcapacity is increasing from the expansion of capacity at incinerators which are currently in operation, and is at risk of increasing further from incinerators which already have planning permission but have not yet been built or started operating.

We understand that several incinerator projects have obtained planning permission but have not yet obtained PPC permits from SEPA and would together amount to an additional 956,000 tonnes per annum ('tpa') of incineration capacity:

- Avondale (176,000 tpa).
- Glenfarg (85,000 tpa).
- Oldhall (180,000 tpa).
- Inverurie (200,000 tpa).
- Levenseat 2 (315,000 tpa).

To illustrate the problem of the expanding capacity of existing incinerators, on 28 July 2023 SEPA granted a variation to PPC permit for the incinerator at Dunbar operated by Viridor Dunbar Waste Services Limited (PPC permit reference: PPC/A/1032878/CP01). The permit for that incinerator was varied to increase its annual capacity from 325,000 tpa to 390,000 tpa (i.e. by 65,000 tpa or ~22%).

We further note that, since the modelling work was carried out in April 2022 by Ricardo for the independent review, construction work has commenced on new incinerators at Oldhall, South Clyde and Drumgray.

This trend towards increasing incineration capacity is reflected in the most recent waste data for Scotland which shows a significant annual increase in waste being 'treated' by incineration. SEPA's March 2024, 'Scottish Waste From All Sources 2022' report states that, "The amount of Scottish



waste recovered or disposed of by incineration in 2022 was 1.40 million tonnes, an increase of 108,000 tonnes (8.3%) from 2021”.¹

The above demonstrates that the level of incineration capacity (both currently operational and planned) is already significantly higher than that which was considered by the independent review that warned of an overcapacity problem.

You will be aware that on 4 April 2024 the UK Government directed the Environment Agency to pause the determination of waste incineration environmental permits. The legal powers under which that direction was made are similar to those which apply in Scotland. The 4 April 2024 letter from DEFRA to the Environment Agency which accompanied the direction explains that it was made in the context of concerns over further expanding England’s waste incineration capacity. Copies of the direction and the letter are enclosed.

Without a similar intervention from you, it is very likely that SEPA will grant permits to new incinerators and will continue to vary existing permits. New permits and permit variations will worsen the incineration overcapacity problem. SEPA’s approach to incineration permitting is at odds with Scottish Government policy and requires ministerial intervention as a matter of urgency.

Request for direction to SEPA to address incineration overcapacity

It is imperative that you direct SEPA to stop exercising its powers under the 2012 Regulations in ways which increase incineration capacity. In particular, we ask that you direct SEPA to both refuse to grant PPC permits for new incinerators and to ensure that existing PPC permits cannot be varied to increase incineration capacity for any incinerators which are currently in operation or are already permitted.

The need for the direction to remain in place could be reviewed after the establishment of an indicative cap on residual waste treatment.

In your 19 December 2023 answer to a written parliamentary question from Mark Ruskell MSP, you accepted that the Scottish Ministers have the power to issue a direction to SEPA in the manner requested by Friends of the Earth Scotland.²

Your answer expressed a reluctance to intervene “in the absence of exceptional circumstances”. You will be aware that there is no legal basis in the 2012 Regulations for the proposition that exceptional circumstances are required in order for the Scottish Ministers to exercise the Regulation 60 power.

¹ SEPA, ‘[Scottish Waste From All Sources Generated and Managed – 2022](#)’ (2024), page 2.

² Question reference S6W-23750. The full text of the question and answer are available at <https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S6W-23750> (accessed 12 March 2024).



In any event, our view is that the incineration overcapacity problem detailed in this letter amounts to exceptional circumstances which necessitate a direction.

We would be grateful if you could please confirm **by no later than Friday 3 May 2024** that you will direct SEPA in the terms requested above.

In the event that you are not minded to direct SEPA as requested, please provide reasons to explain your position.

Please note that if you refuse to direct SEPA as requested, we will refer this matter to Environmental Standards Scotland on the basis that the above represents an instance of environmental law which does not effectively protect human health or the environment. We will ask Environmental Standards Scotland to issue the Scottish Ministers with an improvement report using their powers under Section 26 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. That process is likely to generate significant adverse publicity for the Scottish Ministers.

We look forward to hearing from you.

Yours sincerely,

Ben Christman, In-house solicitor, Environmental Rights Centre for Scotland
Shlomo Downen, National Coordinator, The UK Without Incineration Network