Citizen Participation and Public Petitions Committee
Wednesday 13 November 2024
17th Meeting, 2024 (Session 6)

PE2117: Ban the use of toxic chemicals along our coasts

Introduction

Petitioner	Bruce Whitehead
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to ban the use of any chemical labelled "very toxic to aquatic life with long lasting effects" or carrying the "Dead Fish" pictogram graphic, on coastal jetties or slipways.
Webpage	https://petitions.parliament.scot/petitions/PE2117

1. This is a new petition that was lodged on 16 September 2024.

2. A full summary of this petition and its aims can be found at **Annexe A**.

3. A SPICe briefing has been prepared to inform the Committee's consideration of the petition and can be found at **Annexe B**.

4. Every petition collects signatures while it remains under consideration. At the time of writing, 36 signatures have been received on this petition.

5. The Committee seeks views from the Scottish Government on all new petitions before they are formally considered.

6. The Committee has received submissions from the Scottish Government and the Petitioner which are set out in **Annexe C** of this paper.

Action

7. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
November 2024

Annexe A: Summary of petition

PE2117: Ban the use of toxic chemicals along our coasts

Petitioner

Bruce Whitehead

Date Lodged

16 September 2024

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ban the use of any chemical labelled "very toxic to aquatic life with long lasting effects" or carrying the "Dead Fish" pictogram graphic, on coastal jetties or slipways.

Background information

The Scottish Environmental Protection Agency currently licenses these chemicals to kill seaweed on jetties and slipways. In 2022 I discovered Edinburgh council was using a product labelled as "very toxic to aquatic life with lasting effects" to kill seaweed in South Queensferry. The council argued that the practice is required to reduce the slip risk for cruise ship passengers, a lucrative revenue source.

The product is banned by the Royal Yachting Association. When I notified the council they thanked me and promised to replace the chemical with a safe alternative.

This year I discovered that the replacement, sodium hypochlorite, has very similar labelling and both carry the "Dead Fish" pictogram graphic.

Sodium hypochlorite is also labelled:

"causes severe skin burns and eye damage"
"may be corrosive to metals"
"contact with acids liberates toxic gas"

A ban is required because SEPA should not be licensing toxic products.

N.B. the Committee should therefore not take advice from SEPA on this matter.

Annexe B: SPICe briefing on PE2117

Introduction

The petitioner is calling on the Scottish Parliament to urge the Scottish Government to ban the use, on coastal jetties or slipways, of any chemical labelled "very toxic to aquatic life with long lasting effects" or carrying the "Dead Fish" pictogram. The petitioner raises concerns that the Scottish Environmental Protection Agency (SEPA) is licensing the use of sodium hypochlorite by the local authority to kill seaweed on jetties and slipways in South Queensferry to reduce slip risk. The petitioner states that this product is labelled as "very toxic to aquatic life with lasting effects".

SEPA regulatory functions – 'CAR regime'

SEPA is Scotland's main environmental regulator for the water environment and pollution. The key legal framework in Scotland for protecting the water environment is provided by the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended), or 'CAR regime'. The framework covers both direct discharges into the water environment or where there is a risk of diffuse pollution from activities on land.

Under the CAR regime, SEPA risk assesses proposed activities before granting, if appropriate, an authorisation. The type of authorisation required depends on the environmental risk of the proposed activity. There are different levels of control:

- General Binding Rules: a set of mandatory rules which cover specific low risk activities, but no specific authorisation, or registration of the activity with SEPA, is required.
- Registration: for small-scale activities that individually are considered to pose low environmental risk but, cumulatively, can result in greater environmental risk. Operators must apply to SEPA to register these activities.
- A 'simple' licence or 'complex' licence: which must be granted by SEPA, allowing for site-specific conditions to be set to protect the water environment from activities that pose a higher risk. Licences can cover linked activities on several sites over a wide area, as well as single or multiple activities on a single site.

The SEPA CAR Practical Guide sets out the level of authorisation required for different activities in more detail. This includes what level of authorisation is required when chemicals are used in close proximity to the water environment e.g. coastal waters, versus being directly released to the water environment.

Approval and labelling of chemicals (GB-wide)

The regulation of chemicals is a complex area. For the purposes of environmental protection, waste management and public health this is a devolved issue, with significant overlaps with reserved areas - particularly animal testing, product standards and labelling (with some exceptions) and health and safety in the workplace.

Chemicals are generally approved for use under GB-wide regimes that replaced centralised EU frameworks post EU-exit. The principal regulatory frameworks are UK REACH and the GB Biocidal Regulation, both of which are overseen by the Health and Safety Executive (HSE). Other Regulations include the Control of Pesticides Regulations (COPR), relevant here as the petitioner raises concerns about use of an algicide as an anti-fouling product, which would require to be first approved under the COPR.

Product labelling is a reserved matter, with some exceptions in relation to food, agricultural and fish products. The Classification, Labelling and Packaging (CLP) of substances and mixtures Regulation seeks to ensure consistent labelling of chemicals including in relation to key environmental risk, hazard and safety data. The CLP Regulation (part of assimilated EU law) is based on a global system, adopting the UN Globally Harmonized System of the classification and labelling of chemicals (GHS). The HSE is the relevant agency overseeing GB CLP functions for substances on the GB market.

The UN GHS addresses classification of chemicals by types of hazard and harmonised hazard communication. This includes requirements to label products with short and long-term aquatic hazards i.e. from “harmful to aquatic life” through to “very toxic to aquatic life with long-lasting effects” (see chapter 4.1 of the UN GHS guidance). The GHS also covers when products should come with a “warning” or “danger” label and where a hazard ‘pictogram’ should be displayed (see HSE webpage for pictograms used, including the ‘environment’ hazard pictogram referred to by the petitioner). The UN GHS in itself is advisory - the details of when hazard pictograms must be displayed are set out in the CLP Regulation.

NB/ The classification of a substance does not in itself restrict or control the use or supply of that substance. It would be up to SEPA (under the CAR regime) to assess the risk to the environment associated with approved chemicals bearing any such labels or pictograms.

Authorisation of use sodium hypochlorite by SEPA highlighted by the petitioner

Sodium hypochlorite is toxic to aquatic organisms. The specific level of hazard will depend on the product and concentration, which would be approved and labelled according to the systems above. It is also highly reactive with organic matter in the environment (producing chlorine – sodium hypochlorite is a major ingredient in household bleach).

SEPA has issued a CAR registration to the City of Edinburgh Council for "the application of a product containing sodium hypochlorite onto land near to the water environment". The registration specifies the locations (two piers in South Queensferry) and method of application (low mounted spray bar on a road sweeper with the edges of the pier manually applied) covered and specifies that use will be limited to ten applications per year. The registration covers use of an 'algae inhibitor', defined as "A solution containing up to 10% sodium hypochlorite as the only active ingredient".

The CAR practical guide sets out that registration activities under CAR (i.e. not requiring a licence) can include:

> "The application of pesticides, which are plant protection products within 1 metre of any river, burn, ditch or loch, as measured from the top of the bank; within 1 metre of a wetland; or within 1 metre of any transitional water or coastal water as measured from the shoreline where:
>
> 1. The treated plants are not invasive species outwith their native range
> 2. No pesticide will enter the river, burn, ditch, wetland, loch, transitional water or coastal water."

The petitioner has previously raised concerns with SEPA that sodium hypochlorite is entering coastal waters in relation to this authorisation. This was dealt with as a complaint which was not upheld (responded to in May 2024). SEPA said it was satisfied that the City of Edinburgh Council is not using an algae inhibitor in excess of that authorised, with the inhibitor applied once per month from April to September during 2023, and the City of Edinburgh Council have advised SEPA that algae inhibitor is not applied when rain is forecast (and is applied as the tide is outgoing).

Alexa Morrison, Senior Researcher
21 October 2024

Published by the Scottish Parliament Information Centre (SPICe), an office of the Scottish Parliamentary Corporate Body, The Scottish Parliament, Edinburgh, EH99 1SP

Annexe C: Written submissions

Scottish Government written submission, 10 October 2024

PE2117/A: Ban the use of toxic chemicals along our coasts

I am writing to you to set out for the Committee the Scottish Government's initial views, as agreed by the Cabinet Secretary for Net Zero and Energy, on the petition that was published on 16 September 2024 (PE2117: Ban the use of toxic chemicals along our coasts) and that is currently under consideration.

Scottish Government considers this to be a regulatory matter. A rigorous GB regulatory framework is in place to prevent or minimise harm to people and wildlife from the use of biocides (pesticides used for purposes other than the protection of crops) where these are used in amenity settings and used according to instructions provided with the product's authorisation (and, in this case, in accordance with the Scottish Environment Protection Agency's permitting regime). This regulatory framework reflects both reserved and devolved competence (see appendix). With this robust framework in place, in this case, we do not believe there is a role for the Government or a reason for Scottish Ministers to intervene.

The petition calls for all chemicals with specific labelling to be banned from use on coastal jetties or slipways. Labelling reflects the intrinsic properties of a substance or chemical product in isolation. It is not the only factor in understanding the risk a product may pose for people or wildlife. "Risk" is based on the combination of intrinsic properties and a relevant receptor's exposure to the product; here, relevant receptors (also called "non-target organisms") are aquatic organisms that might be exposed to the product. The product Algae Remover Concentrate contains 6.9% of the active ingredient sodium hypochlorite (the same active ingredient as is found in household bleach) and 93.1% water. It has been authorised as safe for this use under relevant GB legislation by the Health and Safety Executive (HSE), acting as competent authority on behalf of Scottish Ministers. This authorisation requires the user to follow conditions of use that mean exposure to "non-target organisms" remains low enough to prevent such organisms from being placed at risk.

SEPA also permit the activity under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR; see annex for further information) which in practice means these conditions of use should be enforced at the product's site of use. This particular activity is considered by SEPA to be low risk so falls under the registration duty under CAR. This requires the operator to follow the schedule issued by the (HSE) under which the product's GB approval for use as a biocide has been granted. The schedule indicates 'Harbour Slipways and Piers' as areas of suitable use. It sets out the name and formulation of the product, the content as well as the method and rate of application. Details of the schedule (No 9815) are attached separately with this letter.

I hope the Committee will find this information useful in relation to this petition, and I am happy to provide further information if required in advance of its consideration.

Environmental Quality and Resilience Division

Appendix

Further information on classification and labelling

The labelling "very toxic to aquatic life with long lasting effects" and associated "Dead Fish" pictogram come from requirements of the GB Classification, labelling and Packaging Regulation. This is reserved legislation that encompasses devolved interests (environmental protection and public health). To recognise this, decisions on classifications and other decisions resulting from the legislation are subject to the consent of Devolved Government Ministers. Under this regulation, any chemical product placed on the GB market must be labelled according to its classification which is based on the product's intrinsic hazardous properties. The results of (generally laboratory) toxicity testing, undertaken for the purposes of marketing chemical products under other Regulations, is used for this classification and covers physical hazards and toxicity hazards for people and the environment. This classification relates to the intrinsic properties of the product. It is designed to work in concert with instructions for safe use of the product. Classification and associated warning labels guide the user on how to use a product safely, for example to wear gloves or dilute a spent product before releasing it to drain.

Further information on biocide authorisations

Products marketed as biocides will usually include classifications reflecting a product's hazards for the environment because these products usually have inherent toxicity, whereby their "active ingredient" is designed to give the product its ability to kill or control the "target organism".

Under relevant legislation (which again is reserved but includes devolved aspects such that decisions are subject to the consent of Devolved Government Ministers) the HSE, acting as competent authority on behalf of Scottish Ministers, evaluates pesticidal product for specific uses, where the "applicant" (supplier or manufacturer) must demonstrate that the use they have applied for authorisation for does not present a risk to "non-target organisms" or people. If this cannot be demonstrated, then either conditions of use must be applied to reduce the level of risk to acceptable levels, or the product cannot be authorised for use. In this case I note that the product has been authorised for use on jetties and slipways until December 2024.

Further information on Water Regulation

The European Community (EC)'s Water Framework Directive (WFD) was transposed in Scotland by primary legislation by way of the Water Environment and Water Services (Scotland) Act 2003 (WEWS Act).

The Water Environment and Water Services Act (Scotland) 2003 (WEWS) gave Ministers powers to introduce regulatory controls over activities in order to protect and improve the water environment.

The water environment includes:

- groundwater,
- wetlands (directly associated with surface and groundwater bodies);
- rivers;
- lochs;
- transitional waters (estuaries and saline lagoons); and
- coastal waters (3nm from territorial baseline).

WEWS defines the purpose of the regimes and therefore provides the basis of interpreting the powers in the Water Environment (Controlled Activities) (Scotland) Regulations 2011 – more commonly known as the Controlled Activity Regulations (CAR) – that apply regulatory controls over the following activities which may affect Scotland's water environment.

The CAR regulations enable the Scottish Environment Protection Agency (SEPA) to implement the objectives of the Water Framework Directive, and provide in effect a framework for the protection of the water environment in Scotland. The framework introduced flexible, proportionate and risk-based controls over abstraction, discharges, impoundment and building, engineering and other works that impact on the physical quality of aquatic habitats.

In short, they represent a fundamental step to ensuring effective protection and improvement of the water environment, whilst at the same time, reducing the regulatory burden on Scotland's business community.

In order to ensure proportionate risk-based controls over activities that may affect the water environment, the regulations provide for three levels of CAR authorisation:

- General Binding Rules (GBRs)
- Registrations
- Licences

General Binding Rules

GBRs represent a set of mandatory rules which cover specific low risk activities. Activities complying with the rules do not require an application to be made to SEPA, as compliance with a GBR is considered to be compliant with an authorisation and protective of the environment. SEPA uses its statutory role in the land use planning system to highlight GBRs that may apply to a given proposal.

Registrations

These allow for the registration of small-scale activities that individually pose low environmental risk but, cumulatively, can result in greater environmental risk. Operators must apply to SEPA to register these activities. A registration will include details of the scale of the activity and its location, and there will be a number of conditions that must be complied with.

Licences

These allow for site-specific conditions to be set to protect the water environment from activities that pose a higher risk. Licences can cover linked activities on several sites over a wide area, as well as single or multiple activities on a single site.

Petitioner written submission, 30 October 2024

PE2117/B: Ban the use of toxic chemicals along our coasts

I submitted this petition because I became concerned as a resident about the frequent spraying of toxic chemicals on the Hawes Pier.

My specific complaint is that although SEPA has granted a permit for use of these chemicals I believe that it has failed to enforce the Conditions of the Permit as follows:

1. The permit requires application to be via a "Low mounted spray bar on a road sweeper with the edges of the pier being manually applied for greater control"

In fact, the spraying is done manually by workers who constantly spill it over the pier edge into the river. This contravenes this condition of the permit. (I have previously submitted photographic evidence of this but these are not accepted from petitioners)

2. The permit requires that "The application of the Algae Inhibitor must be at the authorised location and must not enter *any river*, burn, ditch, wetland, loch transitional water *or coastal water*.

The spraying is done on the Hawes Pier which slopes into the *coastal* estuary of the *River* Forth; this contravenes 2 of the permit's conditions.

3. The permit states that "Algae Inhibitor must not be applied:

a) during rainfall;

b) if heavy rain is forecast within 24 hours; or

c) during conditions when there is a risk that spray will be blown outwith the area to be treated."

I have evidence that all 3 of these conditions were breached

Any challenges and solutions:

The **challenge** is to allow safe embarkation of cruise passengers and other pier users aboard vessels visiting the pier, with due regard to the right to a healthy and peaceful environment for residents, and to the protection of the local ecology. The application of toxic chemicals cannot easily be proven safe for aquatic life. A project to re-introduce the native oyster to the Forth fishery is currently being carried out by Heriot-Watt University. The council must prove beyond any doubt that the toxic chemicals being applied cannot threaten the success of this initiative.

A **solution** for centuries for those using maritime structures to board vessels is gangways, duckboards and rubber matting to cross slippery algae and seaweed, which can all be deployed quickly and cheaply, without any risk to the environment.

Whether the petition is realistic:

This is a subjective point! I firmly believe the Council is ignoring the impact of its careless approach to the challenge, and should listen to this sensible alternative.

Other work that might be happening to address the petition:

I am not aware of any other work underway.

I am happy to appear before the Committee and to provide the evidence detailed above.