



F0191802 FORMAL REVIEW OF F0191735

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A. Original Request and Response

Timeline Related Requests

Date	Status
17/03/2020	EIR Request F0191735 received (statutory deadline 15/04/2020)
18/03/2020	EIR Request F0191735 acknowledged
23/03/2020	COVID status update
15/04/2020	EIR Request F0191735 response issued
17/04/2020	Formal Review Request: F0191802

Requested Information F0191735

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 here - and attached as a PDF.

Please therefore provide the information requested which may involve re-visiting previous FOI requests. Please consider this a formal request for information via the relevant FOI and Environmental Information regulations. Please provide the information electronically and/or online. Please provide a receipt of this FOI request.

Original Response F0191735

Imidacloprid

I can confirm that SEPA does not hold information relating to Imidacloprid. Under Regulation 9 of the EIRs SEPA has a duty to advise and assist. Please be advised that Imidacloprid is not included in any marine pen fish farm licences nor is it included in any freshwater fish farm licences.

BMK08/Ectosan/CleanTreat

I can confirm that SEPA does not hold any further information relating to BMK08, Ectosan, or discharges and disposals via Benchmark's 'CleanTreat' since 2014. Under Regulation 9 of the EIRs SEPA has a duty to advise and assist. Please be advised that all SEPA information in relation to BMK08, Ectosan or CleanTreat has been considered, and where appropriate released, on the SEPA disclosure log with the following reference numbers:

- F0190619
- F0190072
- F0191311
- F0191380
- F0191595
- F0191465

D10 Aquatic Blast

I can confirm that SEPA does not hold information relating to D10 Aquatic Blast.

B. Points raised by requester at Formal Review

Please consider this a formal request for a review of F0191735. Scottish Salmon Watch's FOI request dated 17 March 2020 is available online via: [link](#) SEPA's FOI refusal dated 15 April 2020 is online via: [link](#) Scottish Salmon Watch asks SEPA to revisit the blanket refusal to disclose information on Imidacloprid; namely:

Response

Imidacloprid

I can confirm that SEPA does not hold information relating to Imidacloprid. Under Regulation 9 of the EIRs SEPA has a duty to advise and assist. Please be advised that Imidacloprid is not included in any marine pen fish farm licences nor is it included in any freshwater fish farm licences.

It is simply unbelievable that "SEPA does not hold information relating to Imidacloprid". Is SEPA seriously suggesting that the first time it knew about Imidacloprid was when contacted by Rob Edwards for The Ferret's article on 17 March 2020? [link](#) And when Scottish Salmon Watch issued a press release naming BMK08/Ectosan as Imidacloprid on 17 March 2020? [link](#)

It beggars belief SEPA were not briefed by Benchmark on Imidacloprid and not told several years ago that Ectosan (re-named BMK08 in 2019) was Imidacloprid?

SEPA's FOI refusal dated 15 April 2020 indicates, wrongly as far as Scottish Salmon Watch believes, that SEPA did not know that BMK08/Ectosan was Imidacloprid. Surely SEPA were in possession of documents, data, emails and other information in relation to Imidacloprid use by Benchmark and salmon farming companies in Scotland and Norway?

Surely SEPA has information on file in relation to Imidacloprid? Surely SEPA were told verbally and discussed the matter internally either using the name Imidacloprid or the code name BMK08 or Ectosan? To deny the existence of any information at all on Imidacloprid appears unreasonable. Hence this formal review request.

Finally, SEPA's FOI refusal dated 15 April 2020 claimed that "all SEPA information in relation to BMK08, Ectosan or CleanTreat has been considered, and where appropriate, released" via various FOI requests or review requests including these in 2020.

F0191311	BMK08 & Ectosan	07/01/2020
F0191380	Discharges from Well Boats	27/01/2020
F0191465	Formal Review of F0191380 CleanTreat	24/02/2020
F0191595	Formal Review of F0191311 BK08 and Ectosan	13/03/2020

However, is SEPA suggesting that zero information has become available since the FOI request on 7 January 2020? i.e. is SEPA seriously suggesting that Benchmark has not in contact recently in relation to BMK08/Ectosan/Imidacloprid?

If so, then SEPA is incorrect in claiming that "SEPA does not hold any further information relating to BMK08, Ectosan or discharges and disposals via Benchmark's 'CleanTreat' since 2014".

Please therefore review the FOI request and provide the information requested.

C. Scope of Formal Review F0191802

The requester contacted SEPA on 17 April 2020 seeking a Formal Review of F0191735. In line with the Environmental Information (Scotland) Regulations (EIRs) 2004 process a Formal Review was initiated. Acknowledgement of the Formal Review was provided 17 April 2020.

Formal Review F0191802 findings will address:

- The handling of the original request
- The information provided by SEPA
- The application of regulations/exceptions to the response

Review Officer Comments

- **The Review Officer noted the points raised by the requester in their request for a Formal Review.**
- **The Review Officer noted that the scope of the Formal Review is limited to the release of recorded information under the under the terms of the Environmental Information (Scotland) Regulations 2004 (EIRs).**
- **The Review Officer then considered the findings of the Formal Review.**

D. Findings

1. Handling of the original request

It was reported that the requester sought information, on 17 March 2020, relating to Imidacloprid; BMK08; Ectosan; D10 Aquatic Blast; and CleanTreat. A response was provided 15 April 2020 meeting the statutory deadline. SEPA's duties under Regulation 5(1) of the EIRs to provide a response "as soon as possible and in any event no later than 20 working days" were met.

Review Officer Comments

- **The Review Officer confirmed that the handling of the original request met the requirements of Regulation 5(1) of the EIRs.**

2. Information Provided by SEPA

The Review officer considered the points raised by the requester at Formal Review; the original response to F0191735; interviewed SEPA staff across Aquaculture; and conducted further searches of SEPA recorded information to assess the information provided F019735.

Imidacloprid

The Review Officer's investigation confirmed that SEPA does not hold information on Imidacloprid including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020. The Review Officer confirmed that Imidacloprid is not listed on any fish farm permit.

CleanTreat

The Review Officer's investigation confirmed that SEPA does not hold any further information relating to discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020. This information already having been released under the following

reference numbers: F0190619; F0190072; F0191311 & Formal Review F0191595; and F0191380 & Formal Review F0191465. The Review Officer noted that further review of the decisions made in these request is out of scope of this Formal Review.

BMK08/Ectosan

The Review Officer's investigation reviewed two documents received by SEPA between 07 January 2020 and the date of receipt of this request, 17 March 2020, in scope of the request F0191735 relating to Ectosan/BKM08. These documents were provided to the SEPA Access to Information Team shortly before the deadline to respond to F0191735.

The Review Officer reported that the Access to Information Team raised concerns regarding the release of these documents. These concerns centred on issues of commercial confidentiality and the lack of time to consult the relevant third party. Considering these concerns the Access to Information Team should have provided a partial response to the requester highlighting that additional time was required to make a decision on these two documents and apologising for failing to fully meet the requirements of Regulation 5(1) of the EIRs.

The Access to Information Team failed to update the draft response to reflect this development resulting in the incorrect application of *Regulation 10(4)(a) – Information not held*. The Review Officer's investigation concluded that the Access to Information Team's processing of these two documents fell short of the standards a requester should expect and recommended an unreserved apology be issued to the requester.

As part of this Formal Review the Review Officer examined the two documents to make a balanced and considered release decision. The Review Officer acknowledged that the concerns of the Access to Information Team were valid and warranted consideration but that in this instance the threshold for application of *Regulation 10(5)(e) - Confidentiality of commercial or industrial information* is not met. The Review Officer recommended the release of these documents, subject to redactions for personal data.

Document	Title	Comments
Email	Ectosan Sea Lice treatment trial_Ardnish (Loch Ailort)	From MOWI to SEPA Received 10 March 2020
Attachment	Ectosan Trial_Ardnish	Letter from MOWI to SEPA

D10 Aquatic Blast

The Review Officer's investigation confirmed that SEPA does not hold information relating to D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.

Review Officer Comments

- **The Review Officer confirmed that the search of SEPA recorded information was comprehensive.**
- **The Review Officer identified a processing failure by the SEPA Access to Information Team resulting in the incorrect application of Regulation 10(4)(a) – Information not held to information related to Ectosan/BMK08.**

- The Review Officer recommended that an unreserved apology be issued to the requester for the processing failures that occurred during F0191735.
- The Review Officer considered and recommended the release, subject to redactions for personal data, of two documents relating to Ectosan/BMK08: Ectosan Sea Lice treatment trial Ardnish (Loch Ailort) and Ectosan Trial Ardnish.
- The Review Officer confirmed that there is no further information relating to Imidacloprid, CleanTreat and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.

3. Application of Regulations/Exceptions

3.1 Applying Environmental Information (Scotland) Regulations 2004 - Section 39(2)

It was reported that the exemption under Section 39(2) of the Freedom of Information (Scotland) Act 2002 was applied due to the environmental nature of the information requested. As a result the request was handled under Environmental Information (Scotland) Regulations 2004 (EIRs). It was asserted that in this case the public interest in maintaining this exemption and in dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Review Officer Comments

- **The Review Officer recommended that the exception under Section 39(2) of the Freedom of Information (Scotland) Act be upheld.**

3.2 Information publically available 6(1)(b)

The Review Officer noted that regulation 6(1)(b) should have been applied in providing reference to SEPA information in relation to BMK08, Ectosan or CleanTreat already released on the [SEPA disclosure log](#) under the following reference numbers: F0190619; F0190072; F0191311; F0191380; F0191595; F0191465. The text of the Environmental Information (Scotland) Regulations 2004 section 6(1) (b) is reproduced below;-

6(1) Where an applicant requests that environmental information be made available in a particular form or form at, a Scottish public authority shall comply with that request unless-

(b) the information is already publicly available and easily accessible to the applicant in another form or format.

Review Officer Comments

- **The Review Officer recommended that Regulation 6(1)(b) of the Environmental Information Regulations be applied.**

3.3 Information not held 10(4)(a)

As noted [above](#), the Review Officer acknowledged the incorrect application of Regulation 10(4)(a) to information regarding Ectosan/BMK08; and confirmed SEPA does not hold any further information within the scope of the request regarding Imidacloprid, CleanTreat, and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020. This disclosure of the information is excepted under Regulation 10(4) (a) of the EIRs. The text of which is reproduced below;

*(4) A Scottish public authority may refuse to make environmental information available to the extent that:-
(a) it does not hold that information when an applicant's request is received.*

The scope of exception at Regulation 10(4)(a) of the Environmental Information (Scotland) Regulations 2004 is given in the detailed briefing prepared by the Office of the Scottish Information Commissioner which can be found [here](#).

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.

Review Officer Comments

- **The Review Officer recommended that the exception at Regulation 10(4)(a) of the Environmental Information Regulations continue to be applied to the requested information regarding Imidacloprid, CleanTreat, and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.**
- **The Review Officer recommended that the exception at Regulation 10(4)(a) of the Environmental Information Regulations cease to be applied to the requested information regarding Ectosan/BMK08.**

E. Outcome

The Review Officer considered the points and information raised by the requester of F0191735 at request for review; the original response provided; exceptions applied; and the Office of the Scottish Information Commissioner [EIRs Exceptions Briefing](#).

The Review Officer upheld the application of Regulation 10(4)(a) made in request F0191735 relating to Imidacloprid, CleanTreat and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.

The Review Officer overturned the application of Regulation 10(4)(a) made in request F0191735 relating to Ectosan/BMK08 and released two documents, **Ectosan Sea Lice treatment trial Ardnish (Loch Ailort)** and **Ectosan Trial Ardnish**, subject to redactions for personal data.

Please note that personal information has been redacted from the documents in accordance with Regulation 11(2) of the EIRs and Data Protection Principles. It was noted that SEPA has not withheld complete documents which contain such personal data and have released all other information within the document.

The Review Officer acknowledged that the quality of the original response to F0191735 fell short of the standards a requester should expect from SEPA. Please be assured that lessons have been learned from the handling of F0191735 and shared with the relevant members of SEPA staff.

Please accept my unreserved apology, on behalf of the agency and the Access to Information Team, for the processing failures that occurred during the handling of F0191735.

Review Officer Comments

- The Review Officer upheld the exception at Regulation 10(4)(a) of the Environmental Information Regulations applied to the requested information regarding Imidacloprid, CleanTreat, and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.
- The Review Officer overturned the exception at Regulation 10(4)(a) of the Environmental Information Regulations applied to the requested information regarding Ectosan/BMK08.
- The Review Officer released two documents relating to Ectosan/BMK08.
- The Review Officer applied the exception at Regulation 11(2) of the Environmental Information Regulations to the released information.
- The Review Officer made an unreserved apology for the processing failures that occurred during F0191735.

Summary of Findings

<i>Scope</i>	The Review Officer noted the points raised by the requester in their request for a Formal Review.
	The Review Officer noted that the scope of the Formal Review is limited to the release of recorded information under the terms of the Environmental Information (Scotland) Regulations 2004 (EIRs).
<i>Handling</i>	The Review Officer then considered the findings of the Formal Review.
	The Review Officer confirmed that the handling of the original request met the requirements of Regulation 5(1) of the EIRs.
<i>Information Provided</i>	The Review Officer confirmed that the search of SEPA recorded information was comprehensive.
	The Review Officer identified a processing failure by the SEPA Access to Information Team resulting in the incorrect application of Regulation 10(4)(a) – Information not held to information related to Ectosan/BMK08.
<i>Application of Regulations & Exceptions</i>	The Review Officer recommended that an unreserved apology be issued to the requester for the processing failures that occurred during F0191735.
	The Review Officer considered and recommended the release, subject to redactions for personal data, of two documents relating to Ectosan/BMK08: <u>Ectosan Sea Lice treatment trial Ardnish (Loch Ailort)</u> and <u>Ectosan Trial Ardnish</u> .
	The Review Officer confirmed that there is no further information relating to Imidacloprid, CleanTreat and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.
	The Review Officer recommended that the exception under Section 39(2) of the Freedom of Information (Scotland) Act be upheld.
	The Review Officer recommended that Regulation 6(1)(b) of the Environmental Information Regulations be applied.
	The Review Officer recommended that the exception at Regulation 10(4)(a) of the Environmental Information Regulations continue to be applied to the requested information regarding Imidacloprid, CleanTreat, and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.
	The Review Officer recommended that the exception at Regulation 10(4)(a) of the Environmental Information Regulations cease to be applied to the requested information regarding Ectosan/BMK08.

Outcome

The Review Officer upheld the exception at Regulation 10(4)(a) of the Environmental Information Regulations applied to the requested information regarding Imidacloprid, CleanTreat, and D10 Aquatic Blast including discharges and disposals via Benchmark's 'CleanTreat' from 2014 to the date of receipt of F0191735, 17 March 2020.

The Review Officer overturned the exception at Regulation 10(4)(a) of the Environmental Information Regulations applied to the requested information regarding Ectosan/BMK08.

The Review Officer released two documents relating to Ectosan/BMK08.

The Review Officer applied the exception at Regulation 11(2) of the Environmental Information Regulations to the released information.

The Review Officer made an unreserved apology for the processing failures that occurred during F0191735.