

Sustainable Land Management Branch  
Agriculture and Rural Affairs Division  
Welsh Government  
Llanbadarn Fawr  
Aberystwyth  
SY23 3UR

20<sup>th</sup> November 2015

Dear Sir/Madam

**Welsh Government Consultation Document: Review of the Water Resources (Control of Pollution) (silage, Slurry and Agricultural Fuel Oil) (Wales) Regulation 2010.**

**Response by Cyfoeth Naturiol Cymru/Natural Resources Wales**

Thank you for consulting Natural Resources Wales (NRW) on the Review of the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010.

NRW works as a regulator, partner and advisor to businesses, non-governmental organisations, Local Authorities and communities to help deliver Welsh Government and European Union policies and priorities. We take an ecosystem approach to promoting sustainable development that delivers social, economic and environmental benefits to the people of Wales.

Whilst being very supportive of the overall approach adopted within this consultation there are two particular issues which we would like to bring to your attention:

- These Regulations continue to be about the control of point source pollution and reducing the risk of pollution events arising from the failure of storage structures. The Regulations need to sit within a wider framework of nutrient use and management which will form part of the overall approach to natural resource management as proposed under the Environment Bill.
- The introduction of the definition of 'lightly fouled water' into these regulations will have wider implications. Where this definition is currently used, within the context of Nitrate Vulnerable Zone Regulations, it is accompanied by a requirement to comply with a whole farm nutrient management plan. As far as we are aware, this will not be the case

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within these revised Regulations. Further consideration will need to be given to the potential increase in risk of adopting this definition without defining the requirements for storage or the need to comply with a plan of nutrient management.

Our detailed response to each of the specific questions set out in the consultation document can be found in Annex 1.

Please do not hesitate to contact [sarah.hetherington@naturalresourceswales.gov.uk](mailto:sarah.hetherington@naturalresourceswales.gov.uk) should you wish to discuss our response in more detail.

Yours faithfully



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## ***Annex 1***

### **1. Do you agree that the SSAFO storage calculation method and requirements should be changed to those as required by the NVZ Regulation?**

Yes.

We are aware that there are on-going issues regarding the availability and cost of the rainfall figures which should be used in the calculation. These Regulations should clearly define the calculation method whilst taking into account the accessibility of the data and costs incurred. However, data availability and costs should not undermine the requirement to be able to store slurry throughout wet periods and/or when crop growth is insufficient to make use of the nutrients applied.

It should be made clear in the guidance produced for farmers that the storage requirements stated are minimum values and on installing new storage further consideration should be given to the potential for wetter winters and a resulting increase in the volume of storage required. In this context, the creation of greater storage capacity could help to reduce costs in the long term as well as providing more resilience for agricultural business.

### **2. Do you agree with the changes to the definitions as proposed?**

Partially agree.

We agree with the proposed definitions of lightly fouled water, manure heap effluent, exemptions and yards as this will help to clarify and simplify the existing Regulation. However, the potential to direct lightly fouled water into a separate store for regular field irrigation (as defined in the Nitrate Vulnerable Zones Action Programme) could have significant implications for diffuse pollution in Wales. Unlike the NVZ Action Programme there is no requirement under these Regulations to have nutrient management plans or to comply with them. As a result there will be no control over where the nutrients within lightly fouled water are spread. Such a change in the definition should be supported by requirement for whole farm nutrient management planning or provisions for broad and clear baseline regulation. Otherwise it could result in poorer resource management.

If the definition of lightly fouled water definition is included in the revised Regulations, the Welsh Government's expectations in terms of the requirements for collection, storage and use will also need to be clearly defined.

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### 3. Are there any other elements of the Regulations that should be clarified or legally defined?

Yes. In particular, we have the following comments:

- It should be made clear that any free drainage from Farm Yard Manure stored on any hard surfaces is classed as 'slurry', irrespective of where the hard standing is positioned e.g. even if outside the yard area.
- This consultation mainly focuses on the risk to surface water but it is worth noting that there is potential risk to groundwater in those areas with thin soils and where there is a shallow water table. In particular, it would be useful to clarify and include that all structures covered by these Regulations should not be located within 50m of a spring, well or borehole or within 10m of surface water or a land drain (other than a sealed impermeable pipe). CIRIA 126 also includes guidance in relation to avoiding slurry store construction in areas with a high water table. It would be worth including a requirement to avoid such areas within these Regulations, particularly in relation to the construction of earth bank stores.
- Including the provision for temporary storage and the use of slurry bags in such circumstances is recommended. In exceptional weather conditions<sup>1</sup> and/or in an emergency, NRW, may agree to the use of temporary storage which does not meet the standards of these Regulations. This covers situations where no other suitable option is available to avoid pollution of surface waters and/or groundwater. This would include situations which could arise from spreading to land at an inappropriate time. Any such agreement would not necessarily remove the risk of enforcement action, but the specific circumstances of the farm, including the level of compliance with these Regulations, would be important considerations. Any farmer or agricultural business considering this option would need to contact NRW directly before proceeding and agree a timescale for when the temporary storage would be emptied (for example, the temporary storage should be emptied at the earliest opportunity, prior to dealing with the main compliant storage structure).

*<sup>1</sup>Exceptional weather conditions are those that surpass what is common or usual, or can be reasonably expected. For example, a 1 in 20 year event is unlikely to be considered exceptional, whereas a considerably more severe event that can't realistically be planned for can be.*

- More prominence should be given to the potential use of notices under Regulation 7 for structures found to be in an un-satisfactory condition. It should not affect those farmers who make the effort to maintain exempt systems in a satisfactory condition. But it should allow action to be taken if a structure is found to be in an un-satisfactory condition whether it has 'Exempt' (pre -1991) status or not.
- The wording around Notice periods on page 12 of the consultation is not the same as that used on page 3. The second bullet point on page 3 refers to "notifications at design stage and 14 days prior to first use should be submitted with a declaration signed by the architect/construction company.....". Page 12 of the consultation refers only to the design stage. NRW would like to see these Regulations worded in accordance with the definition on page 3.

**4. Do you agree with the proposal to accommodate new technologies and practices in view of the findings of the CIRIA 126 review?**

Yes.

Only if there is evidence to justify that the new technologies and practices do not increase the risk to the natural resources of Wales, including surface and ground waters.

**5. Do you agree with the proposal to include rules on the storage of manure in temporary field heaps?**

Yes.

Consideration should also be given to including in the list of criteria on page 8, land which is covered by Environmental Impact Assessment (Agriculture) Regulations.

**6. Do you agree with the principle of including constructed wetlands within the SSAFO regulations if further evidence becomes available to support this?**

Yes.

**7. Do you agree with the proposal to introduce an inspection and maintenance regime for those stores which fall under the Regulation 6 exemption?**

Yes.

In order to qualify for the exemption, structures must have to been constructed prior to 1991 and many are therefore likely to be over 25 years old. Many slurry stores were only designed to last for this period of time and are now approaching the end of their asset lives. Introducing an inspection and maintenance scheme will help farmers reduce the risk of pollution incidents which could result in prosecution and financial penalties.

**8. Should the regulations specify who should undertake inspections and how they should be recorded? If yes, please provide details. :**

Yes. The inspection needs to be carried out by the person who has management responsibility or is technically competent and suitably qualified. As a minimum, the inspections should consider all of the issues recorded in the NRW slurry store check list all well as including

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issues and guidance as listed in CIRIA 126. Clear guidance to farmers as to these requirements would be useful.

Information should be recorded and needs to include as a minimum: the date of inspection or maintenance, person undertaking inspection or maintenance, and brief description of actions undertaken. At present, enforcement action can only be taken against the person in custody or control of slurry. Where inspection or maintenance is completed by an external engineers/contractor, it may also be worth considering including provisions to provide enforcement power to pursue poor performing contractors to help ensure that the maintenance standards are met.

#### **9. Should it be an offence not to keep a record of inspections?**

Yes

Incidents can happen even when regularly maintenance is undertaken. If there is no record of inspection then there is no proof that regular inspection or maintenance has been conducted.

In circumstances where regular inspection and maintenance is not undertaken, there is greater potential for penalties under the Water Resources Act. Keeping records will help the farmer or agricultural business show this work was undertaken.

#### **10. Should the safety zones and silo and slurry store construction standards of the SSAFO regulations be incorporated into cross compliance?**

Yes

The inclusion within cross compliance of all these requirements (including agricultural fuel oil) would provide greater protection to watercourses and groundwater.

Groundwater is an important resource that supports numerous private water supplies in rural Wales and constitutes the base flow to watercourses and wetlands.

Groundwater pollution is particularly difficult and expensive to rectify.

#### **11. Do you agree with the proposal to enable enforcement of the SSAFO regulations through civil sanctions?**

Yes.

Natural Resources Wales believes that Civil Sanctions are a valuable and essential regulatory tool. They enable regulators to take a proportionate approach in line with the requirements of the Regulators' Code. Used in the appropriate circumstances a civil sanction will not only result in a farmers or agricultural business' willingness to comply and remain compliant, but also enhance connection to their local environment and community. Civil sanctions can provide benefit to the environment and restore it to how it was or offer other local amenity benefits. Fines imposed by the courts would not provide such benefits to the affected locality or community.

Civil sanctions are only available for a restricted subset of offences dealt with by NRW. For those offences where they are available for use, there is evidence that recipients have adopted

appropriate measures to improve their future compliance, for example addressing inadequate site infrastructure to prevent future noncompliance.

In our opinion civil sanctions are most valuable for bringing offenders into compliance where they may have been previously unaware of the law and the implications of their actions. The use of civil sanctions in these cases, as a proportionate response to an offence rather than a criminal prosecution, has been found to be an effective mechanism for behavioural change and future compliance.

**November 2015**

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