

THE PROTECTION OF WATERS AGAINST POLLUTION FROM AGRICULTURE

CONSULTATION ON THE IMPLEMENTATION OF THE NITRATES DIRECTIVE IN ENGLAND

Response by Wildlife and Countryside Link

1.0 BACKGROUND

Wildlife and Countryside Link (Link) brings together 39 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practice and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together, our members have the support of over 8 million people in the UK.

We welcome the consultation on the implementation of the Nitrates Directive but have considerable concerns over the length of time it has taken to reach this stage. This response is supported by the following organisations;

- Anglers' Conservation Association
- Association of Rivers Trusts
- Buglife - The Invertebrate Conservation Trust
- Butterfly Conservation
- Herpetological Conservation Trust
- Pond Conservation
- Royal Society for the Protection of Birds (RSPB)
- Salmon & Trout Association
- The Wildlife Trusts
- Wildfowl & Wetlands Trust
- Woodland Trust

2.0 GENERAL COMMENTS

Minimal improvements in nitrate levels with the exception of some small areas, a fact highlighted in the consultation document, indicates that significant changes and improvements are needed to make both the Action Programme and overall implementation of the Nitrates Directive more effective. More long-term research is also needed to clarify the benefits of existing, new and potential mitigation methods.

Consequently Link would recommend a combined approach to reducing diffuse pollution from agriculture that is phased over time, is carefully monitored and assesses the value of all potential policy measures, including:

- Cross compliance
- Support – Incentives and Advice
- Regulations
- Fiscal instruments

2.1 Regulation and Enforcement

Link believes there is a need for regulations to be part of a wider policy package aimed at reducing diffuse pollution and national nutrient surpluses. Appropriate, well-planned and well-communicated regulation is an important policy tool for encouraging behavioural change. We believe that regulation can be effective and appropriate if targeted at the pollution problem. Targeting can be aimed at a small area and limited number of farmers, or through specific measures to control target pollutants countrywide.

Regulation should be used in association with awareness raising, support provision and advice, which will all need appropriate funding. Risk-based enforcement will reward compliance and should allow peace of mind to those who are making efforts to reduce pollution risk.

Link believes that, in setting a strategy for protecting water against pollution from agriculture, Defra needs to be forward thinking and assertive in developing and introducing regulatory measures. An overly tentative approach to regulation has in the past led to further environmental damage and deterioration of water quality, and risk of penalties arising from infraction of EU rules.

Past implementation of the Nitrates Directive in England has caused increased costs and business change at each implementation step, accusations of 'gold-plating', and confusion in the farming industry. A well-communicated introduction of regulation at a level equal to the task can allow farmers to achieve compliance and adapt their businesses in the understanding that 'the goal-posts will not change', while securing the desired environmental outcome.

2.2 Nitrate Vulnerable Zones (NVZs) within a comprehensive strategy

Link wants to see NVZs and the Action Programme included within a comprehensive Defra strategy for the reduction of diffuse pollution from agriculture. This strategy must ensure that there is:

- Proper outcome and process monitoring of the policies.
- Adequate resources for enforcement of the regulations.
- Commitment to enforce penalties for non-compliance with regulations.
- Willingness to prosecute offenders and publicise cases in order to act as a deterrent and demonstrate government's serious intention to uphold the legal standards.
- Extra financial resources if supportive measures are to be part of the package.
- Clear cross-government working and communication to find synergies and complementarities between NVZ and policies, such as Water Protection Zones (WPZ).

2.2 Nitrates Directive and other Directives

The Nitrates Directive is the main driver to reduce nitrate pollution in England. However, NVZs are only one policy tool to ensure N standards are achieved. With the Groundwater Directive and the Water Framework Directive, the UK has other legal obligations to control diffuse pollution from agriculture and action under these directives should also have an impact of reducing nitrate pollution to surface waters, coastal waters and groundwater. Defra must ensure that all measures which can reduce nitrate pollution are coordinated.

3.0 RESPONSE TO SPECIFIC QUESTIONS

Question 1: We are considering whether to continue with the targeted NVZ approach or apply the Action Programme throughout the whole of England. Which is your preferred approach? Why? The Department would welcome comments on the respective advantages and disadvantages of the two options.

Link recommends that Defra designates the whole of England as an NVZ.

i) Administrative benefits

A 100% designation provides significant benefits through ease of administration and enforcement for the Environment Agency.

A 100% designation would mean all farmers are obliged to produce a nitrogen management plan.

A 100% NVZ would ease the administration for Defra, Natural England and the Environment Agency.

ii) Communication benefits and increased understanding

A 100% designation provides benefits to the farming industry by creating a level playing field for all farmers. It avoids any detrimental impact on land prices for farmers within NVZs. Furthermore, all farmers would immediately know that they are within the NVZ and the rules that they have to follow. A 100% designation would remove any confusion regarding NVZ boundaries as well as improving the environmental impact of the Directive, as previous uncertainties reduced implementation.

We believe that diffuse pollution is a significant issue for all farmers. A 100% designation will communicate to all farmers and landowners that nitrate pollution is a serious problem and avoid the potential for some to think that if they are not within an NVZ their practices are acceptable or non-polluting.

When communicating the new NVZ rules to farmers Defra can soften the blow of the regulatory change by communicating the positive benefits of these rules and the long-term financial benefits of using stored organic fertilizer in a time of increasing chemical fertilizer prices.

iii) Impact of 100% designation

Link believes that many of the farmers who fall outside the 70% area designation would not seriously be affected by being included in the larger 100% designated area. The Action Programme may bring benefits to farmers by providing the impetus to improve the efficiency of nutrient use in their businesses and create an overarching and long term culture of good practice.

iv) NVZs and General Binding Rules

In Defra's recent consultation on the control of diffuse sources from agriculture, Link called for a baseline layer of regulation to reduce diffuse pollution from agriculture, including the introduction of General Binding Rules.

A baseline regulatory package for the protection of waters against pollution from agriculture will allow effective:

- communication of the holistic nature of the problem,
- communication of the need, by all farmers, to do at least a minimum level of land management to reduce diffuse pollution,
- introduction of basic measures ahead of the 2012 expected date for WPZ introduction, and
- enforcement of all regulatory land management measures, whether for N, P or pesticides.

Question 2: We are considering under what circumstances de-designation of NVZs would be possible in the future. We would welcome your views on this issue and what Action Programme measures should be applied in potential de-designation areas in the interim.

Defra must be very wary of de-designation. As stated in the consultation supporting paper G1 *'The Nitrates Directive has no specific provision within it to allow de-designation of NVZs. If de-designation were ever to be proposed, a very strong case would have to be made, to show that the waters were no longer vulnerable to nitrate pollution.'*

Link believes that there must be substantial dataset displaying a consistent, prolonged, and predictable decreases in nitrate concentrations before a proposal for de-designation could be submitted to the EU Commission.

Question 3: We would welcome comments on the proposed Action Programme measures.

Link welcomes the strengthening of the Action Programme. We believe that this is needed in order to reduce nitrogen levels in water and meet our obligations under the Nitrates Directive and Water Framework Directive.

In order to achieve the aims of the Directive we believe the Action Programme should go further to include land use mechanisms. We recommend the inclusion of permanent uncultivated buffer strips adjacent to surface water, provision of which is provided for under Part 5 of Article 5 of the Directive¹. We believe permanent uncultivated buffers, i.e. grass, scrub and trees (as appropriate), provide an effective and cost efficient mechanism for reducing and preventing nitrates entering water courses. This represents a significant step forward from the current Action Plan that only includes cultivated buffer strips for organic manures. Furthermore, research shows that targeted woodland creation can reduce nitrate (and other pollutants) in watercourses by as much as 90%².

¹ This deals with additional measures necessary to achieve the Directive.

² Calder, I.R., Harrison, J., Nisbet, T.R., & Smithers, R.J. (2007). The role of native woodland in water management (in press), Woodland Trust.

i) Limiting amounts spread to land

We recommend the following wording addition:

- Quantities of more than 50 m³ /ha of slurry, or 50 tonnes per hectare of organic manure shall not be applied at any one time. A period of at least 1 month shall be left between applications.

ii) Controlling how nitrogen is applied

We believe that there is a need for a clearer definition to the prohibition of high pressure, high trajectory techniques of nitrogen application.

Question 4: Are there other crops with an agronomic nitrogen requirement during the closed period? If so, are you aware of any evidence available to support this requirement?

No comment

Question 5: Are there other livestock categories for which standard manure N production figures would be useful?

No comment

Question 6: Do you feel there is a convincing justification for a derogation from the whole farm limit for organic manure? If so, explain why.

Link is opposed to the use of derogations within farming sectors on the basis of costs. However, where the use of FYM and compost is necessary to deliver conservation objectives (e.g. in applying these as conditioners to degraded soils in arable to wet grassland conversion), then specific exemptions may be justified.

Question 7: The Nitrates Directive does not explicitly require cover crops to be included in the Action Programme. However, we consider that the evidence indicates that they are a cost-effective measure for tackling diffuse water pollution. We would welcome your views on the inclusion of cover crops within the Action Programme.

Link is concerned that the proposed requirement for cover crops in the NVZ Action Programme will cause a loss of seed resources for seed eating farmland birds which depend upon uncropped stubbles left over winter. As well as their clear benefits for farmland biodiversity, stubbles are effective in reducing nitrate leaching as well as helping to combat erosion and run-off.

Link would prefer the NVZ Action Programme to focus on reducing the risk of diffuse pollution from bare soil and maize stubbles as these are the main sources of the problem from uncropped areas, and can be solved by measures to create or maintain soil cover including cover crops.

We propose the following wording as a change to the proposed changes in the Action Programme.

i) Proposed rule changes

- Cover crops must be grown over-winter unless
 - winter crops are sown
 - the previous crop will be harvested after 1 September
 - stubbles are maintained (excluding maize stubbles)
- Sow a cover crop before 15 September on land that would normally be left bare (i.e. with no stubble)
- This crop must then not be destroyed until after 31 December

Question 8: We would welcome comments on the partial RIA and in particular upon the accuracy of the assumptions that underlie the calculated costs and benefits. Note: supporting paper G4 contains further, more specific questions regarding the calculation of costs.

No comment

Question 9: We would welcome comments on the advice and support you consider necessary for implementation of the revised Action Programme. What is the best format for providing this? Would you prefer specific advice relating to the Action Programme, or advice integrated into wider best practice and environmental issues?

NVZs are a regulatory measure and as such must be enforced. However, Link recognizes the value of advice to help farmers adjust to new or changed regulation.

i) Regulatory enforcement

Link believes that the EA must be sufficiently resourced to fully enforce NVZs to an appropriate level. We believe that an appropriate level is one which is effective in causing behavioural change. Anecdotally, we understand that, on average, farmers can expect an NVZ compliance check, only once every 20 years. This is clearly not acceptable.

In order to ensure NVZ regulations are effective, the EA must be committed to enforcing NVZ rules. Following enforcement the EA and Defra must be committed to penalising non-compliance of NVZ rules and to publicise cases.

ii) Advice

Link understands that within the risk based enforcement approach used by the EA to enforce NVZs there is scope to advise farmers on the steps they need to take in order to comply. We welcome this approach to first time, minor non-compliance with the regulations.

Question 10: The Department would welcome your ideas on how we can facilitate a greater uptake in anaerobic digestion. What are the main barriers? How can these be overcome?

Link welcomes the inclusion of anaerobic digestion (AD) into the consultation document and believes that the Department should incentivise this emerging form of green energy. However, most importantly, Defra must outline the role of anaerobic digestion within a strategy to reduce national nutrient surpluses. AD can help to process some of the current organic nutrient surpluses seen in some areas of England and convert them into useful energy and nutrient resources.

In order to maximize environmental benefits, anaerobic digestion should only be promoted where best practices demonstrate multiple environmental benefits and no environmental damage.

Defra must investigate sustainable and fair means to incentivise AD. The capital costs of anaerobic digestion equipment could be made financially attractive through the use of funds from Axis 1 of the Rural Development budget. The use of the digestate must also be promoted in order to sell its advantages and attractiveness in comparison to chemical fertiliser.

Defra must ensure standards for the safe, effective, and optimal storage, use, management, and application of digestate. We believe that digestate must only be applied to land according to a nutrient management plan. Furthermore we believe that nutrient management planning should be compulsory through Cross-compliance. With this and associated, nutrient testing of organic fertiliser, application to crop requirement and avoidance of risk of run-off and pollution, the proper use of existing organic materials to crop need would be incentivised.

**Wildlife and Countryside Link
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