Cyswllt Amgylchedd Cymru | Wales Environment Link

Implementing the Control of Agricultural Pollution Regulations

December 2023

Introduction

The Minister for Rural Affairs has announced that, following the consultation in early 2023 "Nutrient management: managing the application of livestock manures sustainably", an Enhanced Nutrient Management Approach (ENMA) will be taken for holdings or part of holdings not previously situated within an NVZ. This approach will allow higher levels of nitrogen application (up to 250kg/n/ha) from livestock manure, until the end of 31 December 2024, subject to crop need and well-defined environmental controls. This will not be a licensing scheme as was proposed in the consultation. Instead, it would require farmers wishing to take this approach to notify Natural Resources Wales of their intention, subject to meeting certain environmental requirements.

WEL members strongly feel that this approach takes us further away from the original policy intent of the Control of Agricultural Pollution Regulations, which sought to reduce nutrient inputs by setting a 170kg/n/ha limit. It will also make it more difficult for the Welsh Government to achieve its COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030.

Key Areas of Concern

Monitoring, Compliance and Enforcement

We know that further regulations are expected, which will provide more detail on the ENMA. These need to set out how compliance with the new rules will be monitored. Farmers wishing to apply a higher level of nitrogen from livestock manures to their land will need to notify NRW, but it is unclear how NRW will be able to identify farms that are spreading a higher level of nitrogen which haven't notified them of their intention. WEL's response to the Welsh Government consultation strongly supported the introduction of a license scheme because we believed it would provide:

- a means whereby permission to undertake an activity can be refused e.g because of the unsuitability of the site or skill set of the operator;
- a means of raising income to fund monitoring and compliance checking, reducing reliance on taxpayer funding and following the “polluter pays” principle;
- a basis for public transparency as to the extent and location of the licensed activity, who is undertaking it and the standards they have to meet;
- a demonstration that farmers are (assuming they are compliant with license conditions) meeting the required standards;
- an ability to regulate and take enforcement action where necessary if the licence conditions are not met.

The new approach is so far unclear on whether a notification of the intention to spread higher levels of nitrogen could be refused, and how NRW will assess compliance with ENMA environmental conditions. It is also unclear if NRW will be able to sanction farmers if there is evidence of non-compliance. We also believe that this is a missed opportunity to provide NRW with additional resources to monitor compliance and take any necessary enforcement action, creating an increased risk of pollution events going unnoticed. In accordance with the Polluter Pays Principle, other sectors, such as the water industry, waste and recycling industry and construction industry, pay the cost of NRW compliance checking through their regulatory fees and charges. We are concerned that the Polluter Pays Principle will not be applied in this case, resulting in compliance checking costs falling on the taxpayer.

Impact on Rivers

We believe this new approach brings a higher risk of pollution to our rivers. If appropriate conditions for higher levels of spreading are to be effectively monitored and enforced, NRW will need additional resources to avoid further pollution incidents. We are particularly concerned at the lack of evidence that this approach will not harm SAC rivers, many of which are already in an unfavourable ecological condition. Given that other sectors must undertake assessments to demonstrate their proposals meet Habitats Directive nutrient neutrality requirements, we would like to know what assessment has been made of the impact of enabling higher

nitrogen spreading levels on SAC rivers, particularly those which already exceed target levels of nutrients.

In England, the Environment Agency has stated that within SAC catchments, farmers seeking a NVZ derogation to apply up to 250kg N/Ha must provide an assessment of the impact on the SAC. Derogations may be refused if an adverse impact is likely. We are concerned that the Welsh regulations appear to have no similar provision for preventing additional nutrient impacts in SAC catchments.

Now that the regulations have been published, we are pleased to see that phosphorus testing has been included as part of the conditions for spreading above the limit of 170kg/n/ha, given NRW's finding that 61% of Welsh SAC waterbodies were failing phosphate targets. We know that in certain areas of Wales, such as the Wye catchment, soils already exceed safe phosphorus levels. It is critical that these areas do not receive further phosphorus inputs.

Recommendations

- Welsh Government and NRW to publish a clear process for farmers to follow when notifying NRW, specifying information requirements, including crop need, recent soil nutrient data, site suitability, and detail on type of fertiliser and application methods and timing.
- Welsh Government and NRW to publish clear outline of the options and actions which NRW can apply in response to either notifications, subsequent spreading activity, or environmental consequences.
- NRW must be able to take enforcement action for non-compliance with the amended Control of Agricultural Pollution regulations. The Precautionary Principle must apply, and protection should not be weakened by restricting action to cases where there is evidence of a serious pollution event having occurred. The regulations are there to prevent pollution and non-compliance must be enforced, with data on non-compliance published transparently.
- The Senedd should review Welsh Government's Regulatory Impact Assessment, as previously committed, considering the economic and environmental impacts of the 170kg/ha annual holding nitrogen limit to ensure that evidence.

- There needs to be an assessment, either, at a strategic level or on a farm-by-farm basis, of the impact of the ENMA in SAC designated catchments, with applications above 170kg N/ha not permitted if an adverse impact on the SAC is likely.
- There needs to be full transparency concerning implementation of the new regulations, including data from NRW on the levels of compliance, farm visits undertaken by NRW, and any action taken.

WEL is keen that the ENMA does not continue after the first year, and we would like to see the original Control of Agricultural Pollution Regulations limit of 170kg/n/ha reinstated at the end of this period. If the Welsh Government does choose to continue with this approach, it must introduce a licensing scheme following the first year of ENMA, to increase transparency and resources for monitoring and enforcement. To meet the COP15 commitment to reduce nutrient inputs by a minimum of 50% by 2030, licensing should be regarded as a transition step to the original policy intent of the Control of Agricultural Pollution Regulations.

Wales Environment Link (WEL) is a network of environmental, countryside and heritage Non-Governmental Organisations in Wales. WEL is a respected intermediary body connecting the government and the environmental NGO sector. Our vision is a thriving Welsh environment for future generations.

This paper represents the consensus view of a group of WEL members working in this specialist area. Members may also produce information individually in order to raise more detailed issues that are important to their particular organisation.

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