NFUScotland

Submission Date

To : Water Division, SEERAD

DIFFUSE WATER POLLUTION FROM RURAL LAND USE

1. The EU Water Framework Directive obliges member states to tackle diffuse pollution problems. The Scottish Executive's consultation paper proposes that this be done through a "strategy" for dissemination of best practice, through direct controls and through incentives to good practice, paid under Land Management Contracts.

   The first and third components of the proposed strategy are not contentious, although we have comments on the details of how they may be implemented. The second is. This response focuses on the notion of direct controls.

Summary

2. In summary, the NFU Scotland views are:

- The farming industry is highly regulated already. The consultation paper has not demonstrated that any additional direct controls are needed for the agriculture sector.

- Classification by SEPA of a waterbody as "at risk" does not necessarily mean that an actual diffuse pollution problem exists. It indicates a potential problem.

- As a specific instance, we oppose the proposal to ban all direct access by livestock to watercourses adjacent to improved land. In places where that could generate a diffuse pollution problem, farmers are already obliged to take action.

- Any further development of good practice guidance should be carried out in the context of the PEPFAA Code, so as to ensure consistency and avoid duplication.

- Extension of cross compliance obligations and good practice guidance to other rural land users would be welcome.

- Incentives to good practices, which enable new Brussels rules to be met or which exceed the requirements of statutory obligations, would be welcome.

Background

3. Farmers appreciate the necessity of ensuring their activities do not jeopardise environmental quality. To that end, there is already a wide range of statutory requirements and good practice guidance (which includes compliance aids such as the 4 Point Plan, for dealing with manure and slurry, and the Farm Soils Plan). Also, farm assurance inspections verify management action. Many of these obligations address diffuse pollution risks, either directly or indirectly.

4. The industry is already bound by rules that act against diffuse pollution. Not least of these, are the cross compliance rules upon which receipt of the Single Farm Payment (SFP) depends.

   The industry is already subject to EU Statutory Management Requirements (SMRs) to prevent pollution and, from 2005, the main farm support, the SFP, is conditional on adherence both to these and to maintaining land in Good Agricultural and Environmental Condition (GAEC).

5. The Statutory Management Requirements which are relevant are: SMR 2, Protection of Groundwater Against Pollution; SMR 3, The Use of Sewage Sludge in Agriculture; SMR 4, Protection of Water in Nitrate Vulnerable Zones (NVZ); and SMR 9, Restrictions on the use of plant protection products. Note that these obligations give rise to double jeopardy – prosecution under relevant implementing legislation and potential penalties of up to 100 per cent of the SFP.

6. Several GAEC rules are relevant to avoiding diffuse pollution from agricultural activities. This comes about chiefly through the CAP Regulation's attention to soils, especially soil erosion which is the main transmission vector for delivery of phosphates to water bodies. (Annex IV) The relevant GAEC rules are: GAEC 1, Post-harvest management of land; GAEC 2, Wind erosion; GAEC 3, Soil capping; GAEC 4, Erosion caused by livestock; GAEC 5, Maintenance of functional field drainage systems; GAEC 6, Muirburn Code; GAEC 8, Arable stubble management; GAEC 11, Overgrazing; GAEC 15, Field boundaries (re. watercourses); and GAEC 16, Non-productive landscape features (re. ponds). Breaches of these rules could incur potential penalties of up to 100 per cent of the SFP.

7. Adherence to the guidance of the Prevention of Environmental Pollution From Agricultural Activities (PEPFAA) Code is part of the definition of Good Farming Practice upon which LFA and agri-environment payments are dependent. The implementing rules for the new Rural Development Regulation [Article 51, 1] require application of the same cross compliance rules as the SFP to Pillar Two support for land management. Therefore, the reference to the Code in defining Good Farming Practice will become redundant.

8. Nonetheless, the PEPFAA Code appears likely to have continuing status in terms of demonstrating that duties of care have been applied. Therefore, the Code may be expected to remain a reference point for farm assurance schemes.

NFUS supports retention of the PEPFAA Code as a means of communicating good practice.

Proposed Controls

9. In view of the above demonstration of the extent to which agriculture is regulated already and has rules enforced through potentially very severe financial penalties, it seems extraordinary that additional controls should be contemplated.

10. Rather, attention should focus on other activities in rural areas that can contribute to diffuse pollution. These should be brought under the same degree of control as already applies to agriculture. In principle, the extension of SMR and GAEC requirements to other land users from 2007 will achieve that position. However, that will only happen for those businesses that qualify for, and apply for, assistance under land management contracts and other rural development measures governed by the terms of the EU Rural Development Regulation.

11. NFUS does not have a closed attitude to the subject of controls. Our members have an intrinsic interest in Scotland's reputation for environmental quality. If farming practices were demonstrated to be contributing significantly to a water quality problem, there should be consideration of controls that are proportionate to the issue. Given that most water bodies are in liable to be judged as in excellent or good condition, any such problems must only be in some places. Therefore, additional nationwide controls are unlikely to be needed.

12. We have experienced a number of occasions when SEPA staff have asserted diffuse problems from agricultural land use without direct evidence. There is no denying the possibility of diffuse pollution from agriculture. However, such risks do not necessarily yield pollution events. Overwhelmingly, Scottish rivers etc. are in good or excellent condition. In large part, that is because farmers do manage their land responsibly. In this regard, the characterisation report may be accurate as to identification of risks. However, it is capable of being misunderstood, or misrepresented.

13. NFUS is participating in the steering group for a SEPA research project to review sources and measures for control of diffuse pollution. The brief to the group and to the consultants says:
"SEPA holds a significant amount of data on water quality but data on farm scale sources of pollution are lacking. This proposal will provide this much needed data through a literature review to quantitatively assess farm scale sources of pollution. Sources of diffuse pollution and their relative magnitude are generally assessed by expert judgement. However this can potentially lead to errors in the targeting of measures to address diffuse pollution. Research has been ongoing, for a number of reasons, into sources of diffuse pollution. There is a need to draw this together and identify gaps in our understanding in sources of diffuse pollution." From this, it appears that the assertion of agriculture's role as a threat to water bodies in the "characterisation" report to the European Commission has been based on expert judgement, rather than on gathered evidence.

14. The SEPA paper admitting a lack of data on farm scale sources of diffuse pollution was sent to members of the group on 8 February 2006. The consultation was dated at 13 December 2005.

15. Therefore, the Scottish Executive's consultation is presumptive in claiming, in the introductory chapter, that "pollution from agriculture has been identified as the single greatest risk from rural diffuse sources to achieving good ecological status in Scotland's water environment". Indeed, it is contradicted at section 2.3, where it says: "Agriculture, due to its dominant land use, is a significant cause of water pollution in Scotland, although it may not be the most severe." Also, no empirical justification has been presented for the conclusion (paragraph 3.1.3) that "the continuing significance of diffuse pollution pressures is a clear demonstration that there is a need for a *(legislative)* approach targeted at diffuse pollution."

    Regulation should be based on scientific appreciation of whether there is a problem, if so, what is its source(s) and which measures, beyond those that are already in place, would be most effective in tackling each source.

Dissemination of best practice

16. Farming is a big scale production industry. We do not deny that its outputs and inputs present potential risks to the water environment. Good management prevents those risks becoming actual pollution events. This is in farmers' own interests, albeit prompted at least in part by the threat of penalties for non-compliance with statutory obligations.

17. The PEPFAA Code has been the principal vehicle for guiding good management. It has had the additional distinction of being part of the rules. That is scheduled to end this year. NFUS wants it to remain in place and be the evolving reference document which records the rules and shows farmers how to meet them.

18. It would be wrong, and confusing, if dissemination of best practice were additional to, and different from, the guidance in the Code. That is not to deny the valuable guidance in the 4 Point Plan and in the Farm Soils Plan. Both are carefully cross referenced with the PEPFAA Code.

19. The Scottish Agricultural Pollution Group (SAPG), on which NFUS is represented, acts in effect as the editorial board for the Code. We recommend that this should continue. Any further development of good practice guidance should be carried out in the context of the Code, so as to ensure consistency and avoid duplication.

20. To date, SAPG has been wholly concerned with agriculture. The subject of diffuse pollution applies to wider audience. To extend its scope, the Group should include representation from other rural land users. Whether guidance on

additional topics, outwith agriculture, should be published as part of a renamed Code, or separately, should be for the Group itself to judge.

Incentives to good practice

21. Rules of the Rural Development Regulation permit expenditure on pollution avoidance measures. [Article 26 on modernisation of agricultural holdings; Article 30 on infrastructure related to development and adaptation of agriculture and forestry; Article 31 on meeting standards based on Community legislation; Article 39 agri-environment payments relating to environmental objectives; and Article 41 non-productive investments.] These are expected to be delivered in Scotland through the medium of Land Management Contracts (LMCs). A sub-group of the Natural Resources Technical Working Group, itself reporting to a national stakeholder group has been working on suggested measures.

22. NFUS welcomes the proposal to underwrite good practice by assisting those who incur extra costs or who forego income in the course of diffuse pollution prevention. Because LMC proposals are to be subjects of a forthcoming consultation on the Scottish Rural Development Plan, it appears unnecessary to comment further in the context of this consultation.

Annex A: Example of a General Binding Rule to ban direct access by livestock to watercourses

23. Annex A contains illustrations of possible new controls. It proposes obligations that would ban direct access by livestock to watercourses adjacent to improved land. This subject also serves as illustration of why new controls are not required.

24. Before explaining the detail of existing controls, it may be helpful to consider sources of the phenomenon which is at issue – faeces and urine directly deposited in water and erosion of soil which enters the watercourse during flood events. Both are sources of faecal indicator organisms (FIOs) and nutrients, especially phosphates. The former may contribute to contamination of bathing waters and the latter contributes to eutrophication of freshwaters.

25. Livestock in some places have watercourses that flow through their fenced area. Therefore, passage may be taken through the watercourse to get from one grazing area to another. The watercourse is also a source of drinking water. Livestock in other places may be adjacent to watercourses that are used for drinking.

26. Animals taking passage through waterbodies do not linger. If they do, it is to drink. Therefore, the situation is not different in kind from those drinking from adjacent watercourses. In drinking and defecating in or beside the watercourse, there is undoubtedly a contribution to diffuse pollution. It is one that has been going on since agriculture began, as has the contribution from wild fauna, notably the many birds that live or feed in and around watercourses.

27. To deal first with FIOs, where the receiving water is a bathing water or is connected to a bathing water, there is a clear and specific problem for government of compliance with EU rules. Given that breakdowns at waste water treatment plants and operation of combined sewer outfalls (storm water overflows of untreated sewage) are the principal sources, any contribution from agriculture should be placed in context. Efficient operation of septic tanks is also likely to be an issue, especially with regard to properties that are only occupied on a seasonal basis. A further consideration in this regard is contamination of watercourses by wild animals and birds. Contributions from wetlands may be especially significant. There, accumulations of material from decaying vegetation and from bird droppings will be washed into watercourses following heavy rain.

28. Where research shows that the livestock contribution is a significant influence, NFUS accepts that action may be justified. However, fencing off watercourses has not yet been established to be a suitable measure in all circumstances. [Ref. Brighouse Bay experiment where bathing water still failed after substantial exclusion activity. £66,000 was expended on four farms with no certain benefit to environmental quality because the bathing water was exposed to FIOs from other sources.] No prescription could fit all circumstances.

    In those few places where research justifies livestock exclusion, that could be tackled through guidance and incentives. In that event, farmers should be fully compensated for making alternative arrangements: bridges for passage and watertroughs or other constructed watering points. Fencing may also be required and should be fully funded.*

29. Secondly, on nutrient contributions, where the receiving waterbody is oligotrophic (naturally nutrient-poor), there is extreme sensitivity to diffuse pollution by nutrients. However, if it has that status, there can't be a problem. Where a waterbody is naturally mesotrophic (relatively nutrient rich), it might be tipped over the edge into eutrophication (over-enrichment). In such circumstances, i.e. where oligotrophic or mesotrophic status is being compromised, there would be justification for specific action to prevent agricultural diffuse pollution if it is significant, relative to other sources. That should be demonstrated, not asserted.

30. The nutrient transfer issue addressed to a large extent by existing rules. GAEC rules 4(i) and 4(ii) obliges producers to prevent erosion of land, particularly banks of watercourses and watering points. Where it happens, stock must be reduced until the ground recovers. Failure to do so is a breach of cross compliance rules.

31. There is also value in having stock graze the vegetation at the side of ditches. Their exclusion could prevent proper operation of field drainage systems. This would be a cross compliance breach under GAEC Rule 5(i). The only remedy would be clearance by mechanical intervention.

32. Therefore, the instances where stock exclusion from watercourses may be beneficial and not covered by existing rules are bound to be peculiar to a limited number of places. Exclusion of livestock from all places would be a disproportionate response to the perceived issue.

* footnote: The EU Water Framework Directive obliges action, to put into effect the combined approach to point source and diffuse pollution, to be in place by December 2012. [Article 10, 2(c)].