

Diffuse Water Pollution from Rural Land Use

Response by Prof. Colin T. Reid,

Professor of Environmental Law, University of Dundee

I wish to make the following brief and general comments on the recent consultation paper on the above subject. These comments are made in a wholly personal capacity and do not represent the views of any institution or organisation. I am happy for these comments and my details to be made available to the public.

These comments are made on the basis of no direct experience of the agriculture or forestry industry, and largely note things that are not stated in the paper. It may be that they have been fully considered in the background work and are just not reflected in the published paper which rightly focuses on the specific proposals.

1. Diffuse pollution is a very difficult problem to deal with, and may call for some innovative approaches. The proposals here, though, essentially suggest “more of the same”. It may be that an extension of regulatory control and the greater influence of guidance and advice through the impact of changes in agricultural support schemes will be enough to improve the position significantly. Yet, given the current volume of advice, guidance and encouragement to voluntary action, it would be good to see a proper analysis of why farmers are not already adopting the best practice that has been identified. Is it inertia, lack of knowledge, distrust of scientific advice, absence of capital, absence of labour, financial gains to be made through other practices or what? What lessons can be learned from the success or failure of aspects of the nitrate controls? If guidance is already being provided but not being followed, understanding why this is the case must be a priority. There are hints on page 19 of the paper that some research in this direction is being undertaken and this should be pursued vigorously. What will make a difference? For example, would providing “hit squads” to go to farms and carry out the work to improve run-off arrangements be more effective than financial support which still leaves farmers with the additional burden of having to organise the task and obtain the labour and equipment to carry out the work? Is what is proposed here really going to make a difference?

2. Two other elements are also missing. The first is a consideration of the impact of wider agricultural policy. If, say, intensive poultry rearing is an activity that causes problems, what are the factors that lead farmers to this form of enterprise and how can they be countered? I am fully aware that this may ultimately require attention to the entire global food and agriculture economy, but it is exactly this sort of “joined-up thinking” that our supposed commitment to sustainable development demands. Are efforts being made to address such issues so that here, across Europe and in other countries there are not pressures to go down paths that inevitably lead to the sort of environmental problem that we are now trying to redress?

3. The second is a consideration of alternative regulatory devices. For example, what has happened to past discussions of taxes on pesticides and fertilisers? Many ideas may have to be rejected for a whole range of reasons (not least issues of devolved competence and UK and EC levels) but it would be encouraging to see indications of innovative thinking rather than just more of the same.

4. On the specific proposals, I would raise concern over how the proposed General Binding Rules are to be enforced. Who is to discover breaches of the rules and how? To the extent that the overall approach depends on both the enforcement of legal rules and the provision of guidance and advice, it is very difficult for the same person to act in both capacities. Yet, given the nature of diffuse pollution, there are not likely to be specific “incidents” that trigger investigations by enforcement agencies, so that it is hard to see how breaches of the rules are to be identified unless either there is a substantial programme of enforcement inspections or those providing supportive guidance are also to be required to act as enforcers in a way that risks undermining their prime function.

5. Finally, although it must recognise its dominant role in relation to this problem, the agriculture industry may feel aggrieved that it is being made subject to further controls while other sectors that contribute to the problem are not as yet affected (such feelings of unfairly having to carry alone the whole burden of curing a problem to which there are multiple contributors led to the challenge to the UK’s approach on nitrates in *R v Secretary of State for the Environment, ex parte Standley* (C-293/97) [1999] ECR I-2603). More willing co-operation from the agriculture industry may be forthcoming if the promised consultation on measures to tackle diffuse pollution from industrial and urban land use is seen to be progressing rapidly with a real prospect of action in the near future.

Prof. Colin T. Reid,
Professor of Environmental Law,
University of Dundee,
Dundee DD1 4HN