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Dear Ian

## Diffuse Water Pollution from Rural Land Use – Consultation by the Scottish Executive Environmental Group

Thanks you for the opportunity to comment on the Scottish Executive's proposals for Diffuse Pollution Strategy. This Strategy will play a very important role in delivering the objectives of the European Water Framework Directive (WFD), and have major benefits for wider environment and the society. The Freshwater Taskforce of the Scottish Environment LINK comprises of environmental non-government organisations, which are concerned with the conservation, and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management and food production practices and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity.

### General Points

In addition to responding to the specific questions posed in the consultation documentation, we would like to draw attention to the following overall issues:

- While understandably there is a focus throughout the document on impacts of diffuse pollution on wider environment and in the context of WFD, it should be made clear that many **areas of wildlife importance, designated by European and domestic law, are at risk from diffuse pollution**. These areas should be identified as a priority for action.
- The overall tone of the document **lacks ambition** and does not adequately address the non-effectiveness of existing measures. The Scottish Executive needs to look beyond these existing measures and invest more into developing a more **pro-active and integrated approach** to tackling diffuse pollution problem.
- The Freshwater Taskforce strongly advocates that **further measures are necessary**, including provision of free advice at farm level and better integration with developing agricultural and other policies.
- **A strategy for diffuse pollution should recognise the Scottish Executive's commitment to reducing greenhouse gas emissions in all sectors**. Measures for tackling diffuse pollution should be set which will make a significant contribution to cutting emissions particularly targeting nutrient input from fertiliser use. Another of the Executive's climate objectives is to help adapt to those climate impacts arising from past

greenhouse gas emissions. Where species and habitats are affected by diffuse pollution this will impact on their ability to adapt to the changing climate resulting in a loss of biodiversity. Therefore the strategy should ensure action to tackle diffuse pollution in important wildlife sites to help improve their condition to a favourable status. Further action will also be necessary to facilitate the movement and dispersal of those species and habitats which may have to move to more favourable climate zones as the climate changes. This means extending measures to tackle diffuse pollution into the wider countryside including habitat improvements at a landscape and ecosystem level to allow dispersal beyond the currently protected wildlife sites. Fluctuations in the severity of diffuse pollution events are often closely related to shifting patterns of rainfall. Global warming is predicted to produce a trend toward greater annual rainfall (including seasonal fluctuations), and an increased frequency in heavy storm events. Regard should be given to these long term weather predictions if plans to remediate diffuse pollution are not to be constantly overtaken by an increasing problem.

- We are concerned that this Strategy does not specifically apply its proposals to **estuarine waters and sea out to 3 nautical miles** from the baseline. The Water Environment and Water Services Act (the 'WEWS' Act) requires regulations (including diffuse pollution) to be applied out to 3 nautical miles by extending the requirements of the Water Framework Directive (WFD). **We would like to seek clarification from the Scottish Executive on this issue.**

#### 4.1 Responses to Questions

##### **1. Do you agree that we have accurately identified the water quality issues that need to be addressed? If not, why and what supports your view?**

Yes, we agree, but emphasis that further evidence is required to quantify impacts of diffuse pollution on wildlife and wildlife habitats. There is large amount of evidence to suggest that diffuse pollution is a major problem in Scotland. This information will be further refined through the characterisation process. SEPA should, as a matter of urgency, identify priority catchments, which must include sites of national and international importance for wildlife and habitats, whilst also taking into consideration priority BAP habitats and sites listed on the recently published Scottish Biodiversity List of habitats. This list describes those habitats of principle importance for public bodies when complying with the biodiversity duty.

##### **2. Do you consider there are other problems not identified?**

The consultation document fails to adequately address impacts of diffuse pollution (including nutrients and pesticides) on biological diversity. We believe that further evidence is required to understand the impact of pesticides on the aquatic environment, and the behaviour of Nitrogen (N) and Phosphorus (P) in the environment.

##### **3. What aspects do you consider may require regulation or to be more rigorously controlled using existing powers of enforcement?**

We believe that all activities, which cause pollution, require regulation. The Controlled Activities Regulations (CAR) establish a framework for the regulation of all activities, which have the potential to cause pollution. The farming sector must not become an exempt from this rule. There is considerable economic and biodiversity cost associated with the clean up of polluted water bodies, which are used as public water supplies, for recreation and nature conservation. Part of these costs are directly associated with agricultural activities. WFD clearly states that regulation is

required to control diffuse source inputs, and that charging regime must incorporate environmental costs and the polluter pays principle.

Existing measures to address diffuse pollution are inadequate and regulation is needed to make these more effective. General awareness of diffuse pollution amongst farmers, its sources, pathways and impacts is very low and needs to be addressed as a matter of urgency. A combination of measures, such as regulation, free advice and better integration with agricultural policies is the best way forward.

**4. Do you consider that advice on water pollution risks, within the PEPFAA Code and/or the Forest and Water Guidelines, is effective? If not, what else is required?**

PEPFAA Code and Forest and Water Guidance (F&WG) contain useful and cost-effective measures to control pollution from high risk activities. Whilst the advice is sound, the uptake of such measures, especially in relation to agriculture, is poor. The positive diffuse pollution prevention measures proscribed by the Forestry Commission (FC) is linked to payments through cross compliance with the UK Forestry Standard. However, it does not apply to woodlands not in receipt of an FC grant or felling licence - such as many farm woodlands - and do not automatically apply to planning consented forestry work. In order to improve uptake, these measures require statutory backing. However, PEPFAA Code or W&FG were not designed in line with the requirement of the WFD, and their use may be limited unless revised.

**5. Which measures to protect watercourses would you wish to see eligible for financial support under the planned Tier 3 of LMCs?**

The Freshwater Taskforce submitted a response to SEERAD Agriculture Division on LMCs Tier 3, which is given in Annex 1.

**6. Do you agree with the idea for self-audit/environmental checklist of the farm's environmental practice?**

Such assessment must be carried out with expertise knowledge and using an external auditor. As we mentioned before, we are concerned that the understanding of diffuse pollution problem, its causes and impact amongst farmers is low. A tick-box exercise may not identify problems correctly. Our preferred approach would be advice based audit using external auditors.

**7. We think it is important to help farmers/foresters/land managers understand the likelihood of water pollution from their enterprise. What is most likely to be effective?**

- **Advice/guidance/training/codes of practice/voluntary initiative etc?**
- **Seminars/farm visits/catchment officers?**
- **Structured Auditing?**

We believe that all of the above is important. Advice and farm audits are essential to improving understanding of farm diffuse pollution sources. We strongly advocate the use of Catchment Officers in priority areas to provide farmers with free advice.

**8. Do you agree that farming should be subject to a regulatory structure similar to that already planned for other activities under CAR?**

Yes, we agree. We believe that the regime must be based on polluter-pays principle and in line with WFD requirements. Licencing system must be used in areas of persistent problems. However, we are aware that regulation alone will not achieve the changes required to bring about the required reduction in diffuse pollution, and this approach must be supported with financial incentives, free advice and SEERAD funded catchment officers. The regulatory regime must apply to estuaries and sea areas out to 3 nautical miles from the baseline.

**9. Do you agree that measures should be introduced as early as possible to enable us to meet WFD Targets?**

Yes, we strongly agree. The sooner such measures are introduced, the higher the rate of compliance with WFD requirements by 2015. There is, however, a question of whether the 'proposed timetable in context of WFD' is actually achievable given the scale and diversity of the problem. The first WFD river basin management plan must be placed with the European Commission by December 2009. The Executive has therefore just two and half years to finalise a diffuse pollution strategy, devise national and targeted GBRs, consult on its draft river basin management plan, and have the agreed measures in the first in place by 2009. Such tight deadlines call for an immediate action, and we therefore recommend the establishment of an expert Diffuse Pollution Advisory Group to advice the Scottish Executive on the implementation of Diffuse Pollution Strategy.

**10. Are you content that there should be general binding rules (GBRs) for activities which contain potentially polluting practices?**

Yes, but we emphasis that all polluting activities must be addressed. The system of GBRs must be developed in consultation with all relevant stakeholders, including the agricultural and environment sectors. GBRs must contain measures, which are cost-effective and easy to implement, and address problems at source rather than use end of pipe solutions. PEPFAA code and the 4PP contain such measures and would form a good baseline for the development of national GBRs. Further financial support should be offered to farmers through the LMCs for land management that aims towards delivering supplementary measure under the WFD. These measures should go beyond those included in the developing framework of national and targeted GBRs, such as incentives for catchments based collaborative applications, catchment scale restoration/management of wetland/riparian vegetation, blockage of field drains, wider buffer strips, etc.

**11. Do you agree that specific problems in "at risk" catchments should be dealt with through targeted GBRs to be developed in consultation with the industry?**

Yes, we agree. However, licences should be used in areas of persistent problems, and licence fees should reflect the clean up and environmental cost of pollution. Targeted GBRs must be developed in consultation with all relevant sectors (internally and externally), including the environment and farm advice sectors. In particular cases, licencing that involves specific conditions could be used, based on the level of risk to water quality objectives – for example, the remediation of faecal contamination to water courses through control of livestock.

**12. Do you agree with the proposed approach of combining regulations (GBRs) with the development of guidance, support and the promotion of voluntary action?**

We agree in principle, but believe that such measures must be developed further to allow a more pro-active approach. This includes better integration with existing policies, such as the development of LMCs, provision of free advice on farms (Catchment Officers) and nutrients, soil and manure management becoming part of cross-compliance.

**13. Do you agree that the proposed GBRs and a suite of supportive measures is the right approach? What should they include?**

As above. GBRs should be developed from existing best practice advice, such as the 4PP and PEPFAA Code. National GBRs, as well as targeted GBRs must be developed in consultation with all relevant stakeholders.

**14. How might the proposed approach best be developed?**

Such approach must be developed in close consultation with all relevant stakeholders. We strongly advise the Scottish Executive to establish a Diffuse Pollution Working Group, led by the Scottish Executive to support and advise on the implementation of Diffuse Pollution Strategy.

**15. Are there any further factors we need to take into account?**

All strategies should develop a system of monitoring and evaluation which would advise its further development. We therefore recommend that the Scottish Executive should consider:

- Full and comprehensive **monitoring** in order to provide evidence for developing further activities.
- Continual assessment and **evaluation** of the impacts in order to:
  - ensure each project is delivering on its goals and objectives
  - provide evidence for scaled up and providing good practice indicators

**16. How should the Executive work most effectively with the agricultural sector?**

We are not clear what the Scottish Executive meant by this question. We believe that in order to improve the understanding of diffuse pollution amongst farmers, the provision of advice and training is essential as mentioned in previous answers. Financial incentives (such as those through LMCs) are essential for a good and voluntary uptake of environmental practice that goes beyond basic requirements. There is an urgent need for better integration between the relevant departments of the Scottish Executive to deliver policies that are more integrated and better value for public money.

**17. Can a similar approach be used for forestry as for agriculture?**

We believe that more has been achieved in the forestry sector to reduce diffuse pollution. The UK Forestry Standard – which includes the *Forests & Water Guidelines* and the *Forests & Soil Guidelines* - applies to woodland planting, felling and management operations that are authorised by Forestry Commission Scotland. It provides good basis for diffuse pollution prevention, but does not apply to any woodland not in receipt of an FC grant or felling licence. Whilst the Forest and Water Guidance provides an effective and useful tool in addressing diffuse pollution from forestry, the UK Forestry Standard must be applied to all woodlands, not just those in receipt of an FC grant/felling licence or the state forest. This measure therefore requires statutory backing, and would be a suitable template for a national GBR.

Should you have any questions about this submission, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrea Johnstone', with a stylized flourish at the end.

Andrea Johnstone  
Convener of the Freshwater Taskforce  
Scottish Environment LINK