

**Review of the Water Resources
(Control of Pollution) (Silage, Slurry and
Agricultural Fuel Oil) (Wales) Regulations 2010**

Response to Consultation

May 2016

Introduction

Purpose of consultation

On the 26 August 2015 the Welsh Government published a consultation on the Review of Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010. The full text can be found at

<http://gov.wales/consultations/environmentandcountryside/150826-151120-review-of-ssafo-wales-regulations-2010/?status=closed&lang=en>

The Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010 (SSAFO) set standards for the storage of silage, slurries and agricultural fuel oil, so as to minimise the risk of water pollution. These substances have all caused significant pollution incidents, often due to farms having inadequate storage capacity, or storage being of poor quality.

Alongside this consultation, the Welsh Government also consulted on a proposed new Control of Pollution (Oil Storage) (Wales) Regulations, which aimed to streamline the legislation governing the storage of oil and fuel across all sectors in Wales, including agriculture.

Consultation Period and distribution

The consultation ran for a 12 week period from 26 August to 20 November 2015. The consultation document was sent to key stakeholders and was available on the Welsh Government's website, and on request from the Welsh Government.

Responses

Twelve responses were received during the consultation period from a wide range of industry stakeholders, please see Annex A.

A total of 12 questions were posed with a provision for additional comments to support each response; these questions are listed at Annex B.

Welsh Government Response

The Welsh Government values all responses to the consultation exercise and welcomes the comments provided by stakeholders. The following response has been developed in consideration of the views of the respondents.

In taking forward the final decisions from this consultation, the Welsh Government remains mindful that the agricultural industry has been subjected to volatile market conditions and this will be taken into account when developing legislative changes involving the storage of slurry and silage.

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It is also noted that many of the proposals made within the consultation document will require further development before any decisions are made. Impact Assessments will be undertaken to address any unintended consequences that may occur due to legislative change.

Due to the close links with other regulations, such as the domestic legislation transposing the Nitrates Directive which is currently being reviewed, no decisions on the storage of slurry and silage will be taken until later in the year.

The Welsh Government remains mindful that certain slurry and silage stores were constructed pre 1991, making them exempt from the current SSAFO regulations. The expected life of a storage facility is approximately 25 years; therefore some storage facilities will be exceeding their life expectancy.

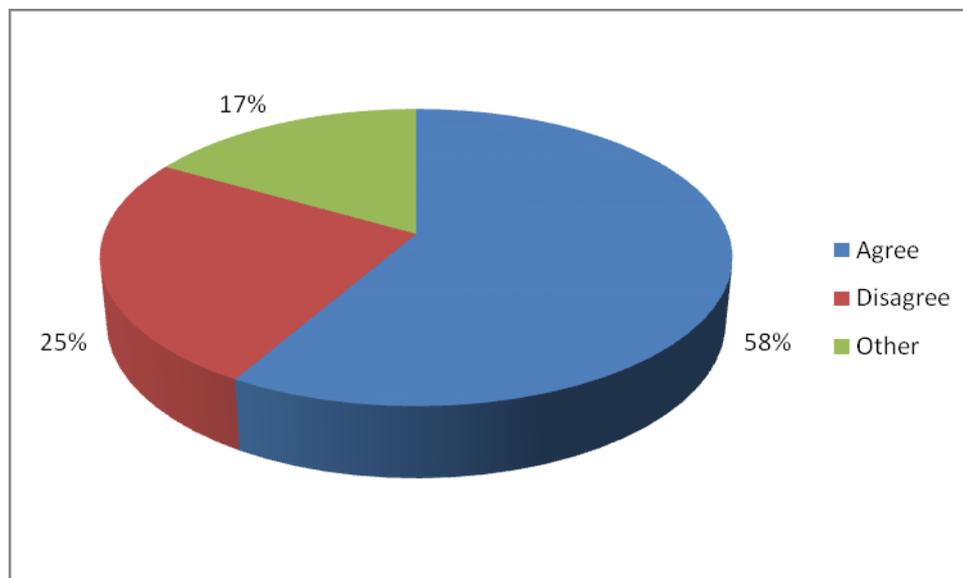
The current exemption for facilities constructed before June 1991 will remain in place under any new storage regulations. However the Welsh Government alongside industry stakeholders will be giving serious consideration to the removal of this exemption in future years. Maintaining the exemption increases the risk to leakage of slurry and silage effluent into our water systems which poses a threat to our natural environment and biodiversity. Creating a legislative model which protects our watercourses can only be of benefit to our nation.

The Welsh Government is grateful to those who supported the development of this consultation and subsequently responded with their comments and viewpoints, all of which shall be considered in the development of the new regulations.

Question 1

Do you agree that the SSAFO storage calculation method and requirements should be changed to those as required by the NVZ regulations?

Consultation Response



Twelve responses were received in relation to this question from a cross section of the industry and the associated stakeholders.

Seven of the responders felt that rationalising the regulations between SSAFO and NVZ requirements would harmonise requirements in Wales and reduce misunderstandings and misconceptions surrounding the legislation.

However, caution was raised in relation to the calculation used for the amount of storage needed for slurry. Severe weather, such as above average rainfall can increase slurry levels of uncapped / unroofed slurry stores. Oversizing a storage facility to allow for this may be unfeasible for many farming operations, depending on their geographical location and the current storage system that they have in place.

It is acknowledged that these proposals were made previously during 2012 in a consultation to review the implementation of the Nitrates Directive in Wales¹. Within the consultation responses there was disagreement with the proposal for standardisation of the calculation based on the assumptions that it would disadvantage the majority of farming businesses who operate outside of the current Nitrate Vulnerable Zones (NVZ).

¹ Response to the Review of Nitrate Vulnerable Zones in Wales. Page 15, Question 21
<http://gov.wales/docs/desh/consultation/120924responsewaternitratesen.pdf>

Welsh Government Response

The Welsh Government believes that adopting the NVZ regulations methodology for calculating slurry storage requirements will reduce red tape in line with recommendations made in the Working Smarter review undertaken by Gareth Williams.

The reduction of regulations will help reduce confusion. However the Welsh Government does acknowledge the concerns that any rationalisation of the regulations may create a financial implication on some farming businesses, which may have to consider increasing their storage capacity to accommodate the change.

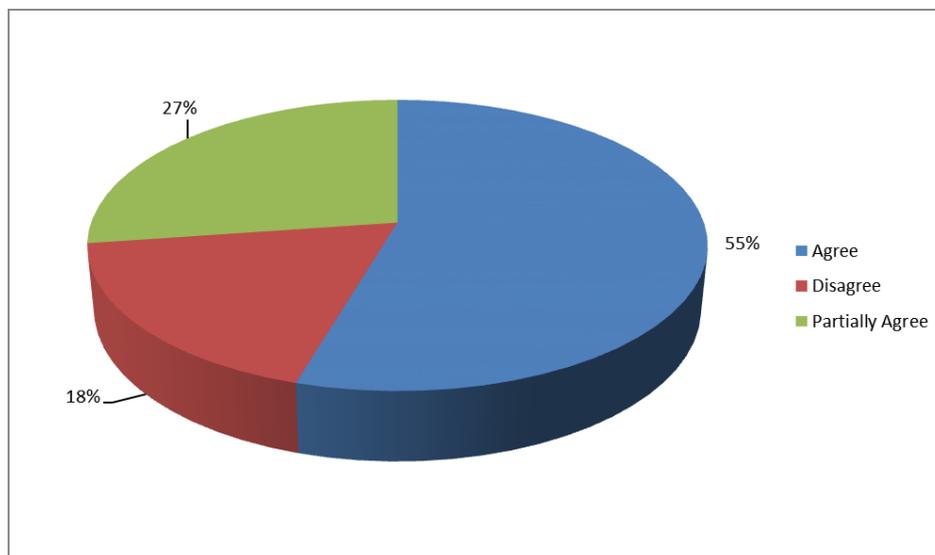
We would not expect to apply the regulations retrospectively, so any stores which are currently compliant with the SSAFO regulations would not necessarily need to undertake the revised calculation. However if there is a business decision to increase the number of livestock numbers, or the store is significantly modified, there would be an expectation that the storage capacity would then need to be compliant with the NVZ calculation methodology.

However, no decision will be made on this matter until the outcome of the consultation on the review of the implementation of the Nitrates Directive is available. This will ensure that the new regulatory requirements are compatible and inform the Regulatory Impact Assessment (RIA), which is currently being undertaken.

Question 2

Do you agree with the changes to the definitions as proposed?

Consultation Response



Responses for this question gave a mixed opinion. Although those who agreed were in the majority, there were many additional points that were raised as a concern.

Out of the four terms that were consulted on, the following feedback was received.

‘Dirty Water’ renamed to ‘Lightly Fouled Water’:

In general, responses indicated a positive reaction to the renaming of dirty water to lightly fouled water. It was felt that by softening the term from dirty water would highlight that even slightly contaminated water can cause a detrimental impact on the environment. However, there were calls that a clear definition was given as to what was meant by Lightly Fouled Water, as this would be open to interpretation, making enforcement complicated and subjective.

Manure Heap Effluent:

The majority of responses agreed with the proposal in the consultation that Manure Heap Effluent should be considered within the regulations, as effluent from a field heap can be as polluting as slurry. However, one respondent did not support the proposed change due to the number of manure heaps located around Wales, and the little evidence that was available to suggest that the redefinition would make any improvement to the environment.

Exemption Definitions:

Respondents all agreed with the proposed change to the definition. However, the main comments were concerns on what constituted the definition of 'substantially enlarged' and 'reconstructed', which needed to be clarified further.

Yard Definition:

In all, this received the least comments, which provides the Welsh Government with confidence that in general this proposal is widely supported. However, one responder did make the suggestion that the yard definition was unnecessary as the term is well understood.

The main purpose of including definitions is to provide greater clarity on how the amended SSAFO regulations should be interpreted and enforced.

Unintended consequences were an issue for the responders. There was a concern that by redefining specific terms, the new definitions may be applied retrospectively. This would create a financial outlay for many farming businesses, in particular to those which have silage and slurry storage.

One respondent felt that the ability to enforce the SSAFO regulations using the proposed definitions would be unachievable, due to the fact that there was scope for individual farmers interpreting the terms differently. It was felt that in order to address this issue, each definition needed an incontestable legal definition.

Welsh Government Response

The Welsh Government believes that clearly defined descriptions of key terms will make sure that all farming businesses have the necessary detail in order to carry out farming practices which fall within the legal boundaries of the regulations and remain respectful to our natural environment and biodiversity. Welsh Government officials will work with industry to define the terms more fully in order to prevent misinterpretation.

Any definition will have to be made in accordance with other policies and legislative areas to ensure continuity and consistency. The application of the new definitions will be considered as non-retrospective to avoid any unnecessary financial implication and limit any negative impacts on farming businesses.

As a matter of course, the statutory impact assessment will be considered, to make every effort to minimise the impact of any unintended consequences.

Question 3

Are there any other elements of the regulations that should be clarified or legally defined?

Consultation Response

Comments received asked for a definition of the term silage as there are other forms of the feedstuff in drier form, notably 'haylage'.

Other terms suggested for defining included 'Controlled Waters', 'Woodchip Corrals' and 'Substantially Enlarged or Substantially Reconstructed'. There was also a strong opinion that there needs to be a more joined up approach as the SSAFO regulations can impact on other areas, such as the Environment Act 1995.

In addition to this, closer working with other Welsh Government initiatives, such as the Rural Development Programme 2014-2020 could potentially offer financial help to farming businesses for the upgrading of storage facilities through grants, loans or other innovative financial interventions.

Welsh Government Response

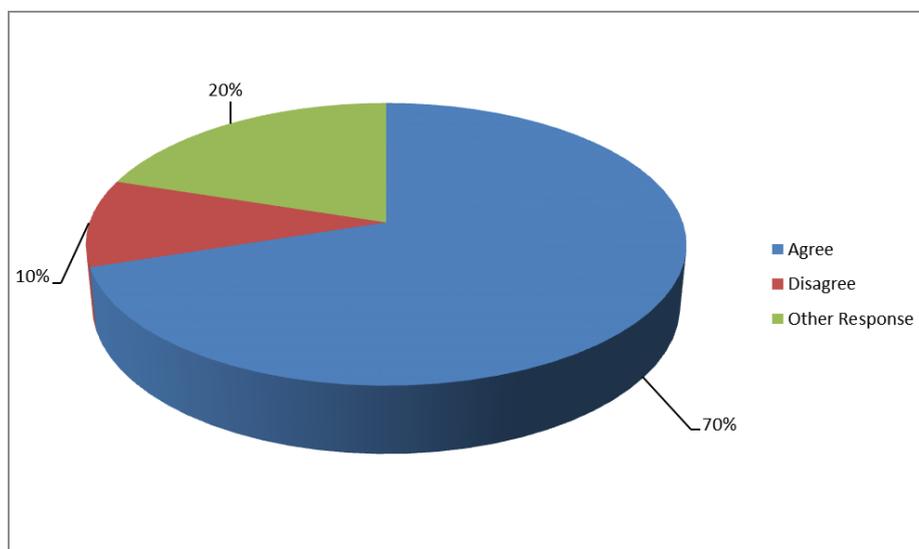
Clearly defining terminology within legislation is something that the Welsh Government believes is fundamental for ensuring compliance with the regulatory requirements.

Hence the Welsh Government will work with industry stakeholders and the organisations that provided the feedback, to make sure that terminology within the legislation is clear, concise and fit for purpose.

Question 4

Do you agree with the proposal to accommodate the new technologies and practices in view of the findings of the CIRIA 126 review?

Consultation Response



The Construction Industry Research and Information Association (CIRIA) review looks at the standards for the construction industry across the UK, specifically for the construction of farm manure, slurry and silage storage facilities.

It was noted that the report by CIRIA was being undertaken to provide guidance for the construction of agricultural buildings and storage facilities. It was felt that planning policy needed to be clarified in terms of the requirements set out to construct a slurry or silage storage facility.

Fundamentally, consultees agreed with the proposal that new technology should be accommodated in the new SSAFO regulations. It was noted by one respondent that the CIRIA 126 report was not available at the time of the consultation and therefore the guidance it will offer was unknown at the time. Further consultation should therefore be undertaken before any change in legislation is put forward.

Some of the respondents warned that any new technologies have to be viable, appropriate and must not cause any detriment to the natural environment.

Welsh Government Response

The Welsh Government not only takes safety of the environment seriously, but also that of human wellbeing. The review set out by CIRIA sets standards

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which protect all aspects of the agricultural industry across England and Wales.

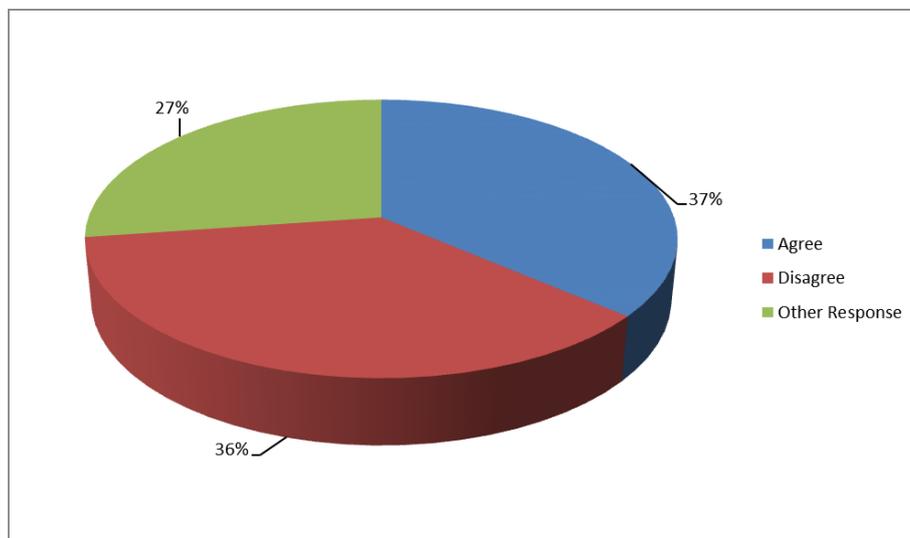
Storing agricultural waste products such as slurry and silage needs to be done in a way which is secure and minimises the risk to the natural environment. Therefore it is essential that any such building works conform to the industry standards.

The CIRIA '126' report has now been published and Welsh Government officials are considering the guidance made for the construction of farm buildings and storage structures. Once an impact assessment is completed on the relevance of the guidance made by CIRIA, Welsh Government will give further consideration into the implementation of the report findings and use this to guide should it be considered that further consultation is required before any decisions are made.

Question 5

Do you agree with the proposals to include rules on the storage of manure in temporary field heaps?

Consultation Response



This question gave more of a mixed opinion on whether or not temporary field heaps of manure should be included in the regulations.

In one comment, the responder made a point that manure heaps can cause extreme detriment to the quality of raw water, especially when located within a high risk area. Therefore they should be regulated under SSAFO.

A second responder felt that, provided the heap is away from any water course, manure heaps pose little environmental threat. In order for dry manure to be spread, it needs to rot down for at least a 12 month period. Any effluent run off is minimised by the straw content in the pile though absorption.

Welsh Government Response

The Welsh Government is content that, provided that the manure heaps are placed in fields responsibly, there is little evidence to suggest that they cause detriment to the surrounding environment. However, the siting of these heaps should be done in compliance with the following:

A temporary field site must not be:

- a) in a field liable to flooding or becoming waterlogged;
- b) within 50m of a spring, well or borehole or within 10m of surface water or a land drain (other than a sealed impermeable pipe);
- c) located within 30m of a watercourse on land with an incline of greater than 12 degrees;

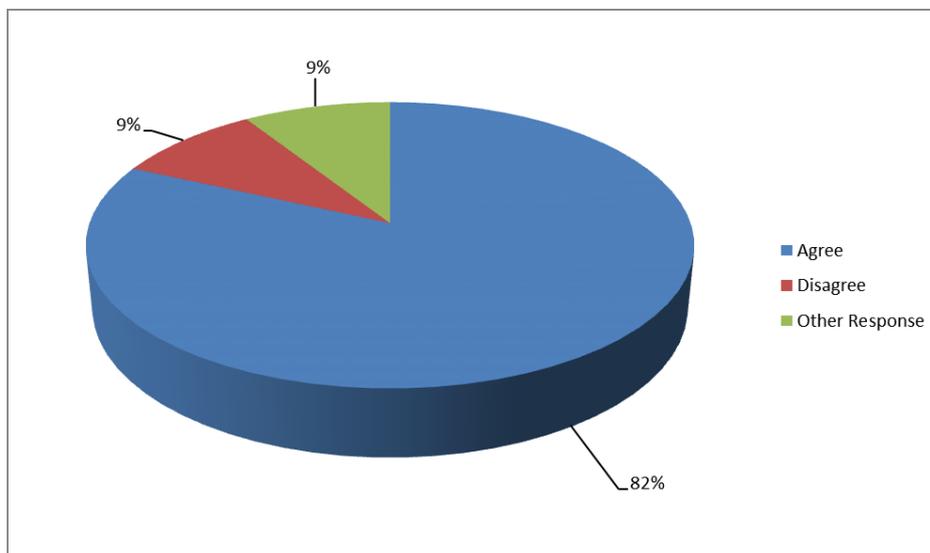
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- d) located in any single position for more than 12 consecutive months; or
 - e) located in the same place as an earlier one constructed within the last two years
- Solid poultry manure that does not have bedding mixed into it and is stored on a temporary field site must be covered with an impermeable material.
 - Topsoil must not be removed from the ground upon which the field site is to be constructed.
 - The surface area of a temporary field site should be as small as reasonably practicable to minimise the leaching effect of rainfall.
 - The positioning of such a heap will be the fundamental factor and therefore it should be a consideration within the scope of the Cross Compliance regulations.

Question 6

Do you agree with the principle of including constructed wetlands within the SSAFO regulations if further evidence becomes available to support this?

Consultation Response



Within the responses received, there was an overall majority that, in principle, the inclusion of constructed wetlands should be considered within the SSAFO regulations.

However, this would be on the provision that further research is undertaken to establish the effectiveness of such systems for the control of contaminated water.

Welsh Government Response

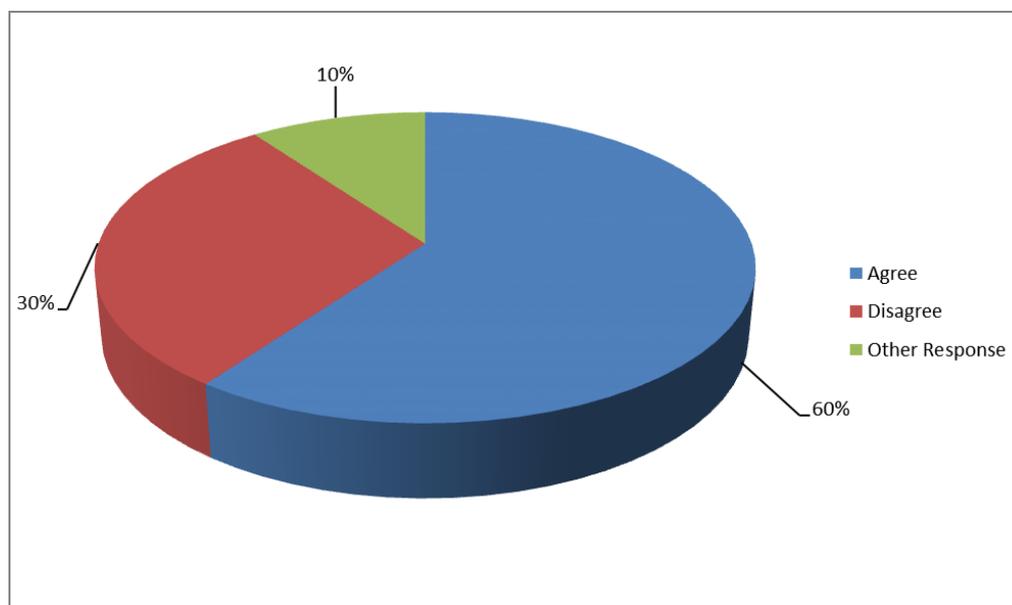
Currently there is limited data available on the effectiveness of constructed wetlands for the control and treatment of contaminated water.

Therefore the Welsh Government will work alongside experts within this area to carry out further research before a decision is made whether to include this provision within the new SSAFO regulations. This will be considered should any further consultation exercises take place before any final decision is made.

Question 7

Do you agree with the proposal to introduce an inspection and maintenance regime for those stores which fall under the 'regulation 6 exemption'?

Consultation Response



Generally there was agreement that an inspection and maintenance regime should be established to ensure that storage facilities that were constructed before 1991 are fit for purpose.

Respondents felt that farms with pre 1991 facilities should not be penalised if they are not posing any significant risk of pollution. However, there should be a clear definition within the regulations on who is responsible for carrying out inspections and enforcing any remedial action.

A respondent did highlight the issue concerning tenanted farms and potential breaches of the regulations. In their view, compliance should be the responsibility of the landlord.

Welsh Government Response

The need for inspecting storage facilities that fall under the 1991 exemption is something that the Welsh Government remains committed to. The responses from the consultation also indicate the general support by the industry for this to happen.

The Welsh Government considers the alternative to this approach would be the removal of the exemption, which in the short term may risk the viability of some farm businesses, and so would be unacceptable. However, the industry has a responsibility to ensure that it does not pollute the water environment.

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Many farms in Wales have not invested in sufficient slurry storage to enable good nutrient management practices and because of the 1991 exemption do not meet the minimum SSAFO standards. The exemption may incentivise reluctance to modify stores, as they would then have to comply with the regulations. The industry must undertake long term planning if it is to be sustainable.

While the removal of the exemption is not proposed at this time it is expected that as stores benefitting from the exemption will, in the not too distant future, have been modified to the extent that they would automatically fall within the regulations, the exemption will be inconsequential and so removed.

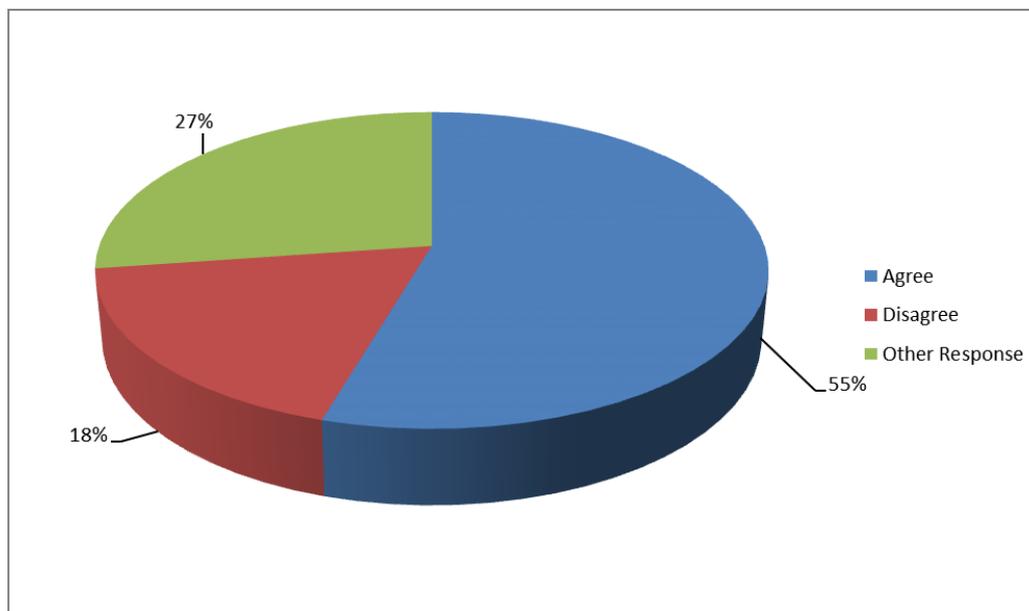
Wherever possible, the Welsh Government will look to support the industry by adhering to the Working Smarter principles in order to reduce the burden on farming businesses. Nevertheless, there will be an obligation that farmers who fall under the exemption must maintain a robust facility that is fit for purpose.

The Welsh Government will continue to work alongside the respective departments within Natural Resources Wales to put into practice a suitable enforcement regime in order to prevent any environmental damage

Question 8

Should the regulations specify who should undertake inspections and how they should be recorded?

Consultation Response



The majority of responders felt that any inspection should be undertaken by a suitably qualified person.

In order for the industry to understand the obligations of each party in the enforcement of the regulations, there should be a suitable framework document in place which clearly details what is expected of farmers, in order to remain compliant with the regulations.

Welsh Government Response

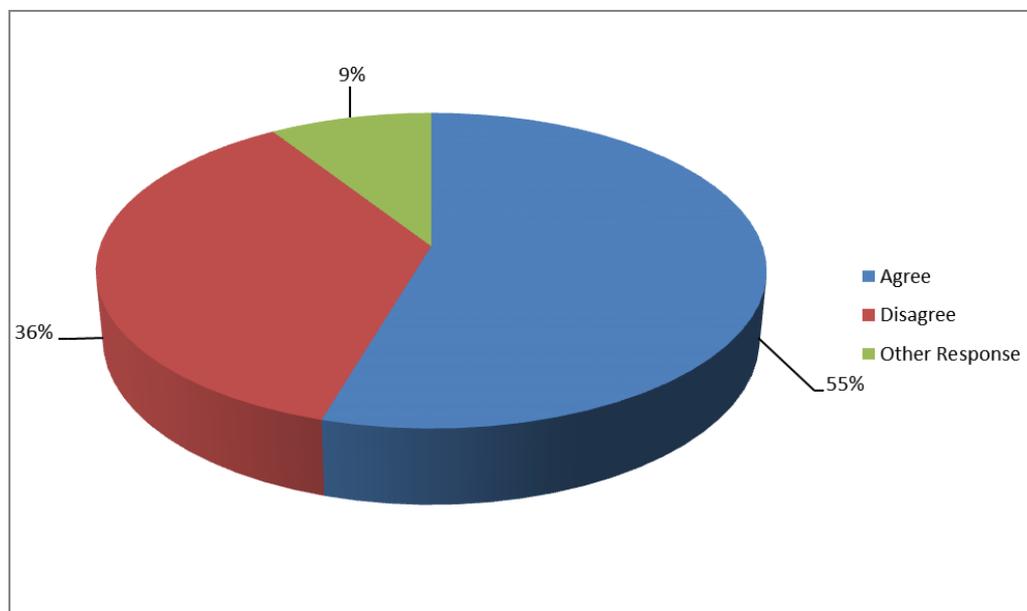
Enforcement of the regulations which govern the use of storage facilities is a vital element to ensure that farming businesses are compliant with the requirements. The Welsh Government will work alongside partner organisations to provide an inspection regime which is administered by a suitably qualified person in order to maintain the integrity of the regulations.

The Welsh Government notes the request for putting a regulatory framework in place so that every opportunity is given to farming businesses to make sure that any storage facility is up to the required standard and know what to expect should they be inspected by the enforcing body. This suggestion will be taken forward as part of the Welsh Government's commitment to the Working Smarter agenda.

Question 9

Should it be an offence not to keep a record of inspections?

Consultation Response



The majority of consultees agreed with the proposal and underlined the need to maintain adequate records by farmers following regular and periodic inspections of their storage facilities.

This would also reinforce the need to have a regulatory framework available to farmers to follow in order to adhere to the regulations as discussed in the previous question. Failure to keep inspection records would go against any attempt to show that a farming business was trying to demonstrate compliance with the regulations.

One responder felt that simply failing to keep inspection records should not be classed as an offence. It was considered that by failing to keep evidence of an inspection taking place should be deemed a 'technical offence' rather than a breach of the regulation.

Welsh Government Response

Before any decisions are made in terms of the scale that failing to keep adequate records constitutes a breach of the regulations, more work will need to be undertaken to determine the appropriate level of response.

Imposing a penalty for non-compliance would act as the influencer for farmers to undertake an inspection of storage facilities periodically.

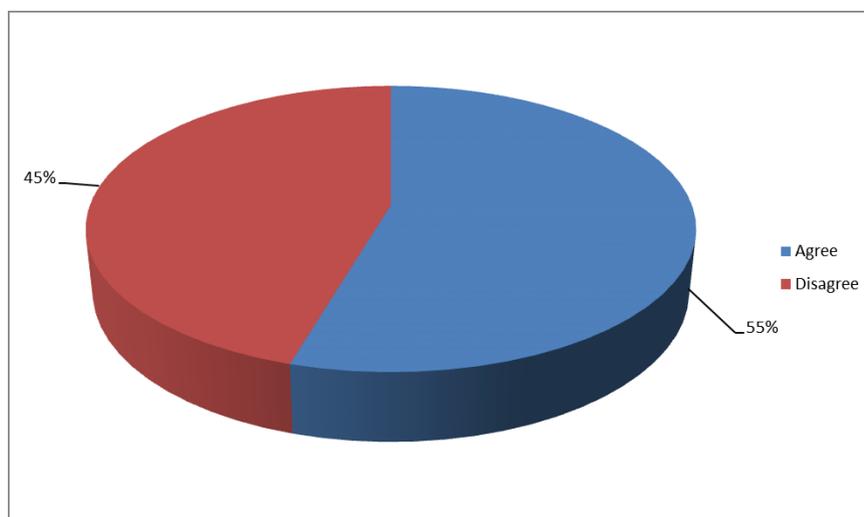
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Encouraging a self-policing arrangement in which farming businesses take responsibility for maintaining silage and slurry stores is fundamental to protect our natural environment.

Question 10

Should the safety zones and silo and slurry store construction standards of the SSAFO regulations be incorporated into cross compliance?

Consultation Response



The responses to this question were fairly even with 6 agreeing and 5 disagreeing. The main reasons for the agreement to have the SSAFO regulations encompassed into cross compliance would be that the potential risk of having penalties imposed to the Basic Payment Scheme would help to persuade farmers to abide by the legislation.

Another responder raised concerns that by incorporating the enforcement into the cross compliance regime may inadvertently create a 'double jeopardy' situation, as it could lead to imposition of not only a fine by Natural Resources Wales but also penalties applied to the Basic Payment Scheme, which was deemed unfair.

However, one respondent made the point that a 10 metre safety zone would, in effect, be too complex to add in to the cross compliance regime as it currently stands and therefore not supported at this stage.

Welsh Government Response

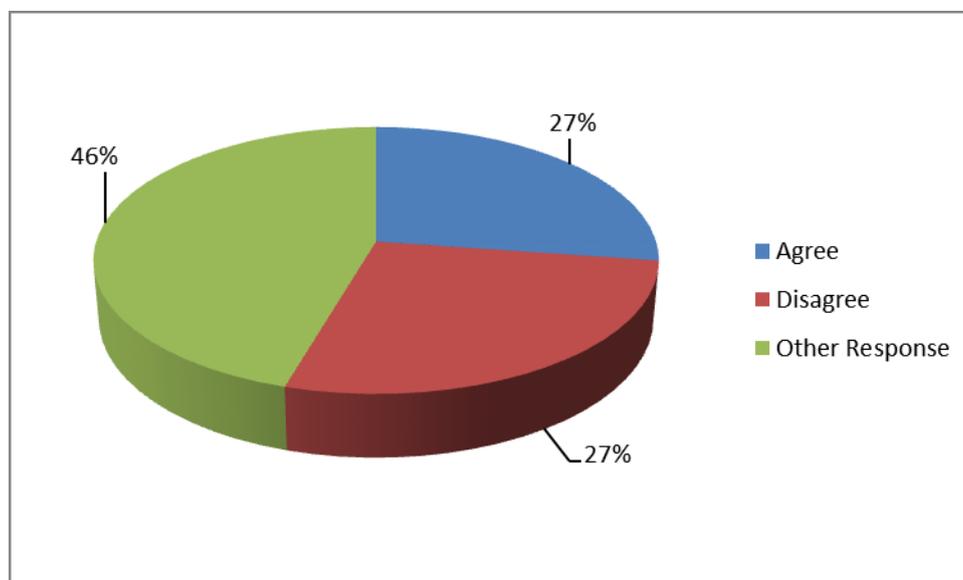
Any change to legislation would mean that the rules would need to be enforced using the most appropriate method.

The Welsh Government will work with agricultural industry and stakeholders to give full consideration into all of the options available in which the storage of slurry and silage regulations could be encompassed into cross compliance.

Question 11

Do you agree with the proposal to enable enforcement of the SSAFO regulations through civil sanctions?

Consultation Response



This question raised further queries, mainly as civil sanctions are not well understood, with calls for further clarification around the proposal. The enforcement of the regulations was a major topic for discussion, including questions about who would be responsible for carrying out any enforcement and whether the relevant organisation will have the necessary skillset and required staffing levels.

One responder did however make the point that in certain circumstances and for the more serious offences criminal prosecution does need to remain an option.

There was also a cautious view on the amount of penalties that already exist within the industry and concern for those people who make genuine mistakes.

Welsh Government Response

The Welsh Government believes that there needs to be the right level of enforcement in order to encourage farming businesses to take a proactive approach in protecting our natural environment.

Civil sanctions often pose the best method for enforcement as a far more constructive outcome. However for the more serious breaches of the regulations, criminal sanctions need to be available for consideration.

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The Welsh Government will continue to work with stakeholders in order to address what the most suitable method for breach of the regulations are in order to discourage farming businesses from causing detriment to the natural environment and our biosecurity in Wales.

Question 12

Are there any other comments you want to make?

Consultation Response

This question received limited responses. However, some constructive comments were made. One respondent suggested that within any new regulation, a degree of flexibility or the ability to make modifications to allow for any novel storage management systems that have been developed since the original regulations were adopted, should be included.

Other comments included that any extension to storage facilities should not be considered a rebuild, which may then be classed as new, therefore no longer eligible under the 1991 exemption.

Welsh Government Response

These comments will be fully considered in conjunction with those received to the questions above.

The Welsh Government acknowledges that since the introduction of the SSAFO regulations in 1991, many advances have been made in the storage of silage and slurry. Any change to the legislation will reflect this progression.

Setting legislation which encourages the use of new technologies reaffirms the Welsh Government's commitment to developing a forward thinking and progressive agricultural industry.

ANNEX A – List of Responders

- Dŵr Cymru
- Tenant Farmers Association
- Natural Resources Wales
- National Farmers Union
- ADAS
- Campaign for the Protection of Rural Wales (CPRW) Brecon Branch
- Country Land and Business Owners Association
- Farmers Union of Wales
- Individual Expert
- Individual Farmer
- Member of the General Public
- Member of the General Public

Annex B – Questions

1. *Do you agree that the SSAFO storage calculation method and requirements should be changed to those as required by the NVZ regulations?*
2. *Do you agree with the changes to the definitions as proposed?*
3. *Are there any other elements of the regulations that should be clarified or legally defined?*
4. *Do you agree with the proposal to accommodate the new technologies and practices in view of the findings of the CIRIA 126 review?*
5. *Do you agree with the proposals to include rules on the storage of manure in temporary field heaps?*
6. *Do you agree with the principle of including constructed wetlands within the SSAFO regulations if further evidence becomes available to support this?*
7. *Do you agree with the proposal to introduce an inspection and maintenance regime for those stores which fall under the 'regulation 6 exemption'?*
8. *Should the regulations specify who should undertake inspections and how they should be recorded?*
9. *Should it be an offence not to keep a record of inspections?*
10. *Should the safety zones and silo and slurry store construction standards of the SSAFO regulations be incorporated into Cross Compliance?*
11. *Do you agree with the proposal to enable enforcement of the SSAFO regulations through Civil Sanctions?*
12. *Are there any other comments you want to make?*