

Lesley Griffiths
Cabinet Secretary for Environment and Rural Affairs
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

19th July 2017

Dear Cabinet Secretary,

Tackling Agricultural Pollution

Following our many conversations over the past year on agricultural pollution, as well as the continuing, unacceptable number of slurry pollution incidents that have been experienced across Wales (see Annex 1), I thought it would be helpful if I outlined our work to tackle this issue before setting out what we think is necessary, along with the help we need from Welsh Government.

1. Current work on agricultural pollution

NRW's approach involves all of our departments and falls under the three broad headings as set out below. An internal NRW Working Group on agricultural pollution has been established to ensure that information is shared quickly between teams and appropriate action taken.

1.1. Responding to pollution incidents, communications and enforcement

Incident responses are led by our local Natural Resource Management Teams with additional support provided by the Evidence, Policy and Permitting; Communications; and Legal Directorates.

Disappointingly, some inaccurate information about pollution incidents caused by slurry has been published in recent weeks. Our own incident recording systems show that a total of 679 slurry pollution cases have been reported to us since 1st January 2010, ranging from 70-120 per annum. The bulk of these have been caused by the dairy sector, with a smaller number originating from beef units. In a significant proportion, it is not possible to definitively attribute the source of the pollution to a particular sector.

These 679 slurry pollution incidents vary in their degree of impact and significance on the environment and our subsequent enforcement approach to each of these has been summarised in the table below and in Annex 1.

NRW's Enforcement Responses to Slurry Pollution Incidents since 1st January 2010

Enforcement Response	Number	Proportion
Formal Caution Recommended	46	6.8%
Formal Warning Letter	291	42.9%
No Further Action - Insufficient Evidence	26	3.8%
No Further Action - Public Interest	23	3.4%
Notice Served	12	1.8%
Prosecution Recommended	45	6.6%
Site Warning	67	9.9%
No offence / Offender not identified	156	23%
Advice & Guidance <i>since March 2016 *</i>	13	1.9%
Total	679	

Site warnings, warning letters and the provision of advice and guidance were used in 55% of cases as a way of dealing with incidents that had less serious impacts on the environment. Formal cautions, prosecutions and the service of notices were used in 15% of cases; where the issues were more serious. Evidence to support further action was not strong enough, not evident or not identified in 23% of reported incidents, and in 3.4% of cases no further action was taken for reasons of public interest; such as where we felt it would serve no good reason, or cause unacceptable stress and hardship to prosecute.

1.2. Advice to Welsh Government

NRW staff continue to work with your officials on a number of interlinked agricultural policy areas including:

- revision of the existing Codes of Good Agricultural Practice (CoGAP)
- revision of the Slurry, Silage and Agricultural Fuel Oil (SSAFO) Regulations
- the Nitrate Pollution Prevention Regulations - a revised action plan as well as the implications of extending the targeted approach / adopting a whole territory designation.

1.3 Working in partnership with the agricultural sector

As you are aware we gave presentations on agricultural pollution to previous Ministers, Carl Sergeant and Rebecca Evans, back in 2015-16 and you have also seen one such presentation. These described the types of pollution incidents which occur regularly, outlined the probable causes and introduced a range of possible solutions - none of which

was seen as constituting a “silver bullet” on their own. The list of possible actions was subsequently used as the basis for a number of officer-level meetings between your officials in Environment and Rural Affairs (E&RA), Water Branch and NRW.

The single most important outcome from these meetings has been the establishment of a Working Group under the auspices of the Wales Land Management Forum (WLMF)¹. The membership of the WLMF Working Group on agri-pollution includes the Welsh Government (E&RA as well as Water Branch), the National Farmers’ Union Cymru (NFU Cymru), the Farmers’ Union of Wales (FUW), the Country Land and Business Association (CLA), Tenant Farmers Association (TFA), Dŵr Cymru Welsh Water (DCWW), Hybu Cig Cymru (HCC), AHDB Dairy, and Natural Resources Wales (NRW). Other organisations can be invited to attend at the discretion of the Chair and we are hopeful that a representative from Afonydd Cymru will soon join the Working Group.

Through regular discussion about the root causes of agricultural pollution, alongside a focus on the role of advice, incentives, regulation and innovation, we are striving for a more consensual approach to addressing the problem; and this is starting to emerge. This approach rests on a growing, collective acceptance that the problem is a shared one; with farmers being encouraged to seek advice and guidance on good practice (whether from Farming Connect, their own advisors or NRW), whilst being urged to contact NRW at the earliest opportunity should something go wrong to mitigate any subsequent environmental damage. Our view is that this is a first for those representing the sector to work in this way and it is so important that we try to collaborate and cement this new way of working for everyone. This will not only help us to make a real step difference to the agricultural pollution issue, but will help us take forward the new ways of working fundamentally required by both the Environment and the Well-being of Future Generations Acts.

As this working group develops, our aim is that it should provide a comprehensive suite of recommendations to yourself, the NRW Board, Amaeth Cymru and the Boards of all participating organisations. As an early and immediate achievement, it is encouraging that a joint bid for additional resources has been deployed under the Farming Connect programme. NRW will be co-ordinating the collective bid submission. The working group has committed to meet on a regular basis for at least another two years to maintain an overview of progress and agree any changes of approach that may be necessary.

Placing all of this activity in the wider context of the sustainable management of natural resources, we have recently embarked on a series of conversations with stakeholders in the land management / agricultural sector to complement what you have established via the Brexit roundtable. This aims to help us establish the area statement process.

¹ *The WLMF is the mechanism through which Board Members from NRW, the Farming Unions and the Forestry Sector are able to liaise on a regular basis. This working group is chaired by NRW Board Member Zoe Henderson.*

2. Next Steps

In addition to the WLMF working group on agri-pollution, there are many other areas where NRW and Welsh Government are working closely and effectively together. However, along with my fellow Board Members, I am becoming increasingly concerned that we may have lost sight of the necessary overview, and urge you to prioritise the work of your officials to help take these elements forward.

I have summarised below some of our thoughts in relation to CoGAP, the Slurry & Silage Storage Regulations, Anaerobic Digestion (AD) plants, Civil Sanctions, Basic Measures and NVZ's. I am also hoping we can reinstate the regular Welsh Government / NRW meetings regarding these issues at senior officer level. This will help to ensure a well co-ordinated approach to our common agendas. For example, you could look to "shadow" the ongoing WLMF working-group meetings whilst keeping an overview of the related policy strands (including Amaeth Cymru and the development of the Welsh Land Management Strategy). All of these elements are key in our continued determination to achieve a major step change in the reduction of agricultural pollution incidents.

2.1 Code of Good Agricultural Practice (CoGAP).

NRW is currently working with staff in E&RA on the revision of the existing CoGAP. The Regulator's Code makes clear that advice and guidance should focus on assisting those who are being regulated to both understand and meet their responsibilities. This means that legal requirements should be clearly distinguished from suggested good practice.

The Scottish PEPFAA Code² provides an excellent example of how to assist land managers in identifying what the "regulatory floor" looks like, but also where good practice is over and above this regulatory requirement. We are hopeful that this kind of approach can be incorporated into the updated version of CoGAP which will then provide an extremely useful on-farm tool for use by Farming Connect, private sector advisors and NRW staff. The revised code would also help underpin discussions on future agricultural policy. In particular, it can clearly establish what land managers are expected to deliver under regulation. This would then help to clarify which additional activities can be incentivised.

2.2. Silage & Slurry Storage Regulations.

NRW is also working with E&RA staff on the forthcoming revisions to the Silage & Slurry Storage Regulations. We believe that the risks of agricultural pollution could be significantly reduced if all newly constructed stores could be inspected at various stages of the design and construction process (paralleling the requirements of the Building

² https://www.sruc.ac.uk/homepage/720/pepfaa_code

Regulations) rather than just on completion. Additional measures are also needed in respect of those (potentially higher risk) stores constructed prior to 1991 and which are currently exempt under the existing Slurry, Silage and Agricultural Fuel Oil (SSAFO) Regulations. We are currently looking to amend our own reporting procedures so we can more accurately establish future slurry incidents arising from failures within exempt structures.

2.3. Anaerobic Digestion (AD) plants

As you will be aware, the regulation of AD is dependent on the feedstock utilised by the process. NRW is only required to regulate AD plants that have a waste feedstock. Those fed with energy crops, by-products, and waste that has achieved 'End of Waste' status, such as slurry, are not currently subject to the risk based regulatory framework involving the issue of permits. By contrast, all AD plants fed with source segregated food waste will require regulation.

Where waste is used as a feedstock, a risk based regulatory framework then applies. For lower risk sites there are waste exemptions and for the medium to higher risk sites a permit is required. Waste exemptions are subject to a lighter touch compliance approach based on risk assessment. All permitted waste facilities are subject to a risk based compliance assessment programme under which poorly performing sites are inspected more frequently.

The two most recent AD river pollution incidents both involved farm based units. Neither had a permit, as they operated within the exemption thresholds. There were also inconsistencies within the approach to planning control; one plant had planning consent, whilst the other was dealt with under permitted development.

The planning regime is plainly critical to ensuring early intervention in terms of siting of AD plants and the infrastructure involved. As a result, the NRW waste team has:

- liaised with the Welsh Government Planning team and advised on setting up a review of the use of permitted development rights as applied to the establishment of an on-farm AD plant;
- agreed to assist Welsh Government officials in reviewing the TAN 21 Technical Support Guidance on AD;
- ensure that the NRW Planning Policy team provide consistent advice when advising local authorities on the development of AD plants.

The risk profile for the waste exemptions applied to AD also requires review. As a result, the NRW waste team has:

- requested Welsh Government consider reviewing the T24 and T25 exemption as part of the current waste exemption review.
- started work to establish which AD sites are operating under the waste exemptions in Wales. This work is ongoing.

NRW recognises that AD is a sustainable resource management solution which can support better nutrient management and the potential eradication of pathogens (such as bovine TB). However, to support this approach, we need to ensure that safe and efficient AD systems are planned, developed and operated. Currently we are:

- Working with the Industry Association to develop Best Practice and a voluntary scheme to help adoption of best practice. NRW have provided key input and the association is keen to reciprocate this with key support in Wales;
- Liaising with the Farming Unions to gain their help in promoting best practice.
- Working with the Centre for Excellence for AD to bring key partners together (hopefully in early autumn) to clarify the role and opportunities for AD in sustainably managing waste in Wales.

One area we urge you to consider further is whether AD is a technology that should be regulated in its own right given the inherent risks. This would ensure a consistent regulatory framework to these operations, regardless of what is fed into an AD plant; be it maize, potatoes, waste food, slurry or other animal by-products. Such an approach would require legislative changes which would need to be driven by your officials.

2.4 Civil Sanctions

The use of civil sanctions to help tackle agricultural pollution is another area of regulation we would urge you to explore to deliver better outcomes for any environment which is polluted. Currently it is not possible for enforcement undertakings to be offered on breaches of the Environmental Permitting Regulations (EPR) 2016³. This can, however, be done in relation to the Salmon and Freshwater Fisheries Act (SFFA) 1975⁴. Ensuring NRW has access to civil sanctions for offences within the EPR (as is already the case in England) would mean that, where there is insufficient evidence to pursue an offence under the SFFA (or other legislation listed in the current Civil Sanctions Order), the civil sanctions route could still be used when considering offences under other legislation. In particular, allowing farmers to offer an Enforcement Undertaking for a slurry pollution could make it easier to rectify the problem and potentially benefiting the affected habitat, amenity or local community. This approach could also benefit farmers and angling clubs, as well as local communities and other interest groups, because where an enforcement undertaking is offered, the person affected by the offence must be consulted, a commitment made (including payment of a sum of money) to recompense them for the damage caused. Greater use of enforcement undertakings would help to avoid the need for NRW, the farmer, and angling clubs to become involved in court action. At the same time, it should also improve the quality of the outcome for the environment. Currently, we are unable to achieve what we believe would be significant advantage for Wales, as indeed our colleagues in England are able to do.

³ e.g. “causing or knowingly permitting a water activity, namely a discharge of slurry to water

⁴ e.g. Section 4 “discharge of poisonous or noxious matter (such as slurry) that is poisonous to fish or food of fish”.

In exploring options to address agricultural pollution, NRW has spoken with the Welsh Government Natural Resources Management Programme Team to consider the opportunity that **basic measures** may provide as part of WG's Smarter Regulation initiative. There are several important drivers behind this work, not least, the UK's departure from the EU. This is likely to force a reconsideration of the present CAP Cross-Compliance Framework. It will also promote the need for a rational and coherent regulatory floor upon which we can then build incentive schemes. This will cover both a public-sector perspective (e.g. the future of agri-environment-climate schemes) and that of the private sector (so-called Payments for Ecosystem Services or PES). We understand that the Scottish experience with basic measures has been favourable. Our initial discussion with other stakeholders has been positive, especially once the intention to rationalise the regulatory landscape has been made clear. Seen in this light, basic measures are also in line with NRW's regulatory principles, with a clear focus on delivering the sustainable management of natural resources (SMNR). In particular, we welcome the continuing opportunity to work with your staff on this issue. We are encouraged by the inclusion of provision for basic measures in the current SMNR consultation and look forward to this approach being taken forward under legislation.

2.5 Nitrate Vulnerable Zones (NVZ)

We have already provided a substantial amount of evidence on water quality which was been used to underpin the recent NVZ consultation exercise. As a result, we felt it was appropriate to reserve our position on the issue of targeted approach versus whole territory. We have, however subsequently provided your officials with detailed advice in relation to the review of the NVZ Action Programme. I'm aware that you are still considering the most appropriate way of moving forward on the NVZ. We would welcome the opportunity to continue to work closely with your officials in both E&RA and Water Branch in considering the extent of designation.

2.6 Innovation

I'm very pleased to hear that the proposal to develop the prototype slurry separator at Gelli Aur has now been accepted under the RDP Co-operation and Supply Chain Development Scheme (CSCDS). We thought this was extremely welcome news, not least because it highlights the potential to turn a problem into a solution through an **innovative initiative**. This is one of the areas that the WLMF working group is planning to examine in more detail.

The Welsh Government can also make a significant contribution by continuing to work with the sector to look at the range of other innovations being considered, and helping to finance pilot projects. This will enable suitable concepts to be brought to market in ways that are accessible to individual farmers and contractors, both in Wales and importantly, if the solutions are developed by Welsh Companies, to markets further afield.

2.7 Investment

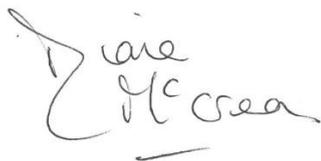
Ensuring that Wales is at the forefront of innovation sits well with our other tools for tackling agricultural pollution. These include regulation, advice and guidance, investment, and incentivisation to help farmers in developing more sustainable businesses. We believe that mechanisms such as **Glastir Advanced, Glastir Small Grants, the Sustainable Production Scheme, and the new Farm Business Grant** are all important in helping to incentivise the necessary improvements in farm infrastructure. We welcome more dialogue with your officials to brigade the full range of RDP schemes to ensure an integrated approach to tackling agricultural pollution. WLMF Working Group members have already raised a number of issues on how applications are evaluated and the benefits to be gained from ensuring that a wider range of pollution management mechanisms are eligible. The WLMF Working Group will be reporting to you on these issues in due course, but plainly this work will also contribute to the debates now taking place on the nature of future land management mechanisms that will need to be put in place following the UK's departure from the EU.

I hope this detailed letter is helpful in setting out what we see as the current situation.

Minister, I urge you to consider the ways forward we propose to tackle this problem. As you will appreciate we are fully committed to playing our part to resolve the problem of agricultural pollution in Wales.

I very much look forward to discussing these matters with you at our next meeting, as well as working together to achieve a coherent, sustainable response for the sector, the environment and the people of Wales.

Yours sincerely,

A handwritten signature in black ink, reading "Diane McCrea". The signature is written in a cursive style with a horizontal line underneath the name.

Diane McCrea MBE
Chair, Natural Resources Wales

CC: Carys Clarke

Members of the WLMF Working Group on agri-pollution

Annex 1 - Slurry Pollution Incidents notified/reported to NRW since 1st January 2010

Slurry incidents to Water by Year / Sector
01 Jan 2010 to 31 May 2017

