

Written Ministerial Statement

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Environment

Spreading of Slurry under the Nitrates Action Programme

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Mr Attwood (The Minister of the Environment):

Background

As Members are aware the Nitrate Action Programme (NAP) Regulations (which implements the EU Nitrates Directive) were introduced to improve the use of nutrients on farmland and as a result improve water quality throughout the North of Ireland.

Given the emphasis which is being placed on the North's "clean and green" image, not only in relation to attracting tourists, but in marketing produce and products from our agri-food sector, the importance of good water quality is self-evident.

The NAP Regulations specify a closed period for the spreading of livestock manures, except dirty water, from midnight on 15 October to 31 January. This measure promotes best practice to obtain maximum benefit from nutrients in those manures for crop fertilisation whilst protecting the environment.

The Issue

I very much appreciate the difficulties that have been and are being faced by farmers in a number of places in the North. The numbers are significant. In particular farmers have faced difficult circumstances over the past few weeks preventing them from spreading slurry. These circumstances include cases of flooding and inability to harvest crops.

I have received a number of representations from elected representatives and farming organisations asking that I consider whether

the circumstances were so extreme that a delay to the start of the Nitrates Action Programme "closed period", when the spreading of slurry is prohibited, should be considered. I am also aware that the DARD Minister has commented on this issue.

In seeking to determine the best course of action for the affected farmers and the environment I have examined the Met. Office weather records over the last weeks and months and I continue to do so. I have received strong and clear legal advice from a number of authorities and there have been conversations with relevant EU officials and colleagues in the Republic of Ireland. I have reviewed the recent experience in Scotland, met with farming representatives and considered the matter from all viewpoints.

My Decision

The decision I have made aims to provide relief to farmers who have reasonable excuse for non compliance with the Nitrates Action Programme when the season for spreading organic manures ended at midnight on 15 October. At the same time, the decision I have made aims to act within the limits of the law and, crucially, protect farmers and the Government from EU penalties which potentially could be severe in relation to the management of the Nitrates Action Programme.

Therefore, having taken into account the relevant legal advice from a number of sources, the views of farmers' leadership, advice from DOE and NIEA officials, and having reviewed Met. Office statistics I announced last Tuesday (11/10/11) and now confirm that under regulation 25(2) of the Nitrates Action Programme Regulations (Northern Ireland) 2010, farmers on a case by case basis may be able to rely on the defence of "reasonable excuse" in relation to spreading of organic manures and non compliance with the closed period.

I again confirm, that where farmers have reasonable excuse and have grounds for their actions, this would inform how my Department subsequently assesses compliance with the Nitrates Action Programme.

Let me also say again – I will be supportive of farmers in these circumstances to the limits of my office. I made it clear to NIEA that where individual farmers have taken all reasonable steps to manage the situation and had no alternative other than to spread organic manures during the closed period, the Agency should look positively at those cases.

As Members will be aware breaches of the Nitrates Action Programme Regulations are reported to DARD under cross compliance procedures and may lead to reductions in direct aid payments for non-compliant farm businesses. Every case will be assessed on an individual basis and only after a assessment has been made of individual circumstances can a decision be made on a referral for penalties under the Cross-compliance elements of the Single Farm Payment. However, to assist in this process, I have made it clear that the relevant NIEA staff should look positively at cases, where evidence is produced in each particular case and taking into account information from other sources such as rainfall pre-coded in each area in NI.

Reasonable Excuse

‘Reasonable excuse’ has an accepted legal meaning of something beyond the control of, and not foreseeable by an individual. In the context of slurry spreading, wet weather, is something a farmer would normally be expected to anticipate and farmers are required to have sufficient storage both for the closed period and for periods of adverse weather conditions when, due to extended wet weather, spreading of organic manure is not permitted.

However given the defence of reasonable excuse which exists in law and upon which farmers can seek to rely upon, it is fair for farmers to ask what this might mean.

In assessing whether a farmer had taken “all reasonable steps” to manage the situation the Northern Ireland Environment Agency would consider a number of factors including:

- if the farmer had sufficient slurry storage in accordance with the regulations
- if slurry had been properly managed outside the closed period and had been spread as appropriate when conditions permitted;
- if clean storm water, e.g. roof water had been diverted away from slurry storage tanks;
- if farmers had exhausted reasonable alternatives such as renting extra storage space or using straw bedding, and where forced to breach the closed period,
- if farmers had taken additional steps to protect against water pollution such as increasing safety margins, spreading to flat land etc;
- if only the minimum necessary was spread to provide sufficient capacity to the end of the closed period.

Practicalities

To be able to rely on the defence of reasonable excuse a farmer should provide a record of evidence showing that they had taken all reasonable steps to manage the situation and had no alternative other than to spread organic manures during the closed period. Subsequently this record would be important in informing the assessment of the NIEA in relation to compliance issues. I have advised the NIEA that on a case by case basis where a farmer provides a record of evidence, the NIEA must take full account of this evidence.

Where it comes to the attention of NIEA that a farmer has spread slurry over the closed period, NIEA officers will do the following:-

- Visit the farm in question
- Check for evidence of water pollution arising from the spreading
- Ascertain the circumstances that led to the farmer spreading slurry or manure during the closed period
- Confirm the evidence that the farmer had taken all reasonable steps, as outlined earlier, to manage the situation.
- Consider rainfall, pattern in the area in the period before the end of the season, which may be a factor in the actions of a farmer.

I am aware that the UFU has produced guidelines for its members on what this might mean in practice. I very much appreciate the Union’s approach on these guidelines, which are a very helpful contribution to addressing this

problem responsibly. NIEA has provided input to this document, which it endorses. The approach outlined in the document is something NIEA would reasonably expect to see.

Conclusion

I believe what I have confirmed in this statement will result in relief to, and protection of, farmers in genuine difficulty, in a way that protects the interests of the farmer, the government, economy and environment. I believe that this is a proper intervention and a proportionate response to a difficult situation.

