SCOTTISH STATUTORY INSTRUMENTS

2003 No. 531

WATER RESOURCES

The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003

Made - - - -	*5th November 2003*
Laid before the Scottish Parliament - - - -	*7th November 2003*
Coming into force - -	*1st December 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 31A, 104(1)(a) and 105(1) of the Control of Pollution Act 1974(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 and shall come into force on 1st December 2003.

(2) In these Regulations–

"the 2001 Regulations" means the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2001(**2**);

"BS 5502" means the Code of Practice on Buildings and Structures for Agriculture published by the British Standards Institution and numbered BS 5502;

"construct" includes install and cognate expressions shall be construed accordingly;

"EEA State" means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993;

"farm" means land occupied as a unit for agricultural purposes;

"forage crop" means any crop grown as food for livestock;

(**1**) 1974 c. 40; section 31A was inserted by the Water Act 1989 (c. 15), Schedule 23, paragraph 4 and section 31A(2) was amended by the Environmental Protection Act 1990 (c. 43), section 145(2) and by the Environment Act 1995 (c. 25), Schedule 22, paragraph 29(2); section 104 was amended by the Water Act 1989, Schedule 23, paragraph 7 and was repealed in part by the Environment Act 1995, Schedule 22, paragraph 29(34) and Schedule 24; section 105(1) contains definitions of "prescribed" and "regulations" which are relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) S.S.I. 2001/206, amended by S.S.I. 2001/248.

"fuel oil" means oil intended for use as a fuel for the production of heat or power but does not include oil intended for use exclusively as a fuel for heating a farmhouse or other residential premises on a farm and which is stored separately from other oil;

"livestock" means–

(a) any animals kept for the production of food or wool; or

(b) any birds kept for the production of food;

"reception pit" means a pit used for the collection of slurry before it is transferred into a slurry storage tank or for the collection of slurry discharged from such a tank;

"relevant substance" means–

(a) slurry;

(b) any crop which is being made, or has been made, into silage; and

(c) fuel oil;

"SEPA" means the Scottish Environmental Protection Agency;

"silage" means any forage crop which is being, or has been, conserved by fermentation or preservation (including the use of additives), or both, and which is intended for consumption by livestock;

"silage effluent" means–

(a) effluent produced from any forage crop which is being made, or has been made, into silage; and

(b) a mixture consisting wholly of or containing such effluent, rain or groundwater emanating from a silo, silage effluent collection system or drain;

"silo" means any structure used for making or storing silage;

"slurry" means–

(a) excreta, including any liquid fraction, produced by livestock whilst in a yard or building; or

(b) a mixture consisting wholly of or containing such excreta, bedding, feed residues, rainwater and washings from a building or yard used by livestock, dungsteads or middens, high level slatted buildings and weeping wall structures or any combination of these, provided such excreta is present,

of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process;

"slurry storage system" means–

(a) a slurry storage tank;

(b) any reception pit and any effluent tank used in connection with the slurry storage tank; and

(c) any channels and pipes used in connection with the slurry storage tank, any reception pit or any effluent tank; and

"slurry storage tank" includes a lagoon, pit (other than a reception pit) or tower used for the storage of slurry.

(3) In these Regulations, any requirement for a silo, slurry storage system, fuel storage tank or any other product to comply with a specified standard shall be satisfied by compliance with–

(a) a relevant standard or code of practice of a national standards body or equivalent body of any EEA State;

(b) any relevant international standard recognised for use as a standard by any EEA State; or

(c) a technical specification or code of practice which, whether mandatory or not, is recognised for use as a standard by a public authority of any EEA State,

in so far as the standard, code of practice, international standard or technical specification in question enables the pollution prevention objectives pursued by the present Regulation to be met in an equivalent manner.

(4) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation or Schedule is a reference to the regulation in, or Schedule to, these Regulations bearing that number and any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph in that regulation or Schedule bearing that number.

(5) These Regulations shall extend to Scotland only.

Making and storage of silage

2.—(1) Subject to regulation 6, no person shall have custody or control of any crop which is being made into silage or of any silage which is being stored unless–

(a) it is kept in a silo in relation to which the requirements of Schedule 1 are satisfied or which is an exempt structure by virtue of regulation 5; or

(b) it is compressed in the form of bales which are wrapped and sealed within impermeable membranes (or are enclosed in impermeable bags) and are stored at least 10 metres from any inland or coastal waters.

(2) No person having custody or control of any crop which is being or has been made into silage in the manner described in paragraph (1)(b) shall open or remove the wrapping of any bales unless that person does so at a place at least 10 metres from any inland or coastal waters.

Storage of slurry

3.—(1) Subject to paragraph (2), a person having custody or control of slurry shall store it in a slurry storage system in relation to which the requirements of Schedule 2 are satisfied or which is an exempt structure by virtue of regulation 5.

(2) Paragraph (1) shall not apply to slurry while it is stored temporarily in a tanker with a capacity not exceeding 18,000 litres which is used for transporting slurry on roads or about a farm.

Storage of fuel oil on farms

4.—(1) Subject to paragraph (2), no person shall have custody or control of fuel oil on a farm unless it is stored–

(a) in a fuel storage tank or container within a storage area in relation to which the requirements of Schedule 3 are satisfied;

(b) in drums within such a storage area;

(c) temporarily in a tanker used for transporting fuel oil on roads or about the farm;

(d) in a fuel storage tank or container which is an exempt structure by virtue of regulation 5; or

(e) in an underground fuel storage tank or container.

(2) Paragraph (1) shall not apply if the total quantity of fuel oil stored on the farm does not exceed 1,250 litres.

Exemptions

5. A silo, slurry storage system or fuel storage tank or container is for the time being an exempt structure if–

(a) it was an exempt structure under the 2001 Regulations and had not ceased to be an exempt structure on the date immediately before the coming into force of these Regulations; and

(b) it does not cease to be an exempt structure by virtue of regulation 7(1).

6.—(1) Subject to paragraph (2), regulation 2 shall not apply where a person makes bulk bagged silage on a farm in bags which–

(a) are made of 1000 gauge polyethylene or material of at least equivalent impermeability and durability;

(b) are kept sealed to prevent the escape of silage effluent; and

(c) are stored on a firm level surface and incorporate a facility designed to enable the safe removal of excess effluent when present.

(2) A person shall not be entitled to rely on the exemption conferred by paragraph (1) unless that person stores any bags in which silage is being made or stored at a place at least 10 metres from any inland or coastal waters.

(3) No person having custody or control of any crop which has been made into silage in the manner described in paragraph (1) shall open or empty any bag in which silage has been made unless that person does so at a place at least 10 metres from any inland or coastal waters.

Loss of exemption

7.—(1) A structure to which the circumstances set out at regulation 5(a) apply shall cease to be an exempt structure if–

(a) any requirement of a notice under regulation 8(1) is not complied with within the period stated in the notice;

(b) it is substantially enlarged; or

(c) it is substantially reconstructed, unless, in the opinion of SEPA, which opinion shall be notified in writing to the person concerned, the risks of pollution will be reduced by such works.

(2) Any reference in paragraph (1) to the period stated in a notice is to that period as extended if it has been extended under regulation 8(5) or by virtue of regulation 9(5) or (6) and any reference in that paragraph to a requirement of a notice is to that requirement as modified if it has been modified under regulation 8(5) or by virtue of regulation 9(5).

Notice requiring works etc.

8.—(1) SEPA may serve notice on any person, who has custody or control of any relevant substance in circumstances in which these Regulations apply, requiring that person to carry out such works, take such precautions or take such other steps as are specified in the notice and which, in the opinion of SEPA, are appropriate, having regard to any requirements of these Regulations in relation to that substance, for reducing to a minimum any significant risk of pollution of inland or coastal waters arising from the custody or control of that substance.

(2) The notice shall specify or describe the works, precautions or other steps which the person is required to carry out or take, state the period within which any such requirement is to be complied with, and inform that person of the effect in relation to the notice of regulation 9.

(3) The works, precautions or other steps as may be specified or described in the notice may include the requirement to establish and implement a Farm Waste Management Plan in accordance

with the code of practice approved under section 51(1) (codes of good agricultural practice) of the Control of Pollution Act 1974(**3**).

(4) Any period for compliance stated in the notice shall be such period as SEPA may consider reasonable in the circumstances, but no period shall end earlier than on the expiry of the period of 28 days beginning with the day on which the notice is served.

(5) SEPA may at any time–

(a) withdraw the notice;

(b) extend the period for compliance with any requirement of the notice;

(c) with the consent of the person on whom the notice is served, modify any requirement of the notice; or

and shall do so, if so directed by the Scottish Ministers under regulation 9(5).

Appeals against notices

9.—(1) A person served with a notice under regulation 8 may within the period of 28 days beginning with the day on which that notice is served (or within such longer period as the Scottish Ministers may allow) appeal to the Scottish Ministers against the notice.

(2) An appeal under this regulation shall be made by the appellant serving notice on the Scottish Ministers and the notice shall contain or be accompanied by a statement of the grounds of appeal.

(3) At the same time as serving such notice on the Scottish Ministers, the appellant shall send a copy of the notice and any accompanying statement to SEPA.

(4) Before determining an appeal under this regulation the Scottish Ministers shall, if requested to do so by the appellant or SEPA, afford them an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers for that purpose.

(5) On determining an appeal under this regulation, the Scottish Ministers may–

(a) direct SEPA to–

(i) withdraw the notice;

(ii) extend the period for compliance with any requirement of the notice; or

(iii) modify any requirement of the notice.

(b) dismiss the appeal.

(6) The period for compliance with a notice under regulation 8 shall, subject to any direction under paragraph (5), be extended so that it expires on the date on which the Scottish Ministers finally determine the appeal or, if the appeal is withdrawn, the date on which it is withdrawn.

Notification requirements

10. A person who proposes to have custody or control of any relevant substance which is to be kept or stored on a farm in a silo, slurry storage system or, as the case may be, fuel storage area constructed, substantially enlarged or substantially reconstructed on or after 29th December 2003 shall serve notice on SEPA specifying the type of structure to be used and its location at least 28 days before it is to be used for such purpose.

(**3**) 1974 c. 40. The code of practice at present in force is the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity approved by S.I.1997/1584 and as amended by the Nitrogen and Phosphorus Supplement to the Code of Good Practice approved by S.S.I. 2000/175.