STATUTORY RULES OF NORTHERN IRELAND

2006 No. 489

ENVIRONMENTAL PROTECTION

The Nitrates Action Programme Regulations (Northern Ireland) 2006

Made - - - - 1st December 2006

Coming into operation 1st January 2007

The Department of the Environment and the Department of Agriculture and Rural Development, being departments designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to water resources and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment(**3**), acting jointly in exercise of the powers conferred upon them by that section and every other power enabling them in that behalf and the Department of the Environment in exercise of the powers conferred on it by Articles 32, 44 and 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997(**4**) make the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as The Nitrates Action Programme Regulations (Northern Ireland) 2006 and subject to regulation 28 shall come into operation on 1st January 2007.

Territorial application

2. These Regulations shall apply to the whole of the territory of Northern Ireland as required under The Protection of Water Against Agricultural Nitrate Pollution Regulations (Northern Ireland) 2004(**5**).

(**1**) S.I. 2003/2901
(**2**) 1972 c.68
(**3**) O.J. L.156. 25/06/2003, P. 0017 - 0025
(**4**) S.I. 1997/2778 (N.I. 19)
(**5**) S.R. 2004 No. 419

Interpretation

3.—(1) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations:

"action programme" means measures regarding the protection of water against pollution caused by nitrates from agricultural sources as set out in Article 5 and Annex III of the Directive;

"agricultural area" means any land suitable for agricultural activities, including any common land used for grazing and excludes areas under farm roads, paths, buildings, woods, dense scrub, rivers, streams, ponds, lakes, sandpits, quarries, areas of peat cutting, bare rock, areas of forestry and areas fenced off or inaccessible other than forests where the use of the same is ancillary to the farming of land for other agricultural purposes;

"agricultural land" has the same meaning as in the Agriculture Act (Northern Ireland) 1949(**7**);

"Appeals Commission" means the Water Appeals Commission for Northern Ireland established under Article 7(1) of the Water and Sewerage Services (Northern Ireland) Order 1973(**8**);

"authorised person" means a person authorised by the Department under Article 72 of the Order in respect of fulfilling its functions;

"chemical fertiliser" means any fertiliser containing a nitrogen compound which is manufactured or blended by an industrial process;

"controller" means in relation to a holding, the person charged with management of the holding for the calendar year in question and in the absence of written agreement to the contrary, the owner of the agricultural area will be taken to be charged with its management;

"crop requirement" means the amount of nitrogen fertiliser which is reasonable to apply to land in any year for the purpose of promoting the growth of the crop having regard to the foreseeable nitrogen supply to the crop from the soil and from other sources, including any previous applications of livestock and other organic manure and any chemical fertilisers estimated as described in the fertiliser technical standards and regulation 9 of these Regulations;

"Department" means the Department of the Environment;

"Departments" mean the Department of the Environment and the Department of Agriculture and Rural Development acting jointly;

"Directive" means Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources(**9**);

"dirty water" means a low dry matter waste made up of water contaminated by manure, urine, effluent, milk and cleaning materials with a Biochemical Oxygen Demand (BOD) no greater than 2000 mg/litre and total nitrogen and dry matter contents as set out in Schedule 1 Table 2;

"environment" means any or all of the following media, namely the air, water and land;

"farmyard manure" means a mixture of bedding material and animal excreta in solid form arising from the housing of cattle, sheep and other livestock, excluding poultry manure, but including spent mushroom compost and the stackable solids fraction from mechanical separation of slurry excluding pig slurry;

"fertiliser technical standards" means the 'DEFRA Fertiliser Recommendations for Agricultural and Horticultural Crops (RB209) 2000 7th edition' (as may from time to time be

(**6**) 1954 c.33 (N.I.)
(**7**) 1949 c.2 (N.I.)
(**8**) S.I. 1973/70 (N.I. 2)
(**9**) O.J. L. 375, 31/12/1991 P. 0001- 0008

re-issued) and any supplementary guidance, and any other DEFRA publication substituting the standards set out in RB209 and any supplementary guidance;

"grassland" means any land on which the vegetation consists predominantly of grass species;

"holding" in relation to a controller means all the agricultural area managed by that controller;

"lake" means a body of standing inland surface water;

"land application" means the addition of materials to agricultural land whether by spreading on the surface of the land, injection into the land, placing below the surface of the land or mixing with the surface layers of the land but does not include the direct deposition of manure onto land by animals;

"livestock" means any animal kept for use or profit;

"livestock manure" save for the purposes of regulation 14 means waste products excreted by livestock, or a mixture of litter and waste products excreted by livestock, even in processed form;

"nitrogen compound" means any nitrogen-containing substance except for gaseous molecular nitrogen;

"nitrogen fertiliser" means any substance, including chemical fertiliser, containing a nitrogen compound utilised on land to enhance growth of vegetation;

"notice" means notice in writing;

"organic manure" means

(a) livestock manure, and

(b) nitrogen fertiliser, not being livestock manure or chemical fertiliser, derived from organic matter, and includes sewage sludge, residues from fish farms and other organic wastes;

"pig enterprise" means any enterprise with more than 10 breeding sow places or 150 finishing pig places;

"poultry enterprise" means any enterprise with more than 500 places;

"public" means such persons as appear to the Departments—

(a) to be representative of those carrying on any business which—

  (i) is, or is likely to be, directly affected by the action programme; or

  (ii) relies upon the water environment; or

(b) to have an interest in the protection of the water environment;

"scientific case" means a reasoned case, as set out in guidance issued on these Regulations, designed to demonstrate that the proposed deviation from the values set out in Schedule 1 Tables 1, 2 or 3 of these Regulations will have no worse effect on the environment than that caused by using the aforementioned values;

"silage effluent" has the same meaning as in regulation 1(1) of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations (Northern Ireland) 2003(**10**);

"slurry" means (a) excreta produced by livestock whilst in a yard or building or (b) a mixture of such excreta with bedding, rainwater, seepage, washings or any other extraneous material from a building or yard used by livestock or in which livestock manure is stored or (c) any other organic manure or any combination of these, of a consistency that allows it to be pumped or discharged by gravity at any stage in the handling process and includes dirty water that is stored with slurry or mixed with slurry;

(**10**) S.R. 2003 No. 319

"soil fertility status" means the soil reserves available for uptake by the next crop estimated as described in the fertiliser technical standards;

"steeply sloping land" means land which has an average incline of 20% or more;

"the Order" means the Waste and Contaminated Land (Northern Ireland) Order 1997;

"underground strata" has the same meaning as in Article 2(2) of the Water (Northern Ireland) Order 1999(**11**);

"water pollution" means the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water;

"waterlogged" means soil where water appears on the surface of the land when pressure is added;

"waterway" has the same meaning as in Article 2(2) of the Water (Northern Ireland) Order 1999.

(3) Other expressions used in these Regulations have the same meaning as in the Directive.

PART 2

GENERAL

Duty of the controller to prevent water pollution

4. The controller of a holding shall not knowingly or otherwise cause directly or indirectly the entry of nitrogen fertiliser into any waterway or water contained in any underground strata.

Duty of the owner and/or controller to comply with these Regulations

5. In complying with any duty under these Regulations, the owner and/or controller of a holding shall have regard to any guidance which may be issued from time to time by the Department or Departments for the purposes of these Regulations and, in accordance with Article 4 of the Directive, the Code of Good Agricultural Practice as may be amended from time to time.

PART 3

PREVENTION OF WATER POLLUTION FROM THE APPLICATION OF FERTILISERS

Periods when the land application of nitrogen fertiliser is prohibited

6.—(1) The land application of chemical fertiliser to grassland shall not be permitted between 15 September in any year and 31 January of the following year.

(2) The land application of chemical fertiliser to any land shall not be permitted between 15 September in any year and 31 January of the following year for crops other than grass unless there is a demonstrable crop requirement between those dates.

(3) The land application of organic manure, excluding farmyard manure and dirty water, to any land shall not be permitted between 15 October in any year and 31 January of the following year.

(**11**) S.I. 1999/662 (N.I. 6)

Requirements as to the manner of land application of nitrogen fertiliser other than dirty water

7.—(1) The land application of nitrogen fertiliser shall be done in an accurate and uniform manner and, other than for dirty water, in accordance with paragraphs (2) to (8).

(2) The land application of nitrogen fertiliser shall not be permitted when: -

(a) soil is waterlogged; or

(b) land is flooded or likely to flood; or

(c) the soil has been frozen for 12 hours or longer in the preceding 24 hours; or

(d) land is snow-covered; or

(e) heavy rain is forecast within 48 hours; or

(f) the land is steeply sloping land where, taking into account factors such as proximity to waterways, soil condition, ground cover and rainfall there is a significant risk of causing water pollution.

(3) The land application of nitrogen fertiliser shall not be permitted on any land in a location or manner which would make it likely that the nitrogen fertiliser will directly enter a waterway or water contained in any underground strata.

(4) The land application of chemical fertiliser shall not be permitted within 1.5 m of any waterway.

(5) The land application of organic manures shall not be permitted within: –

(a) 20m of lakes; or

(b) 50m of a borehole, spring or well; or

(c) 250m of a borehole used for a public water supply; or

(d) 15m of exposed cavernous or karstified limestone features (such as swallow–holes and collapse features); or

(e) 10m of any waterway, other than lakes, including open areas of water, open field drains or any drain which has been backfilled to the surface with permeable material such as stone/ aggregate; except that

(f) the distance for (e) may be reduced to 3m of any waterway where the land has an average incline less than 10% towards the waterway and where:

(i) organic manures are spread by bandspreaders, trailing hose or trailing shoe or soil injection; or

(ii) the adjoining area is less than 1 hectare in size or not more than 50m in width.

(6) The maximum land application of solid organic manure shall be 50 tonnes per hectare at any one time provided this does not exceed the limits set out in regulation 9(1) and 10(3) and a period of at least 3 weeks shall be left between such land applications.

(7) The maximum land application of slurry shall be 50 m^3/ha at any one time provided this does not exceed the limits set out in regulation 9(1) and 10(3) and a period of at least 3 weeks shall be left between such land applications.

(8) The land application of slurry shall only be permitted by spreading close to the ground using inverted splash plate spreading, bandspreading, trailing hose, trailing shoe, soil injection or soil incorporation methods.

Requirements as to the manner of land application of dirty water

8.—(1) Subject to regulations 7(2) and 7(3), the land application of dirty water to any land shall be permitted throughout the year, provided that it is done in a uniform and accurate manner.