



## REA Response to Farming Rules for Water review

The Association for Renewable Energy and Clean Technology (the REA) is a not-for-profit trade association, representing British renewable energy producers and clean technology and promoting the use of renewable energy in the UK. It has around 550 corporate members, making it the largest renewable energy trade association in the UK.

The REA's Organics and Natural Capital forum and its Biogas forum together comprise 422 members, numerous of which operate commercial composting facilities, commercial scale anaerobic digestion (AD) facilities and recycle organics to land. The REA works with stakeholders with the aim of achieving policy and regulatory frameworks for renewables and organic waste recycling that deliver an increasing contribution to the UK's electricity, heat, recycling and transport needs. More info available at [www.r-e-a.net](http://www.r-e-a.net)

REA welcome the intention of the Farming Rules for Water (FRfW) to prevent pollution and preserve water quality. The majority of our comments below are in relation to Rule 1 of the FRfW and in particular its interpretation and the enforcement. Rules 2 to 4 reflect existing rules and guidelines and we have no comments raised by members on these rules.

The key problem is the Environment Agency's (EA) interpretation of Provision 4 within the Statutory Instrument and how it is interpreted within the guidance. Clarification on the description for 4 -1(a) (i) is critical within the Statutory Instrument so that it is not open to flexible interpretation by different people.

### Questions from Defra:

**1. Do the rules pose any barriers to your work and if so, what are they?**

- The interpretation of rule 1 is causing many issues for our members involved in the recycling of organics to land. In particular issues they have raised include:
  - The EA is too reliant on interpretation by individual officers, who have different levels of understanding.
  - Interpretation is inconsistent, especially in different areas, creating an unlevel playing field of when organic materials can be applied. This makes it an unfair market for companies to compete in and difficult for companies to provide clarity on storage requirements.
  - The inconsistency of interpretation makes planning and budgeting for recycling organics to land very difficult.
- The beneficial value of the addition of organic matter from renewable bioresources (e.g. composts and digestates made from biodegradable wastes and digestates made from energy crops) is not recognised and there is a need for this calculation to be built into the EA's assessment tool, so the value is recognised. We also call for the EA to recognise that where soil, other than peat soil, contains more than 5 % organic matter, it is not a disbenefit to apply a waste that includes organic matter. This fits with the proposals for the Environmental Land Management Scheme (ELMS) providing support for farmers for soil husbandry measures for carbon sequestration, restoration of natural ecosystems and conservation of soil health and fertility for food security and healthy water resources. Organic matter in soils is vital to soil health.
- Lack of awareness of the rules, we believe mostly amongst farmers, is proving to be a barrier.
- All the issues (inconsistency, uncertainty etc) can put farmers off taking beneficial wastes or organic products. Not only does this have a large impact on the organic material producers but also encourages farmers to use traditional chemically derived fertilisers which do not support the circular economy of bioresources or the Carbon Net Zero ambitions which are vitally important to improving local and global ways of life. A healthy soil is a large contributor to carbon sequestration and control of GHG emissions.
- There has been an issue raised about the minimum detectable limits for nutrient analysis and labs are unable to report a zero content for ammonium nitrogen in samples they test. An example of this provided by an operator was that despite the tiny amounts of readily available N present by analysis, it was still enough for a deployment to be rejected in an autumn application where the following crop had no N requirement. Results below the limit of detection for all nutrients should be considered by the EA to be zero for the corresponding nutrient(s), under agreed limits of detection.

**2. Are you aware of how the rules affect you?**

- Initially awareness with farmers was very poor. We still get feedback that many farmers are unaware of the rules, are unsure of whether they are guidelines or rules or believe that they only apply within Nitrate Vulnerable Zones, and do not feel that there has been effective communication of the rules to farmers. Although awareness amongst large farming co-ops who have anaerobic digesters is better, there is much more to do to educate all the relevant stakeholders about these rules.
- Awareness amongst contractors is good.
- Awareness within the Organics Recycling industry is variable, depending on the companies who are involved in landspreading directly or those who mostly employ external contractors to deal with this.
- The food and drink industry was omitted from the 2016 consultation and they, alongside the application of digestate, wasn't considered in the impact assessment and consultation so awareness initially in these sectors was low and the impact on them not assessed.
- Farmers have a greater focus on the cross-compliance rules – the FRFW are not mentioned in these and there is need to ensure greater co-ordination with other rules and requirements for farmers to ensure that awareness of the FRFW is raised.
- Communications and consultation about the FRFW were poor and there is a need to ensure they included all the stakeholders who are affected going forwards.

**3. Have there been any unintended effects of the rules on your work? If so, can you give examples?**

- The inconsistent enforcement of the rules is leading to difficulties for companies who are trying to comply to justify investment for storage when other companies do not make the investment (possibly through lack of awareness) and suffer no consequences. This also makes investment in upgrading technologies difficult to justify.
- The inconsistent interpretation is causing issues, a few examples:
  - Discrepancies in the interpretation of the RB209 recommendations for nutrients in different seasons and what months in the year fall into these seasons, for example in some cases August has been considered autumn, whereas not in others.
  - There have been cases where low RAN materials have not been allowed to be spread (where soil conditions are suitable and soil/crop need can be demonstrated). There has been no acknowledgement that nitrogen takes time to mineralise (become available to plants) after spreading.
  - In some cases, it seems that EA are making decisions based on the physical properties of the material (i.e. liquid or solid) and not necessarily on nutrient content and potential for diffuse pollution.

- Inconsistency in the way that organic nitrogen usage on crops is assessed between the EA and RB209.
  - There is little recognition by the EA of companies seeking advice from FACTS qualified advisors, and no acknowledgement of their expertise.
- Whilst the limitations on autumn spreading are intended to prevent diffuse pollution from agriculture, the delay of all spreading to spring can cause other issues in terms of environmental protection and may not always deliver the desired outcome. In some cases, where justified, autumn spreading may be the better option. Some issues that have been highlighted include:
  - spreading on growing crops means incorporation is more difficult and could give more issues with odours and ammonia emissions, with more likelihood of damage to crops;
  - spreading in spring can mean the ground is wetter and more at risk of soil smearing and compaction from machinery;
  - the restriction of the spreading window causes more materials looking to be spread over a much shorter time period which has lots of potential issues, including the potential for spreading when soil conditions are less appropriate and over application.
- There has been a massive impact on the costs for recycling organic materials to land, due to additional investment in storage infrastructure and competition for equipment and an impact on the landbank that is needed, under certain crops, creating lots of pressures for land managers.

#### 4. **Are the rules effective in their aim to provide a minimum baseline for land managers?**

- They are good guidelines but improvements in the interpretation and enforcement would improve their effectiveness.
- Inconsistent interpretation and application of the rules is causing lots of issues, as previously outlined.

#### 5. **Other comments**

- Timing:
  - We are aware that AHDB are commissioning a project to assess the impact of the FRfW. This project will be very useful to inform the review, look at best practice and identify any gaps in knowledge. We would strongly urge Defra to await the outcome of this work before taking final decisions on the review of the FRfW.
- Clarity and enforcement:
  - We would encourage the EA to accept and respect the advice from FACTS qualified advisors. Application of organic materials outside the main growing season should be permitted when this is justified with advice from a FACTS agronomist, as is the case within the NVZ

regulations where spreading outside the closed period or exceeding certain thresholds may be permitted with written advice from a FACTS adviser. This approach would enable site specific factors to be better considered in applications. Any evidence requirements from the EA should be set out in guidance.

- We feel it would be beneficial for there to be an independent study to look at the existing data on autumn spreading of organic materials and interpretation in relation to the FRfW. Historically this has been common practice to increase soil organic matter and supply crop nutrients that become available to the crop in the spring through mineralisation. ADAS and Rothamsted Research already have huge resources of information that can be used for this purpose.
  - The EA seem to have very limited resources for checking compliance with the rules.
  - Training for EA staff making assessments of land spreading deployment applications would assist with improving the consistency of the interpretation of the requirements.
  - A minimum 6 year transition is needed to enable planning, permitting and financing of storage. Businesses need this kind of certainty to make the business case for the storage investment and not risk being undercut by competitors who are prepared to take risks that the FRFW will not be enforced or will be enforced late or variably.
- Finances:
    - Storage capacity varies across the industry (can vary according to the age of the site, and if processing waste or not). Some AD plants have made investments and now have 9 months storage capacity. Other facilities have shorter timescale storage capacity (e.g. 3 months, 6 months, while others are yet to build storage, but need to be given time to build it).
    - Low interest loans could be part of solution to enable companies to invest in storage and compliance.
    - An assessment of the financial impact on all affected sectors was not done.
  - Other regulations:
    - Issues with conflicts in other regulations, for example Clean Air Strategy where there may be requirements for rapid incorporation of solid fertilisers (which could be difficult if FRfW means these materials are only able to be spread to growing crops).
    - Covers for storage – there is mismatch of timing; and storage needs to be built ASAP to comply with FRFW but we are still unsure if the current covers set out in the Code of Good Practice for reducing ammonia

emissions (CoGAP) will be acceptable under the Clean Air Strategy and if these requirements will be applicable to existing stores, or only to new stores. It is important that the type of covers required includes a wide range of existing and future storage solutions.

- Improved consistency with planning rules to support improved storage capacity would be beneficial. Planning regulations can affect the ability for on-site storage, due to the restrictions on vehicle movements and timing. Storage should be a condition of planning permission for new organics processing facilities and could also include an assessment of landbank in the vicinity of the proposed development and any other non-land markets the processed bioresource is intended to be supplied to.
- Concerns about integration with the cross-compliance rules. The Statutory Management Requirements (SMR) don't mention diffuse pollution. Farming is going through changes with the shift to ELMS and co-ordination with other regulations would help with awareness.
- Lack of joined up thinking with other rules – including the End of Waste positions – Quality Protocols. These do not allow further processing of digestate (beyond its separation into liquid and solid fractions and 'aerobic maturation' of the solid digestate fraction, these being treatment steps the AD operator can choose whether to apply) which would enable some of the aims of the FRFW to be addressed. The Quality Protocols for composts and anaerobic digestates are being reviewed but the reviews are unlikely to have been completed before December 2020, may take longer, we have no certainty as to what further processing of digestate products will become allowed and industry will need a reasonable transition period for adjusting production and for this to become audited and certified. Unfortunately, the FRFW do not take these things into account and are important considerations.
- Other factors that should be considered:
  - Better consideration of all properties of materials intended to be spread on soils, in terms of their total contributions to soil and crop needs, for example organic matter.
  - Need more focus on the duty of care between the producers and the contractors.
  - Further awareness raising and communication of the rules should be carried out before the EA start more enforcement of the rules.
  - Suggestion that an online portal managed by the EA for recording all materials to land would allow clarity on timings, cropping, agricultural

benefit etc and this would provide consistency and clarity for, farmers, end users, land managers, producers and regulators.

- While direct emissions are considered the wider carbon footprint of applications of organic materials is not considered and should be in order to properly assess the climate impact.
- Covid-19 & external macro impacts should be accommodated on a level playing field. The impacts of economic changes to the industry's capacity to deliver should be considered with as much accommodation as the capacity of regulators or policy makers to undertake their remits.

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