

MINISTRY OF AGRICULTURE, FISHERIES AND FOOD
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From the Minister

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1

3 June 1988

Dear Secretary of State

THIRD REPORT OF THE ENVIRONMENT COMMITTEE: POLLUTION OF RIVERS AND ESTUARIES

FILE WITH DM

Thank you for your letter of 23 May attaching a draft of the response to the Commons Environment Committee. As you say, the text has been subject to much discussion and most of the problems we saw with the earlier versions have been resolved. There are, however, four points which still cause me some concern.

First, I feel that paragraph 1.10 describing the possible health threat from nitrate should be toned down somewhat; the text as drafted appears to give more weight to the evidence casting suspicion on nitrate levels between 50 mg/l and 100 mg/l than could be justified by the CMO's current advice. I feel strongly that we should make plain how little cause there is for public alarm over nitrate in water at these levels. I attach an alternative form of words which you might like to consider using instead.

Second, your officials and mine have agreed in principle that the concept of water environment protection zones (wepz's) is unworkable; yet paragraph 1.15 as worded seems to leave the option open. I do think that it would be very much better if the reference to wepz's in the last sentence of paragraph 1.15 is taken out.

Third, there is the question of the provision for statutory public enquiries prior to the establishment of protection zones. I still take the view that the right to demand an enquiry before a zone is set up must be retained. It is only

/at this stage ...

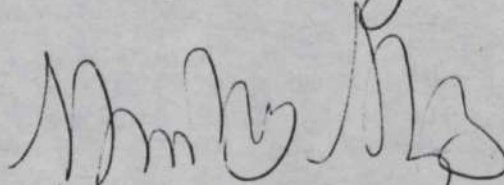
at this stage that the principle of establishing the zone can be challenged. I know this issue is under discussion between our officials in the context of the draft Water Privatisation Bill. While it is not specifically mentioned in the text of this response, the point is of considerable sensitivity and I would not wish anything to be said by way of follow-up to the response which might suggest that the Government has yet decided exactly how the procedures will be streamlined in this respect.

Fourth, I do feel that the last sentence of paragraph 3.17 is a hostage to fortune, inviting speculation which we may or may not be able to fulfil. I suggest that we should delete ".... and will clearly influence consideration of capital grant priorities over the coming months."

There are in addition a few minor textual points arising largely from changes made to the response since my officials last saw a draft. I attach an annotated copy of the draft agriculture chapter and would be grateful if our suggested amendments could be taken on board.

I am copying this letter to the Prime Minister, members of E(A) and to Sir Robin Butler.

Yours sincerely



for JOHN MacGREGOR

(Approved by the Minister and signed in his absence)

REVISED PARAGRAPH ON NITRATE AND HEALTH

1.10 The nitrate limit of 50 mg/l in the EC Directive relating to the Quality of Water intended for Human Consumption is based primarily on the well-established connection between nitrate and infantile methaemoglobinaemia, rather than on the hypothesised connection with cancer referred to by the Committee. Even so, most of the evidence on methaemoglobinaemia indicates such a connection only at levels above 100 mg/l or associated with other factors such as bacterial contamination or intercurrent illness. There has been no recorded case in the UK of infantile methaemoglobinaemia for well over a decade. Throughout this time the medical advice referred to in the previous paragraph has formed the basis of UK policy and no new information has become available to modify this advice. As the Committee indicates, recent epidemiological studies do not support the hypothesis that nitrate may be linked with the development of stomach cancer in humans, such concern as has been expressed having related solely to experiments on animals. Whilst any risk of cancer, if present, is likely to be small, it is prudent to take a cautious approach. The Government therefore does not propose to press for a review of the EC limit as recommended by the Committee. It does however continue to support UK medical evidence that levels up to 100 mg/l are acceptable in certain circumstances.

III POLLUTION FROM AGRICULTURE

3.1 The Committee drew attention to the growth in public concern about agricultural pollution and put forward a number of recommendations for Government action. The Government acknowledges the evidence of an upward trend in pollution from agricultural sources and is in no doubt of the need to seek balanced and effective means to reverse that trend.

3.2 No industry has such a close inter-relationship with the natural environment as does agriculture. The environmental effects of farming activity are complex, and have always included some risks of water pollution. The continuing need for an efficient agricultural industry capable of meeting consumer demand for food, means that, inevitably, some risks will remain. However, while it is clear that the rapid improvement in agricultural productivity in recent decades and the increasing specialisation within the industry has sometimes brought side effects which were not immediately apparent or susceptible to easy control, the available technology for dealing with pollution problems has, fortunately, improved alongside production technology. It is therefore possible for farmers to take adequate precautions to avoid pollution risks, provided they have the means to do so, are properly advised as to the methods, and follow sensible management and maintenance regimes. Given the very large number of small production units in the farming industry, the Government recognises that it has a role to play in ensuring that up to date advice and information are available to farmers so that they know how to deal with the pollution risks which occur in their particular circumstances.

3.3 The Committee criticised the Government's approach to farm pollution as relying too heavily on advice. Advice must of course play a central part in helping farmers to overcome these problems. In practice, however, it is only one part of the Government's efforts to control farm pollution. The Control of Pollution Act 1974 makes it an offence for any farmer to cause pollution - except in those cases where he did so as a result of following good agricultural practice - and it provides for corrective or preventive action where necessary. Administration and enforcement of this Act fall to the DOE and Water Authorities. Under the Government's plans for privatisation, the new National Rivers Authority will take over from the Water Authorities the primary role in bringing prosecutions and otherwise enforcing the legislation. But the Ministry of Agriculture, Fisheries and Food and Welsh Office Agricultural Department, will, as now, have an important role in advising and educating farmers on the avoidance of pollution. The Government remains of the view that this division of responsibilities between the main bodies concerned will continue to ensure a balanced approach to the threat of pollution from agriculture.

3.4 This is not to say, however, that the Government regards the controls presently at its disposal for combating farm pollution as sufficient. On the contrary, Ministers have decided that the regulatory framework enshrined in the Control of Pollution Act 1974 needs to be further developed and strengthened. This section explains below how these moves accord with some of the recommendations set out in the Committee's Report.

REGULATION AND THE CODE OF GOOD AGRICULTURAL PRACTICE

3.5 The Committee's principal recommendations on agricultural pollution were as follows:

19. We conclude that MAFF's reliance on advice will not stem the growing tide of farm pollution incidents.... Together with the DOE, MAFF should take a far more interventionist and regulatory approach to farm pollution. We further recommend that:

i) ADAS Should provide a great deal more advice on conservation and pollution prevention free-of-charge. This service should be widely publicised. Both on-the-spot advice, and all relevant literature, should be readily available.

ii) Adequate grant aid should be readily available to farmers who build new storage and waste treatment facilities to a standard construction. Grant aid should also be available for regular maintenance and for more categories of improvement work.

iii) As a matter of urgency MAFF and the DOE should consider how the Code of Good Agricultural Practice could be made enforceable by statute rather than being merely advisory and report back to Parliament. We would expect any revised Code of Practice to be free-of-charge and in one document. As a first immediate step, regulations on the location, construction and maintenance of storage facilities for silage and for hazardous farm wastes should be introduced under section 31 (4) of COPA. Water authorities would be able to prosecute for any breach.

iv) Section 31 (2) (c) of COPA which provides farmers with a special defence if they pollute the water course should be repealed at an early opportunity.

(para 78)

3.6 The Government has considered each part of these proposals carefully. In the case of the so-called special defence provision - iv above -, the Government notes that the original reason for its inclusion in the Act was to ensure that farmers who, uniquely and necessarily as part of normal agricultural practice, spread large quantities of potentially polluting substances on the land in order to dispose of them safely and to benefit the land, should not be at an undue risk of prosecution in the event of pollution of a watercourse occurring either as a result of exceptional weather conditions or by means which could not reasonably have been foreseen by the farmer. However, the fact that the defence has only once or twice been successfully deployed by a farmer suggests not only that, as MAFF indicated in its evidence to the Committee, the clause does not prevent the conviction of those responsible for farm waste pollution, but also that the threat of prosecutions being brought in response to normal farming activities is not a serious one. The Government therefore agrees with the Committee's recommendation that Section 31 (2) (c) should be removed from the Act.

3.7 As regards the Committee's comments about the format and presentation of the Code of Good Agricultural Practice, - i above -, the Government accepts that more can be done to ensure that the advice contained within the Code is in a more readily accessible form for farmers. As a first step, the Government proposes to make the Code itself free of charge. This should ensure that it is more widely read by those farmers who need to know its contents. In addition, the Government proposes to re-design as many as possible of the leaflets associated with the Code so that they are in a standard format and can, where appropriate, be presented together with the Code as a free advisory package for farmers. On the other hand, the Government does not believe that it would be right to follow the Committee's suggestion that all the material forming part of the code should be brought together in a single

document. If this was done, the result would be very substantial book - so large that most farmers might feel quite unable to use it. The Government believes that the essential objective - that of collecting together in a simplified format the core material which most farmers need to know - can be achieved as the Committee suggested; the Code would ^{continue to} contain references to those other publications to which some farmers may need to refer for more specialised and detailed information. In the Government's view, it will remain appropriate to make a charge for this latter type of information which will frequently be referred to by farmers for other practical reasons as well as for advice on pollution control.

3.8 Given the decision to seek removal of the defence clause and the aim of improving the presentation of the Code, it remains to be considered what should be the status of the revised Code under the law. The Committee has recommended that it should be statutorily enforceable, but the Government is not convinced that this would be a useful step. The Code includes, as it must, a very wide range of advice on subjects relevant to the practical difficulties farmers may face in combating pollution. But in drawing up generalised guidelines, it is impossible to cater for all situations which will actually occur. Indeed, in some cases, rigid adherence to the guidelines in the Code would provide poorer guarantees of avoiding pollution than if the particular farmers concerned sought more detailed advice specific to their farm situations. It remains the Government's view that to make the Code directly enforceable as part of the law would impose too rigid a system upon the farming industry and upon those in ADAS and elsewhere responsible for advising farmers on the avoidance of pollution risks.

3.9 The Government therefore proposes to introduce amendments to the Control of Pollution Act 1974 which will empower the Minister of Agriculture, Fisheries, and Food to offer the Code as an authoritative guide to water pollution from agriculture and to the steps which may be taken to avoid it. Where relevant, it would be open to either the prosecution, or the defence in mitigation, to refer to the Code in the event of a prosecution for pollution under the appropriate sections of COPA. This is a significant change which, while not going all the way to meet the Committee's apparent wish that the water authorities should be able to require compliance with the Code as an end in itself, will make it clear to farmers that any failure on their part to comply with provisions of the Code might well count heavily against them in the event of any conviction for a pollution offence.

3.10 In addition to its recommendations about the Code the Committee took issue with statements in the Government's Consultation Paper "Water Environment: The Next Steps"; which indicated that it was not intended that regulations under Section 31 (4) of the Control of Pollution Act 1974 should extend to farming activities. The Government has listened to those who criticised this aspect of the Consultation Paper and now accepts that it would be unreasonable to introduce controls on the storage of oil and other industrial chemicals while excluding substances which can damage the water environment at least as much -such as silage effluent and slurry. Indeed, the ~~forthcoming~~ report "Water pollution from farm waste" (1988) by the Water Authorities Assoc and MAFF, notes that in 1987 total farm pollution incidents reached a new high of 3890, representing a 13% increase over 1986, ~~and that the number of such incidents classed as serious rose by nearly 60% to 990.~~ The Government believes that regulations requiring farmers to contain these materials adequately should present no difficulty to those farmers who already abide by the Code of Good Agricultural Practice. They would, however, enable the National Rivers Authority to ensure that farmers who fail to provide suitable containment facilities could be required to do so.

3.11 The Government proposes that regulations under Section 31(4) should be so drafted as to cover the construction of new or extended silage and slurry facilities as well as certain industrial storage facilities. The Government will also consider to what extent it is possible to draft the legislation in such a way as to ensure that facilities are properly managed and maintained. So far as existing facilities are concerned, the Government proposes to draft the legislation in such a way as to provide a power to the National Rivers Authority to serve notice on particular sites, bringing the facilities immediately within the scope of the Regulations, wherever they see reasonable cause to believe that pollution may otherwise occur.

FREE ADVICE AND CAPITAL GRANTS

3.12 With the prospect of a change in the status of the Code of Good Agricultural Practice, and the proposed introduction of new regulations requiring them to provide adequate containment facilities for potentially polluting substances, farmers may well ask how, at a time of great change and economic pressure, they can reasonably be expected to take additional measures and ~~incur~~ ^{make} ~~additional costs~~ ^{new investments}. The Government has taken due note of the Committee's comments about the need to give farmers ready access to the best possible advice, and of the evidence that "face to face" contact can have a very significant impact upon farmers' thinking and actions on pollution control. The initial general appraisal by ADAS on pollution control will be free, although farmers will be charged for more specialised and detailed advisory or design services. The Government will encourage the farming community to seek help from ADAS through appropriate publicity and proposes to issue a reminder to farmers about the availability of free advice which will also draw their attention to the leaflets currently available which contain advice on pollution control. ADAS will also continue to co-operate with Water Authorities' farm pollution campaigns like the successful one conducted by South West Water since 1984.

3.13 The Government recognises that in the particular circumstances of the agricultural industry capital grants play a role in encouraging farmers to make adequate provision for waste management facilities.

3.14 Grant is currently available to most farmers who invest in new waste storage or treatment facilities, subject only to a limitation on the grant-aidable investment of £35,000 per labour unit, within a ceiling of £50,000 per business. The present rates of grant are 30% in the lowlands and 60% in the Less Favoured Areas - twice as high as the rates available for other investments. At the time the 60% grant rate was introduced it was above the maximum rate permitted by ^{EC} Regulation 797/85 and required a specific ^{and hard-won} derogation from EC rules. The Community has subsequently amended Article 8 (1) of the Regulation to permit grants for environmental works at levels above 45%. The extent to which these high rates of grant are stimulating new investments in waste facilities is already becoming apparent. For example, in 1987/88 the Ministry of Agriculture, Fisheries and Food ^{and Welsh Office Agriculture Department} expect to ^{have paid} pay grant of £5.8m in England and Wales on waste facilities. This represents over 11 per cent of total grant expenditure on the main schemes and compares most favourably with the £1.2m, or just under 1.3 per cent, we spent in 1985/86. Even so the current expenditure does not yet reflect the full impact of the grants now available because it includes many claims for grant at the lower rates obtaining under two schemes which have been closed for new investments.

3.15 The Committee also recommended that grant-aided facilities should be built to a standard construction. In fact, the existing grant system requires that, to be eligible for grant aid, facilities must comply with certain standards. They must be properly designed for their intended purpose and have a design life of at least 10 years. All relevant British Standards specifications and other guidelines, such as those contained within the Code of Good Agricultural Practice, must be met. As an additional safeguard - one which was welcomed by the Committee in its report - farmers must now consult their water authorities before any application for grant on facilities involving potential pollution risks will be accepted by MAFF. These arrangements will be yet further strengthened when the proposed regulations under Section 31 (4) of COPA are brought into effect, since it will then be necessary for those statutory provisions to be met before a project will be accepted for grant assistance.

3.16 Both the domestic and Community legislation relating to the payment of farm capital grants is concerned solely with encouraging investments of a capital nature. The Government is ~~not convinced~~ ^{not convinced} believes that it would ~~not~~ be appropriate - as the Committee recommends - to extend the grant provisions so as to cover maintenance work on farm waste handling and storage facilities. Expenditure on maintenance work is not capital expenditure and is not eligible for grant aid under the EC and UK legislation. There are difficulties in verifying, to the extent necessary for the proper control of public expenditure, that maintenance work has been carried out to an acceptable standard. ~~Most farmers already adequately maintain their storage and waste bunding facilities, and grant aid seems an inefficient means of ensuring that a minority of farmers undertake proper maintenance work.~~ The Government is, however, supporting research in this area. For example, projects aimed at establishing the most suitable construction materials and designs for silage stores should in future help to reduce both the cost and the difficulty of maintaining such facilities. It should be noted that the Government does grant aid replacement of facilities and in this way provides significant assistance to farmers seeking to maintain a high standard of facility.

3.17 Rates of grant and the coverage of items qualifying for grant are kept under regular review with the object of ensuring as far as possible that available resources are allocated in a way which best responds to the current economic, social and environmental conditions affecting the industry. The concerns of the Committee about the need to increase assistance for capital investments on farms to combat pollution are noted. ~~and will clearly influence consideration of capital grant priorities over the coming months.~~

OTHER MATTERS : ^{NITRATE} POLLUTION, ~~FROM NITRATE APPLICATIONS,~~
AFFORESTATION AND FISH FARMS

3.18 As well as the Government's overall approach to agricultural pollution and the general issue of farm waste management, the Committee referred more briefly to ^{nitrate} pollution from ~~nitrate~~ fertilisers, from afforestation and from fish farming.

3.19 Nitrate The Government has been developing its strategy for limiting nitrate concentrations in drinking water in the light of the report of the Nitrate Co-Ordination Group published in December 1986. Essentially three approaches, that of water treatment, a combination of water treatment and blending, and water protection have been considered. Severn-Trent and Anglian which have vulnerable water sources (characteristically in areas ^{where} there is intensive agriculture sustained by heavy applications of fertiliser and the soil is highly porous) have been assessing the situation, and there have been useful discussions with them and the agricultural industry.

3.20 It has become clear that due to the wide variability of water catchment sizes, associated geology, climate, and land use, within such areas the appropriate solution will vary from one source to another. In some areas the obvious solution will be to blend with a lower nitrate source and in others the installation of de-nitrification plant may be the answer. In addition there may also be scope for modifying agricultural practices to limit nitrate inputs to the vulnerable aquifers, although reductions may take many years to affect nitrate concentrations. ~~leaching.~~

3.21 Advice on practical steps which farmers can take has therefore recently been issued to all farmers in the country, and in nitrate problem areas they are being invited to local meetings to hear more about the problems. This campaign is being developed jointly by MAFF, DOE, the Water Authorities Association, National Farmers' Union, Country Landowners Association, Fertiliser Manufacturers Association, and UK Agricultural Supply Trades Association.

3.22 The Government is also studying more fully the various options for dealing with the problem in different geographic and economic situations. Assessments are being made of the effectiveness of possible measures for a range of differing hydrogeological conditions, catchment area size, farm type and so on. The economic implications for the farming and water industries of the blending, treatment and protection options are being compared.

3.23 Once these studies are complete, discussions will be held with agricultural, water industry, and fertiliser manufacturing interests on the findings, and the Government will then decide what further action is necessary.

3.24 Afforestation The Committee noted that changes in the CAP were likely significantly to affect agricultural land use, particularly through the transfer of marginal agricultural land to coniferous afforestation, and that this in its turn could have a significant impact on water quality, in particular through increased acidification, as well as through discolouration of water, leaching of toxins and release of nutrients. It concluded that:

It is crucial that any major expansion of coniferous forest should be carefully controlled and restricted to areas where there is no risk of damage to rivers and upland water sources

The Government accepts that in a period of rapid agricultural change it is essential to watch for changes in land use which may damage water sources. It is not, however, possible wholly to eliminate risks to water courses from coniferous afforestation. What is important is to ensure that good forestry practices are followed to minimise these risks. This is well recognised in forestry, and a substantial amount of research work has been carried out on this subject in recent years and is continuing.

3.25 Research has shown that careful attention to operational practice can do a great deal to avoid adverse effects on water quality. The Forestry Commission's publication "The Management of Forest Streams" (1980) and the "Forestry and Woodland Code" (1985) published by Timber Growers United Kingdom give advice on how this should be done. The Forestry Commission has recently set up a working group of experts from the water and forestry industries to produce guidelines for the management of forest streams. These guidelines will set out practical measures which will minimise the likelihood of damage to water quality by forest operations. The aim is not merely to avoid damage, but to protect and enhance forest watercourses and their associated habitats; these are areas of great importance for ecological diversity - particularly in upland forests - and valuable for wildlife, as landscape features, and for a wide range of recreational activity.

3.26 Effective control is exercised by the Forestry Commission by means of the consultation procedures undertaken before approval of planting grants. By this means the views of water undertakings on new afforestation proposals are made known to the Commission, either directly or through the appropriate local authority, and taken into account in deciding whether schemes should be approved. The switch to grants as the sole mechanism for forestry support following the tax changes announced in the Budget will in itself strengthen the Commission's role in this area.

3.27 Fish Farms The Committee also referred to fish farming, and in particular to the current exemption from abstraction licensing enjoyed by those farming fish for the table. As the Committee was informed, it is the Government's intention to seek removal of this exemption from the statute at an early opportunity. In some areas such as the Hampshire Avon, fish farmers are working with water authorities on a range of measures to minimise the adverse effects of abstraction and discharges on river quality.

STRUCTURE OF THE MINISTRY OF AGRICULTURE, FISHERIES AND FOOD

3.28 Responsibility for the control of pollution lies with the Department of Environment, but other departments, including Industry, Energy, and Agriculture, have a close interest because of the environmental impacts of the industries with which they deal. The Government recognizes that for reasons referred to at the beginning of this section, the contribution of the Ministry of Agriculture, Fisheries and Food is of particular importance, and that the organization of the Ministry should therefore reflect this. In this context, the Government notes the Committee's view that there should be structures within MAFF capable of overseeing and co-ordinating policy on conservation and pollution across the whole range of the Ministry's activities:

19...MAFF should have a unified conservation and pollution prevention division, headed by an official with the rank of Under-Secretary or above.

3.29 As the Committee was informed, a major reorganisation of the Ministry took place in 1986 which resulted in the establishment of a new Under Secretary Group - the "Land and Environmental Affairs Group" - to take the lead on a wide range of policies relating to the interface between agriculture and the environment. At the same time, the Environmental and Conservation Policy Division was newly created within that Group, to take responsibility within MAFF for general countryside conservation issues and for agricultural pollution. That Division took over the lead on all policy issues relating to farm pollution with the exception of those relating to pesticides, where the volume of work - under different legislation - is sufficient to justify

an entirely separate Division. More recently a further restructuring has taken place with the part of ECP Division dealing with conservation being joined with a task force responsible for Environmentally Sensitive Areas to form a new Conservation Policy Division. The remaining branches now form a Division in their own right, Environmental Protection Division.

3.30 This change has ensured that even greater attention than hitherto can be paid to the problems created by agricultural pollution and more effort can be put into overcoming the problem. The fact that the two new Divisions report to a single Under Secretary ensures an important element of oversight across the range of conservation and pollution issues at that level.

3.31 It should be added that all aspects of the Ministry's work to which the Committee referred, including that concerning the marine environment, are now the responsibility of the Minister of State, who is thus enabled to take an overview on all environmental issues affecting the Ministry's interests, which was not possible under the previous division of Ministerial duties. Thus, while agreeing whole-heartedly with the objective of the Committee's recommendations in this area, the Government believes that MAFF is now organised in a way which ensures the proper co-ordination and direction of its conservation and pollution policies.

