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19th October 2007

Environment Quality Directorate
Water Pollution Control Team
Water, Air, Spills and Flooding Division
Scottish Government
Area 1-H North
Victoria Quay
Edinburgh
EH6 6QQ

Dear Sirs

**Implementing the Water Environment and Water Services Act (Scotland) Act 2003:
Diffuse Water Pollution from Rural Land Use**

The UK Environmental Law Association aims to make the law work for a better environment and to improve understanding and awareness of environmental law. UKELA's members are involved in the practice, study or formulation of Environmental Law in the UK and the European Union. It attracts both lawyers and non-lawyers and has a broad membership from the private and public sectors.

UKELA prepares advice to government with the help of its specialist working parties, covering a range of environmental law topics. This response has been prepared by the Scots Law working party, which I convene. We are grateful to you for agreeing to accept these comments after the deadline for responses.

UKELA's current priorities include:

- Informing and actively influencing the broad law and policy debate on climate change including the measures to reduce greenhouse gas emissions and manage their impacts at the international, EU and domestic level
- Helping deliver more effective and efficient environmental regulation including enforcement at the EU and UK level, not lower standards nor less regulation unless the same or better outcomes will be achieved

UKELA works on a UK basis and seeks to ensure that best legislation and practice are achieved across the devolved jurisdictions.

The UKELA Scots Law Working Party, which I convene, focuses on environmental law in Scotland. The Working Party has considered the above consultation paper and has the following comments.

Generally, we are pleased to see that a number of our comments on the previous October 2006 consultation (letter dated 19th January 2007) have been acted upon. We would

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however re-iterate our comments on the need for effective monitoring and enforcement and publicity of the GBRs if they are to achieve their aims

We also note that there are already a 2007 set of regulations amending CAR, so the title will presumably be amended.

Specifically, referring to Regulation numbers:

3(b)(ii) In the new paragraph (4), note that to the extent that this intended to expand the definition of slurry in the 2003 Regulations, it will require to explicitly do so. At the moment, for instance, an area or pathway in sub-paragraph (b) would only be caught if listed in paragraph (b) of the definition of slurry, since this defines where the rainwater and washing may derive from i.e. a building or yard used by livestock, dungsteads or middens, high level slatted buildings and weeping wall structures.

3(c)(iii) A small point, but 10(b) should probably refer to "forage" crop, since only these crops can be made into silage and produce silage effluent as those terms as defined in the 2003 Regulations.

Schedule paragraph 1

- 18(a)(iv) This comment applies wherever this wording is used. This is perhaps a technical rather than a legal point, but how are regulated persons expected to know whether their land falls within this highly technical definition?
- 18(d) & (f) Guidance will be required to explain what is reasonable if this is to achieve its aims.
- 18(g) Here and everywhere else that this wording is used, guidance will be required to explain what is reasonable if this is to achieve its aims.
- 19(a) This is a very strict prohibition if the intention is not that it prohibits all access by livestock to watercourses. As presently drafted, any degree of erosion or poaching would be a breach. Either the wording should be tempered or SEPA should issue clear guidance on their enforcement position on this rule.
- 20(a) The words "tilled for cropping" should be moved to a new paragraph after (iii). Otherwise (i) – (iii) appear to describe "cropping" not "land".
- 20(b) Guidance will be required of what is satisfactory is this is to achieve its aims.
- 21(c) & (d) These appear to be retrospective requirements – are they onerous requirements for existing forest drains and drainage fro forestry and agricultural activities?
- 22(c) Again, this appears to be retrospective. Have these requirements already been observed for some time?
- 23(b) As we noted in our previous response, guidance will be required on what SEPA regard as an appropriate risk assessment.
- 23(e) What degree of pesticide treatment results in a tree falling within this category? Also presumably this only applies to felled trees?

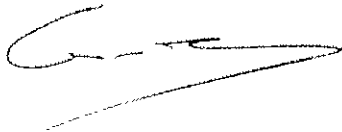
24(a) This is more of a technical matter than a legal one, but wouldn't there be a risk of transfer after the fluid had dried? If so, this would be an unduly onerous obligation.

24(b) Delete the second paragraph (ii).

Since UKELA did not receive a copy of the consultation direct, I should be grateful if you would add my details to you and your colleagues' list of standard consultees. I made this request in our last response to the Water Division, but unfortunately did not receive a copy of this consultation. I should be particularly grateful if you were able to add those details to a central list for all environment consultations: thus far, despite my best efforts, it has not been possible to achieve this.

Please do not hesitate to contact me if you wish to discuss any of the above or if you would like any further information about UKELA and the Scots Law Working Party.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Gordon McCreath', with a long horizontal flourish extending to the right.

Gordon McCreath

Convenor - UKELA Scots Law Working Party