

AGRICULTURAL WASTE STAKEHOLDERS' FORUM

Manure/Slurry

ECJ Case C-416/02 : European Commission v Kingdom of Spain

1. The Secretariat circulated a note on 15 September advising Forum members of the European Court of Justice's (ECJ's) judgment on Case C-416/02. The European Commission infringed Spain and sought a declaration from the ECJ on six grounds covering a range of Directives. These included Spain's alleged failure to fulfil its obligations under the Waste Framework Directive (WFD) in relation to the slurry on the farm which was the subject of the infraction. The UK was granted leave to intervene in the case and did so with the aim of clarifying the law on the issue and seeking to avoid the possibility of the Court's concluding that all manure/slurry is waste within the meaning of Article 1(a) of the WFD.
2. **The purpose** of this paper is:
 - (a) To set out and inform the Forum of Defra's views on the judgment and its implications; and
 - (b) In the light of the judgment and Defra's views on it, to invite the views of Forum members on the provision of a permit/licence exemption under Article 11(1)(b) of the WFD for the recovery of manure/slurry which is waste within the meaning of Article 1(a) of the Directive.

The Judgment

3. The judgment was circulated to Forum members on 15 September and the relevant paragraphs from it are as follows:-

“89. As the United Kingdom Government correctly maintains in its statement of intervention, livestock effluent may, on the same terms, fall outside classification as waste, if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations.

90. Contrary to the Commission's submission, it is not appropriate to limit that analysis to livestock effluent used as fertiliser on land forming part of the same agricultural holding as that which generated the effluent [...].”
4. The judgment uses the term “livestock effluent” and no distinction is drawn between that term and the use of “manure/slurry” in this paper. The judgment does **not** state that all livestock effluent is excluded from

classification as waste. The judgment states that livestock effluent **may** fall outside classification as waste:-

(a) If it is used as a soil fertiliser and:-

(i) that use is part of a lawful practice of spreading; and

(i) the spreading takes place on clearly identified parcels of land; and

(b) If its storage is limited to the needs of those spreading operations;

(c) Furthermore, to fall outside classification as waste it is not necessary for livestock effluent used as fertiliser to be spread on land forming part of the same agricultural holding as that which generated the effluent.

5. On the particular case which was the subject of the infraction proceedings the Court concluded that:-

“94. In this case, as regards, first, the slurry generated by the livestock farm, it is clear from the contents of the case file that the slurry is used as an agricultural fertiliser and spread for that purpose on clearly identified land. It is stored in a pit awaiting spreading. The person running the farm in question is not therefore seeking to discard it, with the result that the slurry is not 'waste' within the meaning of Directive 75/442.” [the WFD]

6. The judgment does not affect the application of controls other than the WFD to manure/slurry e.g. the EU Animal By-Products Regulation¹. Article 5(1)(a) of the Regulation classifies manure as a Category 2 animal by-product and then sets out the ways in which it may be disposed of as waste or used. The relevant provisions of Article 5 of the Regulation are re-produced in Annex 1.

Manure/Slurry As Waste

7. In the Department's view, there are a range of circumstances in which manure/slurry may be classified as waste within the meaning of Article 1(a) of the WFD. Such circumstances would include those in which manure/slurry:-

(a) Is not used as a soil fertiliser as part of a lawful practice of spreading or the spreading does not take place on clearly identified parcels of land;

¹ (EC) No. 1774/2002.

(b) Is abandoned, dumped or otherwise disposed of unlawfully; or

(c) Is “directly disposed of as waste by incineration” under the terms of Article 5 of the EU Animal By-Products Regulation (see paragraph 6 above and Annex 1).

8. It is also necessary for there to be a sufficient degree of certainty about the use of manure/slurry as a soil fertiliser. In the *Palin Granit Oy* case (C-9/00), the ECJ drew a distinction between a residue which comprises waste and a by-product which the holder wishes to exploit and which does not comprise waste. In that case the ECJ held that:-

- “the reasoning applicable to by-products should be confined to situations in which the reuse of the goods, materials or raw materials is not a mere possibility but a certainty [...]; and
- “a second relevant criterion for determining whether or not that substance is waste [...] is the degree of likelihood that that substance will be reused [...].”

9. In the light of the considerations set out in paragraph 8 above, Defra considers that there may be certain circumstances – which may be relatively limited – in which livestock effluent is discarded as waste; and, if so, it will then be necessary to determine whether its use is a waste disposal operation or a waste recovery operation subject respectively to the permit requirements of Articles 9 and 10 of the WFD.

10. For example, a farmer may find himself with such a large quantity of livestock effluent that he is unable either to use it all on his own farm as a soil fertiliser or to find a sufficient number of other farms able to use it as a soil fertiliser. Or a farm which does not produce livestock effluent, but which takes some from another farm, may miscalculate the amount it needs and find itself with an excessive amount which it then needs to discard. Another situation might be where a farmer in possession of livestock effluent, which he intended to use as a soil fertiliser, goes bankrupt and there is no immediate use for the livestock effluent. In such circumstances there may be a need to discard the livestock effluent.

11. Both the *Palin Granit Oy* case (C-9/00) and C-416/02 address the question of storage. In the former case the ECJ held that:-

“The answer to the main question asked by the national court must therefore be that the holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is

accordingly to be classified as waste within the meaning of Directive 75/442.” [the WFD]

12. In case C-416/02, the ECJ held that stored livestock effluent would only fall outside classification as waste if the storage is “limited to the needs of those spreading operations”. Accordingly, if a farmer finds himself with livestock effluent which he himself is unable either to use as a soil fertiliser or to find other farmers who are able to use it, he may have to store a quantity of livestock effluent which goes beyond the need of spreading operations. If he is storing more effluent than is necessary for the spreading operations, or storing it for “an indefinite length of time to await possible use”, it is possible that the livestock effluent would satisfy the discard test and fall to be treated as waste.

Article 11(1)(b) Permit/Licence Exemption

13. In the draft Waste Management (England and Wales) Regulations 2005 issued for consultation, Defra proposed an Article 11(1)(b) permit/licence exemption for the recovery of manure/slurry which is waste. The terms of the proposed exemption are re-produced in Annex 2. Subject to certain conditions, it would provide an exemption from the need for a permit/licence for the following waste recovery operations:-

WFD Annex IIB

- R10 Land treatment resulting in benefit to agriculture or ecological improvement; and
 - R13 Storage of wastes pending any of the operations numbered R1 to R12 (excluding temporary storage, pending collection, on the site where it is produced).
14. **The question** on which Defra invites the views of Forum members is whether, in the light of the ECJ’s judgment in Case C-416/02, the proposed exemption for manure/slurry (Annex 2) should be retained?
15. In the light of the ECJ’s judgment in Case C-416/02, the provision of a permit/licence exemption for the storage and use of manure/slurry for agricultural benefit may seem to be surprising. The provision of such an exemption may result in farmers being uncertain about the classification of manure/slurry as waste when being used as a soil fertiliser. And Defra acknowledges that most farmers are likely to consider that they use manure/slurry within the terms of the ECJ’s judgment in C-416/02 and that, as a consequence, there is no reason for anyone to assert that it is waste.
16. However, for the reasons set out in paragraphs 8-12 above, Defra cannot exclude the possibility that there may be some circumstances in which

manure/slurry is classified as waste either in relation to its storage or its use as a soil fertiliser – i.e. land treatment resulting in benefit to agriculture. If there were no permit/licence exemption on which farmers could rely in such circumstances, they would be faced with two options:-

(a) To obtain a waste management licence and recover the waste in accordance with its terms; or

(b) To dispose of the waste in an uncontrolled way.

17. It may be argued, therefore, there are valid reasons to retain the proposed permit/licence exemption so that it may be relied on in circumstances where the livestock effluent is discarded but where it is not desirable to impose the full waste management licensing regime on the person discarding it. If so, it would probably also be desirable to explain in associated guidance that the purpose of the exemption is to address those (possibly rare) circumstances where the livestock effluent is discarded as waste.

Conclusions

18. Members of the Forum are invited:-

(a) To note Defra's views on the implications of the ECJ's judgment in Case C-416/02; and

(b) In the light of the judgment and Defra's views on it:-

(i) To make known their views on the provision of a permit/licence exemption under Article 11(1)(b) of the WFD for the recovery of manure/slurry which is waste within the meaning of Article 1(a) of the Directive.

**Defra
Waste Management Division
27 September 2005**

EU ANIMAL BY-PRODUCTS REGULATION

Article 5

Category 2 material

1. Category 2 material shall comprise animal by-products of the following description, or any material containing such by-products:

(a) **manure** and digestive tract content;

2. Category 2 material shall be collected, transported and identified without undue delay in accordance with Article 7 and, except as otherwise provided in Articles 23 and 24, shall be:

(a) directly disposed of as waste by incineration in an incineration plant approved in accordance with Article 12;

(e) in the case of manure, digestive tract content separated from the digestive tract, milk and colostrum, if the competent authority does not consider them to present a risk of spreading any serious transmissible disease:

(i) used without processing as raw material in a biogas plant or in a composting plant approved in accordance with Article 15 or treated in a technical plant approved for this purpose in accordance with Article 18,

(ii) applied to land in accordance with this Regulation, or

(iii) transformed in a biogas plant or composted in accordance with rules laid down under the procedure referred to in Article 33(2);

Annex 2

[In Schedule 3 (activities exempt from waste management licensing) [...] there is added]

49.—(1) The treatment of land by the spreading of agricultural waste so as to benefit agriculture or lead to ecological improvement if—

- (a) the waste consists of—
 - (i) animal faeces, urine, spoiled straw or manure;
 - (ii) effluent from any such waste; or
 - (iii) slurry from washing buildings or yards used for keeping livestock;
- (b) in any period of twelve months the quantity of the waste used to treat the land per hectare is no more than—
 - (i) 250 cubic metres (tonnes), in a case where at least half the waste used during that period is waste referred to in paragraph (a)(i);
 - (ii) 850 cubic metres (tonnes), in any other case;
- (c) the waste is spread as evenly on the ground as is reasonably practicable;
- (d) the amount of total nitrogen added to the soil as a result of the treatment does not exceed 250 kilogrammes per hectare in any period of twelve months;
- (e) the land is not—
 - (i) frozen hard (that is, the soil surface has been frozen for at least 12 hours during the preceding 24 hours) or snow covered;
 - (ii) waterlogged or flooded; or
 - (iii) less than 10 metres from a watercourse or 50 metres from a spring, well or borehole; and
- (f) the activity is carried out in accordance with any requirement imposed implementing an action programme under the Action Programme for Nitrate Vulnerable Zones (England and Wales) Regulations 1998.

(2) The storage of the waste intended to be submitted to such treatment if—

- (a) storage takes place—
 - (i) in the case of waste referred to in sub-paragraph (1)(a)(i) above, in a secure place; and
 - (ii) in any other case, in a secure container or lagoon;
- (b) the total quantity of waste being stored at any time does not exceed 1,250 cubic metres (tonnes); and
- (c) no waste is stored for more than twelve months.