

INVESTIGATION REPORT

**addressed to the Secretary of State for Environment, Food and
Rural Affairs concerning the statutory guidance issued under
regulation 15 of the Reduction and Prevention of Agricultural
Diffuse Pollution (England) Regulations 2018**

9 October 2025

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Executive summary

Executive summary

This report concludes the Office for Environmental Protection's ('OEP') investigation into the lawfulness of the guidance that the Secretary of State for Environment, Food and Rural Affairs ('Secretary of State' or 'Defra') issued on 30 March 2022 to the Environment Agency under regulation 15 of the Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (the 'Farming Rules for Water') (the 'Statutory Guidance'). The Statutory Guidance sets out criteria the Environment Agency must have regard to when assessing if it should take enforcement action under the Farming Rules for Water.

Diffuse pollution from agriculture impacts 40% of water bodies in England. Agricultural water pollution limits progress to achieving the Environment Act 2021 agriculture water target and long-term biodiversity targets. The Farming Rules for Water requires farmers to plan their activities to reduce and prevent diffuse agricultural water pollution.

On 13 November 2024 we launched an investigation and issued an Information Notice in relation to alleged failures by the Secretary of State to comply with environmental law. These were identified following a complaint submitted to the OEP by ClientEarth and WWF-UK.

Section 2.2 of the Statutory Guidance contained statements which were inconsistent with regulation 4(1)(a)(i) of the Farming Rules for Water and which we believe encouraged land managers to breach their legal duties under the Farming Rules for Water. These inconsistent statements concerned planning for the application of organic manure or manufactured fertiliser to agricultural land so that the application did not exceed the needs of the soil and crop on that land.

In November 2024 Defra undertook a rapid review of the Statutory Guidance which sought stakeholder feedback by 29 November 2024. Revised Statutory Guidance was subsequently published in June 2025 ('Amended Statutory Guidance').

We set out our findings that Defra failed to comply with environmental law when issuing and promulgating the Statutory Guidance from its issue on 30 March 2022 until its amendment on 18 June 2025, and our conclusion that the Amended Statutory Guidance addresses the identified failures to comply with relevant environmental law.

We are therefore closing the investigation and make two recommendations in relation to the Amended Statutory Guidance and the Farming Rules for Water to improve clarity to land managers and publish the overdue Post Implementation Review as soon as possible. This is important to inform scrutiny ahead of any future reforms in this area.

We welcome indications that the Government is establishing a programme to reform the regulations governing agricultural diffuse pollutions. Whilst this investigation is now closed we will continue our oversight of the progress towards meeting the water

and nature targets. We also look forward to working with Defra as it develops its proposals in this area aimed at driving more positive outcomes.



Introduction

1.Introduction

- 1.1 This report concludes the OEP's investigation into the lawfulness of Statutory Guidance issued by the Secretary of State to the Environment Agency under regulation 15 of the Farming Rules for Water.
- 1.2 In accordance with section 33(5) of the Environment Act 2021, we set out in this report our finding that the Secretary of State failed to comply with relevant environmental law when issuing and promulgating the Statutory Guidance. We also set out our conclusion that the Amended Statutory Guidance addresses the identified failures to comply with relevant environmental law.
- 1.3 We first outline the applicable legislative provisions and factual background to the investigation. Where we use terms with specific meanings within this report, explanations can be found in the glossary (Annex 1).



Legal framework

2. Legal framework

- 2.1 Under regulation 15 of the Farming Rules for Water, the Secretary of State has a power to give statutory guidance to the Environment Agency relating to the exercise of its functions under those regulations.

The Farming Rules for Water

- 2.2 Regulation 4 of the Farming Rules for Water provides that:

- ‘(1) A land manager must ensure that, for each application of organic manure or manufactured fertiliser to agricultural land, the application –
- (a) is planned so that it does not –
 - (i) exceed the needs of the soil and crop on that land, or
 - (ii) give rise to a significant risk of agricultural diffuse pollution, and
 - (b) takes into account the weather conditions and forecasts for that land at the time of the application.
- (2) When planning under paragraph (1)(a)(ii), the land manager must ensure that any factors which mean there would be a significant risk of agricultural diffuse pollution from the application are taken into account, including –
- (a) the slope of the land, in particular if greater than 12 degrees,
 - (b) any ground cover,
 - (c) proximity of the land to inland freshwaters, coastal waters, wetlands, or to a spring, well or borehole,
 - (d) the soil type and condition of the land, and
 - (e) the presence and condition of any agricultural land drains.
- (3) In addition to paragraphs (1) and (2), the land manager must ensure that reasonable precautions are taken to prevent agricultural diffuse pollution resulting from applications.
- (4) Without limiting what may otherwise be done to comply with paragraph (3), examples of reasonable precautions include –
- (a) checking spreading equipment for leaks and correct calibration,
 - (b) incorporating organic manure and manufactured fertiliser into the soil within 12 hours of, or as soon as possible after, its application, and
 - (c) checking the organic matter content in, and moisture levels of, the soil.

(5) In this regulation-

"spreading equipment" means any machinery used for the application of organic manure or manufactured fertiliser to agricultural land and includes precision spreading equipment;

"wetlands" means land that is covered with or saturated by water permanently or for a significant part of the year.'

2.3 Regulation 15 of the Farming Rules for Water states so far as relevant:

'(1) The Secretary of State may issue guidance to the Agency with respect to the exercise of the Agency's functions under these Regulations.

(2) In the exercise of its functions, the Agency must have regard to any guidance issued under paragraph (1).'

2.4 The Secretary of State published the Statutory Guidance under regulation 15 on 30 March 2022. Section 2.2 of the Statutory Guidance stated:

'Land managers should plan to avoid significant risk of diffuse agricultural pollution. This includes not exceeding the needs of the soil and crop on the land.

Land managers should consider soil and crop need for nitrogen (N) based on an annual crop cycle.

As a general guide, land managers should plan to avoid applying organic manures that raise the Soil Phosphorus Index (soil P index) above target levels for soil and crop on land over a crop rotation, unless they can demonstrate that:

- it is not reasonably practicable to do so
- they have taken all appropriate reasonable precautions to help mitigate against the risk of diffuse agricultural pollution

Examples of when it would not be reasonably practicable to do so include if a farm:

- produces and applies its own organic manure to its own land and cannot reasonably take measures to treat or manage the manure (for example, if it exports it) to avoid applications that risk raising the soil P index level of soil above crop and soil need target levels over a crop rotation
- imports organic manure as part of an integrated organic and manufactured fertiliser system and cannot reasonably import organic manures that would not risk raising the soil P index level of the soil above crop and soil need target levels over a crop rotation'

The background is a solid teal color with a repeating pattern of stylized, overlapping leaf or feather shapes. The pattern is created using different shades of teal, with darker outlines and lighter fills for the leaf shapes, giving it a textured, layered appearance.

Factual background

3. Factual background

The Farming Rules for Water

- 3.1 Pollution from rural areas impacts 40% of waterbodies in England.¹ Agriculture and rural land management is listed as a confirmed or probable reason for 5,061 waterbodies not achieving good status under the Water Framework Directive.² There is evidence that diffuse nutrient pollution from agriculture is having significant impact on protected wildlife sites.³
- 3.2 Agriculture is the single largest source of water pollution in England, both at the time when the Farming Rules for Water were introduced and now.⁴
- 3.3 Nutrient pollution (namely by nitrogen and phosphorus) of water bodies can significantly impact aquatic biodiversity through eutrophication leading to deoxygenation and shading of plants, and in some cases toxicity from algae. One of the ways this pollution occurs is when the application of fertilisers and organic material, such as manure, exceeds the nutrient needs of the soil and the excess runs off into watercourses and surrounding land.
- 3.4 The Agricultural SIs collectively aim to limit the environmental impact of agriculture using a regulatory approach. Environment Agency data shows there is reason for concern about non-compliance with the Agricultural SIs, including the Farming Rules for Water.⁵

¹ Environment Agency; Natural England, 'State of the water environment indicator B3: supporting evidence' (updated 22 May 2025) <www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence/state-of-the-water-environment-indicator-b3-supporting-evidence#key-issues-and-sectors-affecting-water-bodies-in-england> accessed 10 July 2025.

² Environment Agency, 'Challenges data for England' (updated 17 March 2025) <<https://environment.data.gov.uk/catchment-planning/England/rnags>> accessed 10 July 2025. Details that all 5,061 waterbodies categorised within the sector 'pollution from rural areas' have the significant water management issue 'agriculture and rural land management'.

³ Water pollution from agricultural run-off is the cause of 3% of SSSIs in England being in adverse condition, as detailed in 'Observatory monitoring framework – indicator data sheet' (2014) <<https://assets.publishing.service.gov.uk/media/5a7e223240f0b6230268963b/agindicator-de8-11nov14.pdf>>. Natural England, 'Prioritising designated wildlife sites at risk from diffuse agricultural pollution - ENRR551' (1 November 2003) <<https://publications.naturalengland.org.uk/publication/61030>> details 72 of 156 (46%) of English river catchments containing designated wetland sites are considered to be impacted by or at risk from diffuse agricultural pollution.

⁴ *R (River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin), as detailed at para 8 in the witness statement of Mr Adnan Obaidullah; Defra, 'Plan for Water: Our Integrated Plan for Delivering Clean and Plentiful Water' (4 April 2023) 12.

⁵ Environment Agency, 'Review of activities regulated by the Environment Agency, 2022' (28 February 2024) <www.gov.uk/government/publications/review-of-activities-regulated-by-the-environment-agency-2022/review-of-activities-regulated-by-the-environment-agency-2022#protecting-water-habitats-and-wildlife-1> accessed 10 July 2025. In 2022 non-compliance with the Farming Rules for Water was identified during 39% of inspections. 3,482 farm inspections in 2022 (compared with 721 in 2021), of around 10% of the highest risk farms in the highest risk catchments, found non-compliance with at least one of the Farming Rules for Water at 39% of the inspected farms. Failure to comply with

- 3.5 The Farming Rules for Water cover the application and storage of fertilisers and the management of soil and livestock and are enforced by the Environment Agency. They were introduced as part of a broader initiative to meet the requirements of the Water Framework Directive,⁶ which itself included requirements to address the control of diffuse pollution.
- 3.6 The Farming Rules for Water and their enforcement by the Environment Agency feature as a measure in the programmes of measures for the third River Basin Management Plans, published in October 2022.⁷
- 3.7 The Farming Rules for Water set national standards based around existing good practice guidance for all farmers in England to reduce and prevent diffuse agricultural water pollution. The impact of diffuse water pollution includes eutrophication, increased flood risk, silting of fish spawning grounds and pollution of bathing waters.⁸

The Statutory Guidance

- 3.8 Defra has informed us that there have been differing interpretations and concerns from a variety of stakeholders (including farming industry, water industry, anaerobic digestion sector and environmental groups) about what is required to comply with the Farming Rules for Water.
- 3.9 These are particularly concerned with the requirement to plan the application of organic manures or manufactured fertiliser to not exceed the needs of the crop and soil on that land at the time of application or not give rise to a significant risk of diffuse pollution, as required by regulation 4 of the Farming Rules for Water otherwise known as “Rule 1”.
- 3.10 A key stakeholder concern was the potential impact on enforcement of the Farming Rules for Water of different interpretations of Rule 1 on the availability of spreading periods for organic manure and the routes for the management of biosolids for water companies.
- 3.11 To address this perceived uncertainty, while reducing the risk of diffuse water pollution, Defra issued the Statutory Guidance to the Environment Agency in respect of the enforcement of the Farming Rules for Water, including in relation to Rule 1 in March 2022 (later amended in June 2022).
- 3.12 The Statutory Guidance publicly set out criteria the Environment Agency should consider when it assesses if it should take enforcement action under

the Farming Rules for Water was identified at 45% of farms visited in the Wye Catchment, with 31% non-compliant with Regulation 4(1)(a)(i), as detailed in *R (River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin) para. 74.

⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [2000] OJ L 327/1 implemented in England through The Water Environment (Water Framework Directive) (England & Wales) Regulations 2017.

⁷ Environment Agency, ‘River basin management plans: updated 2022’ (updated 17 January 2024) <www.gov.uk/guidance/river-basin-management-plans-updated-2022> accessed 11 July 2025.

⁸ Consultation on new basic rules for farmers to tackle diffuse water pollution from agriculture in England, September 2015.

the Farming Rules for Water. It stated that where land managers follow the Statutory Guidance then the Secretary of State does not normally expect enforcement action to be taken.

- 3.13 The Statutory Guidance included a commitment that it would be reviewed by no later than September 2025.
- 3.14 Draft internal Environment Agency guidance obtained during information-gathering suggests the Statutory Guidance was produced because land managers found it difficult to comply with the Farming Rules for Water due to the practice of applying fertiliser to crops in the autumn when there is no immediate nitrogen need.⁹
- 3.15 Stakeholders including the National Farmers' Union (the 'NFU'), Agriculture and Horticulture Development Board (the 'AHDB') and Country Land and Business Association (the 'CLA') signpost farmers to the Statutory Guidance on their websites, indicating it will be read and relied on by land managers.¹⁰
- 3.16 It is therefore our view that land managers may follow the Statutory Guidance rather than the requirements of the Farming Rules for Water.
- 3.17 There is separate high-level guidance from Defra and the Environment Agency to farmers and land managers which relates to the Farming Rules for Water and sets out steps that should be taken in planning manure or fertiliser applications (the 'Implementation Guidance').¹¹ This guidance did not provide advice on the more detailed requirements of the Farming Rules for Water concerning planning manure or fertiliser applications covered by the Statutory Guidance.

Decision to investigate

- 3.18 In November 2022 the OEP received a complaint from ClientEarth and WWF-UK relating to compliance with the Farming Rules for Water and other Agricultural SIs by Defra and the Environment Agency. The complaint contained six allegations relating to alleged non-compliances with the Agricultural SIs. This included an allegation that the Statutory Guidance

⁹ Draft 'The Reduction and Prevention of Agricultural Diffuse Pollution (England) Regulations 2018 (Farming Rules for Water) Supplementary Information following Statutory Guidance from Government Date: 28 June 2022, provided by the Complainants during the assessment.

¹⁰ National Farmers' Union, 'Farming Rules for Water – what you need to know' (7 March 2024) <www.nfuonline.com/updates-and-information/farming-rules-for-water-what-you-need-to-know/> accessed 11 July 2025; Agriculture and Horticulture Development Board, 'Farming rules for water: New enforcement guidance' (27 June 2025) <<https://ahdb.org.uk/news/farming-rules-for-water-new-enforcement-guidance>> accessed 11 July 2025; Country Land and Business Association, 'New guidance on Farming Rules for Water' (revised 25 February 2025) <www.cla.org.uk/news/new-guidance-on-farming-rules-for-water/> accessed 11 July 2025.

¹¹ Defra; Environment Agency, 'Rules for farmers and land managers to prevent water pollution' (version published 2 April 2018) <<https://web.archive.org/web/20250614093638/https://www.gov.uk/guidance/rules-for-farmers-and-land-managers-to-prevent-water-pollution>> accessed 18 July 2025.

encourages unlawful activity by farmers. We also identified three additional issues of concern which were assessed alongside the complaint.

- 3.19 All matters were jointly assessed and we reviewed a significant amount of detailed material obtained from multiple information requests to both public authorities between December 2022 and November 2023. Engagement with the public authorities proceeded at a slower pace than we expected.
- 3.20 Our assessment of the complaint concluded in January 2024. We concluded there was no indication of a failure to comply with environmental law in relation to the majority of the allegations and resolved three issues of potential non-compliance through correspondence with Defra and the Environment Agency.¹²
- 3.21 In relation to the remaining allegation, our assessment identified there was an indication that the Secretary of State may have failed to comply with environmental law in relation to the Statutory Guidance. We considered the potential failure to be serious.
- 3.22 The Statutory Guidance and the correct interpretation of regulation 4(1)(a)(i) of the Farming Rules for Water was considered in *R (River Action UK) v Environment Agency*¹³ (the 'River Action Judgment').
- 3.23 As set out in our Enforcement Policy,¹⁴ and in line with best use of public money, our work should be complementary to ongoing legal proceedings considering the same or similar issues to those we have identified. As the Statutory Guidance was being considered by the courts, it was appropriate and proportionate to await the judgment in that case before determining the appropriate next steps for this aspect of the complaint. The River Action Judgment was handed down on 24 May 2024.
- 3.24 Continuing discussions with the relevant operational team in Defra followed the River Action Judgment, beginning during the pre-election period of sensitivity for the general election. These did not result in resolution and we therefore launched an investigation and issued an Information Notice on 13 November 2024.
- 3.25 We can give an information notice where we have reasonable grounds for suspecting a serious failure to comply with environmental law by a public

¹² Office for Environmental Protection, 'Compliance by the EA when carrying out assessment and approval of grassland derogations under the Nitrate Regulations in England' (10 January 2024) <<https://www.theoep.org.uk/investigation/compliance-ea-when-carrying-out-assessment-and-approval-grassland-derogations-under>> accessed 24 July 2025; Office for Environmental Protection, 'Compliance with obligations imposed on the SoS for Defra under the Nitrate Pollution Prevention Regulations 2015' (10 January 2024) <<https://www.theoep.org.uk/investigation/compliance-obligations-imposed-sos-defra-under-nitrate-pollution-prevention>> accessed 24 July 2025.

¹³ *R (River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin).

¹⁴ Office for Environmental Protection, 'Strategy and Enforcement Policy' (November 2024) <<https://www.theoep.org.uk/report/our-strategy-and-enforcement-policy-2024>> accessed 24 July 2025.

authority.¹⁵ Public authorities must respond in writing to such notices and must provide the information requested so far as it is reasonably practicable to do so.

- 3.26 The Information Notice set out the allegations of the potential failures to comply with environmental law. We determined there were reasonable grounds for suspecting that the Secretary of State unlawfully exercised and continued to unlawfully exercise its power to give guidance to the Environment Agency under regulation 15 of the Farming Rules for Water when respectively issuing and promulgating the Statutory Guidance. This is because that guidance contains statements that are inconsistent with the Farming Rules for Water. In addition, we considered there were reasonable grounds for suspecting that the Statutory Guidance was unlawful insofar as it contained incorrect statements about the Farming Rules for Water which encourage land managers to act in a way which contradicts the requirements of those regulations.
- 3.27 We also believed there were reasonable grounds for suspecting a further failure by the Secretary of State to comply with environmental law in this respect, because it has issued and promulgated guidance that unlawfully fails to take proper account of regulation 4(1)(a)(i) of the Farming Rules for Water.
- 3.28 The Information Notice explained the reasons why we considered these alleged failures to be serious. These related to raising a point of law of general public importance, the risk of harm to the natural environment, the frequency of conduct over time, and the behaviour of the public authority:
- 3.28.1. We considered the lawfulness of issuing and maintaining guidance which contains statements that are inconsistent with the Farming Rules for Water and induces a land manager to act in a way that breaches their legal duties to be a point of law of general public importance.
- 3.28.2. We considered the potential failure to be a systemic issue relating to ongoing conduct, which resulted in an ongoing risk of harm to the natural environment given the Environment Agency's inspection data shows widespread failure by land managers and the water environment in England is under significant pressure from agricultural diffuse pollution.¹⁶ This was due to increased risk of diffuse nitrogen and phosphorous pollution when land managers are

¹⁵ s.35 Environment Act 2021.

¹⁶ Environment Agency, 'Review of activities regulated by the Environment Agency' (published 28 February 2024) <<https://www.gov.uk/government/publications/review-of-activities-regulated-by-the-environment-agency-2022/review-of-activities-regulated-by-the-environment-agency-2022#protecting-water-habitats-and-wildlife-1>> accessed 18 July 2025 and Environment Agency, 'State of the water environment indicator B3: supporting evidence' (updated 22 May 2025) <<https://www.gov.uk/government/publications/state-of-the-water-environment-indicator-b3-supporting-evidence/state-of-the-water-environment-indicator-b3-supporting-evidence#key-issues-and-sectors-affecting-water-bodies-in-england>> accessed 18 July 2025.

induced to believe that they do not need to follow some of the Farming Rules for Water.¹⁷

- 3.28.3. Lastly, there was no commitment by Defra to adequately address inconsistencies of the Statutory Guidance with regulation 4(1)(a)(i) of the Farming Rules for Water. This was even though it was on notice since January 2024 that the OEP considered the Statutory Guidance to be unlawful and was aware that the guidance was produced based on an incorrect interpretation of regulation 4(1)(a)(i) since the River Action Judgment was handed down on 24 May 2024.

3.29 The Information Notice requested a response by 13 January 2025.

Defra's Review of the Statutory Guidance

- 3.30 Defra commenced a review of the Statutory Guidance in November 2024 (the 'Review'). The Review gathered existing data and stakeholder views on the Statutory Guidance and considered its maintenance, amendment, withdrawal and the impacts of any changes to it.
- 3.31 Defra provided an interim response (the 'Response') to the Information Notice on 13 January 2025.
- 3.32 The Response stated that Defra does not consider that it has failed to comply with environmental law. Defra did however accept the potential for a tension between section 2.2 of the Statutory Guidance and the Farming Rules for Water. The response sets out that Government is aware of perceived issues with the Statutory Guidance and was undertaking a rapid review of the Statutory Guidance, with next steps dependent upon the outcome of the Review.
- 3.33 The Response set out an ambition to provide a substantive ministerial response to the request for information, including the review outcomes, during February 2025.
- 3.34 Following the Response, Defra provided regular progress updates during the Review, and subsequent development and publication of the Amended Statutory Guidance.
- 3.35 The Amended Statutory Guidance was published on 18 June 2025.

¹⁷ Namely that they can measure soil and crop needs on an annual crop cycle basis and/or to believe that they will be acting lawfully if they continue to apply fertiliser in excess of target soil and crop need levels because it would not be reasonably practicable to do otherwise.



Analysis

4. Analysis

The Statutory Guidance and inconsistencies with regulation 4(1)(a)

- 4.1 We identified two inconsistencies between the Statutory Guidance and regulation 4(1)(a) of the Farming Rules for Water which we believe could have encouraged land managers to act in a way which contradicts the requirements of those regulations. We also identified concerns relating to the exercise of the Secretary of State's power to issue guidance under regulation 15 of the Farming Rules for Water.
- 4.2 The first inconsistency arose from the following statements in section 2.2 of the Statutory Guidance:
- (i) 'Land managers should plan to avoid significant risk of diffuse agricultural pollution. This includes not exceeding the needs of the soil and crop on the land. *Land managers should consider soil and crop need for nitrogen (N) based on an annual crop cycle*' (emphasis added)
 - (ii) 'As a general guide, land managers should plan to avoid applying organic manures that raise the Soil Phosphorus Index (soil P index) *above target levels for soil and crop on land over a crop rotation*' (emphasis added)
- 4.3 Regulation 4(1)(a)(i) was considered in the River Action Judgment. The Judge held that the correct interpretation of regulation 4(1)(a)(i) is that each application should be planned so as not to exceed the needs of the soil and crop on the land at the time of the application.¹⁸ In reaching this conclusion, the Judge considered and rejected the argument advanced by the Secretary of State that regulation 4(1)(a)(i) should be interpreted so as to entitle consideration of the soil and crop needs over a longer period, such as an annual crop cycle or rotation.
- 4.4 The second inconsistency was the statement that land managers should plan to avoid applying organic manures that raise the Soil Phosphorus Index above target levels unless they can demonstrate that it is 'not reasonably practicable to do so' or 'they have taken all appropriate reasonable precautions to help mitigate against the risk of diffuse agricultural pollution'. The Statutory Guidance then provided examples of when it would not be reasonably practicable to do so (as set out in chapter 2 above).¹⁹ While we consider that it would not be objectionable to have guidance to address what land managers

¹⁸ At paragraphs 104 to 107.

¹⁹ 'Examples of when it would not be reasonably practicable to do so include if a farm: produces and applies its own organic manure to its own land and cannot reasonably take measures to treat or manage the manure (for example, if it exports it) to avoid applications that risk raising the soil P index level of soil above crop and soil need target levels over a crop rotation; imports organic manure as part of an integrated organic and manufactured fertiliser system and cannot reasonably import organic manures that would not risk raising the soil P index level of the soil above crop and soil need target levels over a crop rotation'.

may do to demonstrate they have taken reasonable steps and acted with due diligence for the purposes of regulation 12, this is not what section 2.2 of the Statutory Guidance did.²⁰ Section 2.2 of the Statutory Guidance stated that the requirement in regulation 4(1)(a) to plan to avoid applying organic manure above target levels for crop and soil needs does not apply in certain circumstances.

- 4.5 This was inconsistent with regulation 4(1)(a) of the Farming Rules for Water, which imposes an unqualified obligation on land managers to ensure that each application of organic manure and manufactured fertiliser is planned so that it does not exceed the needs of the soil and crop on that land or give rise to a significant risk of agricultural diffuse pollution. It is not a mere obligation to take 'reasonable steps' to avoid exceeding soil and crop needs. The Statutory Guidance therefore purported to qualify the requirements of regulation 4(1)(a) in a way which is not provided for in the Farming Rules for Water.
- 4.6 As a result, the Statutory Guidance may have induced a land manager to think it is lawful to plan to apply organic manure or manufactured fertiliser: (i) in consideration of the soil and crop need over a longer period, such as an annual crop cycle; and (ii) where it exceeds the needs of the soil and crop at the time of application where it can be demonstrated that it is not reasonably practicable to meet target levels. In other words, the Statutory Guidance may have induced a land manager to believe it is lawful to breach the obligations in regulation 4(1)(a) in the circumstances set out in section 2.2.

Unlawful exercise of power under regulation 15 of the Farming Rules for Water

- 4.7 As set out in chapter 2 above, regulation 15 of the Farming Rules for Water confers a power on the Secretary of State to issue guidance to the Environment Agency with respect to the exercise of the Agency's functions under the Farming Rules for Water. The power under regulation 15 must be exercised consistently with, and in a way which furthers the objectives of, the Farming Rules for Water.
- 4.8 We consider that it is therefore outside the scope of the power conferred by regulation 15 to issue and promulgate guidance which contains statements which are inconsistent with regulation 4(1)(a)(i) and the overall objectives of the Farming Rules for Water. The clear purpose of enacting the Farming Rules for Water is to ensure that applications of organic manure or manufactured fertiliser are tailored to the known and established needs of the existing soil and crops so as to avoid the risks of overprovisions and subsequent leaching or run-off of unabsorbed nutrients into water courses giving rise to environmental damage. The inconsistent statements in section 2.2 of the Statutory Guidance run contrary to that objective, by increasing the

²⁰ r.12(1) Farming Rules for Water reads: 'In any proceedings against any person for an offence under regulation 11(1), it is a defence for that person ("P") to show that P took all reasonable steps and exercised all due diligence to avoid committing the offence'.

risk that land managers will apply manure or fertiliser to crop and soil in excess of its actual need at the time of application.

- 4.9 In addition, the Statutory Guidance contains incorrect statements about the Farming Rules for Water which encourage land managers to act in a way which contradicts the requirements of the Farming Rules for Water. As the Supreme Court held in *R (A) v Secretary of State for the Home Department*,²¹ applying the test in *Gillick*,²² policy guidance which contains a misstatement of law and induces a person to act in a way which contradicts the law, is unlawful.

Amendment of the Statutory Guidance

- 4.10 Following the conclusion of the Review, Defra published its Amended Statutory Guidance on 18 June 2025.²³

Inconsistencies with regulation 4(1)(a)

- 4.11 Section 2.2 of the Statutory Guidance stated that land managers should consider soil and crop need for nitrogen and phosphorus based on an annual crop cycle or rotation. The Amended Statutory Guidance has removed the references to the needs being assessed on the basis of an ‘annual crop cycle’ and ‘over a crop rotation’, meaning that the guidance is no longer inconsistent with regulation 4(1)(a)(i) of the Farming Rules for Water as interpreted in the River Action Judgment.
- 4.12 Section 2.2 of the Statutory Guidance stated that ‘land managers should plan to avoid significant risk of diffuse agricultural pollution. This includes not exceeding the needs of the soil and crop on the land’. The Amended Statutory Guidance now states ‘land managers *must* plan to avoid significant risk of diffuse agricultural pollution’ (emphasis added). The amendment of ‘should’ to ‘must’ means that this aspect of the Amended Statutory Guidance is no longer inconsistent with regulation 4(1)(a) of the Farming Rules for Water which places a mandatory obligation on land managers to plan to avoid significant risk of diffuse agricultural pollution.
- 4.13 Section 2.2 of the Statutory Guidance stated ‘as a general guide, land managers should plan to avoid applying organic manures that raise the Soil Phosphorus Index (soil P index) above target levels for soil and crop on land over a crop rotation’ unless they can demonstrate that it is not reasonably practicable to do so, or they have taken all appropriate reasonable precautions to help mitigate against the risk of diffuse agricultural pollution. The Amended Statutory Guidance now states ‘*in all cases* land managers must demonstrate that they are planning to take all appropriate reasonable

²¹ *R (A) v Secretary of State for the Home Department* [2021] UKSC 37.

²² *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112.

²³ Defra, ‘Enforcing the Farming Rules for Water’ (18 June 2025) <www.gov.uk/government/publications/applying-the-farming-rules-for-water/applying-the-farming-rules-for-water> accessed 10 July 2025.

precautions to help mitigate against the risk of diffuse agricultural pollution’ (emphasis added). The removal of the ‘reasonably practicable’ section makes clear that regulation 4(1)(a) of the Farming Rules for Water imposes an unqualified obligation on land managers to ensure that each application of organic manure and manufactured fertiliser is planned so that it does not exceed the needs of the soil and crop on that land or give rise to a significant risk of agricultural diffuse pollution; and that it is not a mere obligation to take ‘reasonable steps’ to avoid exceeding soil and crop needs.

Unlawful exercise of power under regulation 15

- 4.14 The Statutory Guidance included the statement ‘if the Environment Agency determines that land managers have followed this guidance then the Secretary of State does not normally expect them to take enforcement action’, which has been deleted in the Amended Statutory Guidance. Additionally, where section 2 used to read ‘the Environment Agency should consider the criteria set out below when carrying out an inspection under the farming rules for water. Enforcement action should not normally be taken where land managers have met the criteria’, it now reads ‘The Environment Agency should consider the criteria set out below when: carrying out an inspection under the Farming Rules for Water; deciding whether enforcement action is required’. These amendments remove wording which could give rise to an expectation on the part of farmers that enforcement action will not normally be taken where land managers have met criteria set out in the guidance.



Findings and recommendations

Findings and recommendations

- 5.1. We conclude that the Secretary of State failed to comply with environmental law by unlawfully exercising its power to give statutory guidance to the Environment Agency pursuant to regulation 15 of the Farming Rules for Water when issuing the Statutory Guidance. We consider this failure began when the Statutory Guidance was issued in March 2022 and continued until its published amendment on 18 June 2025.
- 5.2. It therefore follows that by issuing statutory guidance pursuant to regulation 15 of the Farming Rules for Water that contains statements that are inconsistent with the Farming Rules for Water, the Secretary of State failed to comply with environmental law. In addition, we have concluded that the Secretary of State failed to comply with environmental law when respectively issuing the Guidance under regulation 15 of the Farming Rules for Water because it failed to take proper account of regulation 4(1)(a)(i) of the Farming Rules for Water and encouraged land managers to act in a way which contradicts the requirements of the Farming Rules for Water.
- 5.3. Following our analysis of the Amended Statutory Guidance, we are satisfied it does not contain statements which are inconsistent with the Farming Rules for Water. We are therefore of the view the Amended Statutory Guidance does not encourage land managers to act in a way which contradicts the requirements of the Farming Rules for Water.
- 5.4. Although not part of our investigation, we welcome too the updates to section 2.3 in the Amended Statutory Guidance so that the RAN content of organic manures is only one of a range of factors which the Environment Agency is advised to consider for the purpose of assessing significance of risk of agricultural diffuse pollution.
- 5.5. We note that stakeholder news articles updating farmers on the Amended Statutory Guidance highlight the fact that the update is silent on whether crop and soil need means at the time of application, and conclude there is continued ambiguity on the interpretation of regulation 4(1)(a) of the Farming Rules for Water and therefore what farmers are required to do.²⁴
- 5.6. This highlights the importance of clarity in the correct interpretation of this aspect of regulation 4(1)(a) of the Farming Rules for Water, particularly in

²⁴ For example: Farmers Weekly, 'Defra imposes tougher requirements for autumn muckspreading' (20 June 2025) <www.fwi.co.uk/news/defra-imposes-tougher-requirements-for-autumn-muck-spreading> accessed 11 July 2025; Country Land and Business Association, 'New water pollution guidance: what land managers need to know' (updated 24 June 2025) <www.cla.org.uk/news/new-water-pollution-guidance-what-land-managers-need-to-know> accessed 11 July 2025.

light of the high rates of non-compliance which give rise to an increased risk of diffuse nitrogen and phosphorus pollution.²⁵

- 5.7. We welcome updates to the Implementation Guidance which was updated on 16 July 2025.²⁶ The updates include re-naming to 'How to comply with the Farming Rules for Water' and a statement that before applying organic manures of manufactured fertiliser there is a requirement to 'check that you do not apply more than your soil or crops need, at the time of application'.
- 5.8. Agricultural water pollution limits progress to achieving the Environment Act 2021 agriculture water target and long-term biodiversity targets.²⁷ Review of the Farming Rules for Water was recommended in the independent review of Defra's regulatory landscape.²⁸
- 5.9. Defra's Review of the Statutory Guidance did not consider the wider questions as to the effectiveness of and impact of the Farming Rules for Water as this was to be considered by the statutory Post Implementation Review.
- 5.10. The deadline for publishing the first Post Implementation Review report under regulation 16 of the Farming Rules for Water was 2 April 2021. Defra has confirmed that this has not been completed but will be published in the coming months. Defra has recognised the importance of such reviews in assessing the impacts and effectiveness of regulatory measures.²⁹

²⁵ In 2022 non-compliance with at least one of the Farming Rules for Water was identified during 39% of inspections, as detailed in: Environment Agency, 'Review of activities regulated by the Environment Agency, 2022' (28 February 2024) <www.gov.uk/government/publications/review-of-activities-regulated-by-the-environment-agency-2022/review-of-activities-regulated-by-the-environment-agency-2022> accessed 10 July 2025. Failure to comply with the FRfW was identified at 45% of farms visited in the Wye Catchment, with 31% non-compliant with Regulation 4(1)(a)(i), as detailed in *R (River Action UK) v Environment Agency* [2024] EWHC 1279 (Admin) para. 74.

²⁶ Defra, 'How to comply with the Farming Rules for Water' (updated 16 July 2025). <www.gov.uk/guidance/rules-for-farmers-and-land-managers-to-prevent-water-pollution> accessed 18 July 2025. The updates include re-naming to "How to comply with the Farming Rules for Water" from "Rules for farmers and land managers to prevent water pollution".

²⁷ Defra, 'Environmental Improvement Plan 2023' (2023) <<https://assets.publishing.service.gov.uk/media/64a6d9c1c531eb000c64ffa/environmental-improvement-plan-2023.pdf>> accessed 10 July 2025: details relevant statutory targets set under the Environment Act 2021 and interim targets. These include a targets to halt the decline in species populations by 2030, with an interim target for 50% of SSSIs to have actions on track to achieve favourable condition by 31 January 2028, and a target to reduce nitrogen, phosphorus and sediment pollution from agriculture into the water environment by at least 40% by 2038, compared to a 2018 baseline, with an interim target of 10% by 31 January 2028, and 15% in catchments containing protected sites in unfavourable condition due to nutrient pollution by 31 January 2028.

²⁸ Dan Corry, 'Delivering economic growth and nature recovery: An independent review of Defra's regulatory landscape' (April 2025). <<https://assets.publishing.service.gov.uk/media/6825d05cb2527e8de9b014cd/dan-corry-review-defra-regulatory-landscape.pdf>> accessed 10 July 2025.

²⁹ Defra, 'Government response to the Office for Environmental Protection report on post-implementation reviews of environmental laws' (27 June 2023) <www.gov.uk/government/publications/government-response-to-the-oep-report-on-post-implementation-reviews-of-environmental-laws/government-response-to-the-office-for-environmental-protection-report-on-post-implementation-reviews-of-environmental-laws> accessed 10 July 2025.

- 5.11. We welcome indications that the Government is establishing a programme to reform the regulations governing agricultural diffuse pollutions, including the Farming Rules for Water,³⁰ and look forward to working with Defra as it develops its proposals in this area. In undertaking this reform, it is important to ensure clarity on what the law requires for land managers.
- 5.12. We make two recommendations in relation to the Amended Statutory Guidance and the Farming Rules for Water:

Recommendation 1: Take steps to provide clarity to land managers on the requirements of the law. In particular, the Court's interpretation of regulation 4(1)(a) in the River Action Judgment, namely that the soil and crop need must be assessed at the time of the application of manure or fertiliser. This could be achieved in a number of ways including updates to the Amended Statutory Guidance or signposting to the current version of the Implementation Guidance.

Recommendation 2: The statutory Post Implementation Review of the Farming Rules for Water should be completed and published as soon as possible. The Post Implementation Review will assess the regulations' effectiveness in achieving their original objectives and make recommendations on how they can be improved. It is therefore important in supporting Parliamentary accountability and informed scrutiny, particularly in improving the regulations' effectiveness in meeting their stated purpose.

³⁰ House of Lords, 'Corrected oral evidence: Nitrogen', Environment and Climate Change Committee transcript (21 May 2025) Q108 <<https://committees.parliament.uk/oralevidence/15977/html/>> accessed 10 July 2025.

Annex

Annex: Glossary

Term	Description
Agricultural diffuse pollution	Diffuse pollution occurs when water bodies are contaminated by substances used or produced in agricultural activities. This contamination happens as a result of rainfall, soil infiltration and surface runoff. The agricultural pollutants may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems.
Agricultural SIs	The Farming Rules for Water, the Nitrate Pollution Prevention Regulations 2015 and the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010, are collectively known together as the 'Agricultural SIs'.
Annual crop cycle	The annual cycle of activities related to the growth and harvest of a crop.
Crop and soil need	Soil testing provides an understanding of existing nutrient levels in the soil. Regular soil testing, combined with an understanding of the crop's nutrient requirements, helps determine the right amount and type of fertiliser to be used.
Enforcement	The Environment Agency may take enforcement action in line with its enforcement and sanctions policy. Enforcement response options include advice and guidance, issuing warnings, enforcement notices, civil sanctions and criminal proceedings.
Eutrophication	A process in which too much nutrient in water causes algae and higher plants to grow excessively, reducing water quality and leading to algal blooms. These blooms can be toxic to people, animals and disrupt of dissolved oxygen dynamics in the water column when they die off, with adverse impacts on fish and macroinvertebrates.
Fertiliser	Refers to organic manures and manufactured fertilisers.
Good Status	This is an overall target objective for all water bodies under regulation 13 of the WFD Regulations. For surface waters it is achieved when a water body achieves a combination of 'Good Chemical Status' plus 'Good Ecological Potential' for Artificial and Heavily Modified Water Bodies (designated as such under regulation 15 of the WFD Regulations), 'Good Ecological Status' for other surface water bodies or 'Good Quantitative Status' for groundwater bodies.
Land Manager	Any person who has custody or control of agricultural land.
Land Spreading/ Application	The spreading onto land, the injection into land and the mixing with surface layers of soil of organic manure or manufactured fertiliser.
Nitrogen	Nitrogen is a key nutrient required for crop growth. It is found in all plant cells, in plant proteins and hormones, and in chlorophyll.
Manufactured Fertiliser	Fertiliser made by an industrial process.
Organic Manure	Organic manures are fertilisers derived from one or more animal, plant or human source. This includes anaerobic digestates and liquors, ash from meat, poultry litter or biomass, bone meal, livestock manure, paper crumble, silage effluent, sludge and slurry.
Phosphorus	Phosphorus is a key nutrient required for crop growth. Phosphorus helps transfer energy from sunlight to plants, stimulates early root and plant growth, and hastens maturity.

River Basin Management Plans (RBMP)	These are plans developed under Part 6 of the WFD Regulations to protect and improve the water environment in River Basin Districts. Under the WFD Regulations, RBMPs are prepared on a cyclical basis every six years, with three cycles to date.
Readily Available Nitrogen (RAN)	The portion of nitrogen in fertiliser that is immediately accessible to plants for uptake.
Run-off	Movement of water across the soil surface which may carry nutrients from applied manures or fertilisers. Water can also carry soil particles that hold nutrients, in particular phosphorus.
Soil Index	In soil science, a nutrient index is a numerical or categorical representation of the level of a specific nutrient in the soil, indicating its availability for plant uptake. These indices are crucial for determining fertiliser recommendations and predicting potential crop yields.
Site of Special Scientific Interest (SSSI)	A Site of Special Scientific Interest (SSSI) is a UK conservation designation for areas of land or water that are considered to be of special interest due to their flora, fauna, geology, or geomorphology. Natural England's objective is to achieve 'favourable condition' status for all SSSIs. Favourable condition means that the SSSI's habitats and features are in a healthy state and are being conserved by appropriate management.
WFD Regulations	The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017.