

**WRITTEN QUESTION TO THE MINISTER FOR PLANNING AND ENVIRONMENT
BY DEPUTY M. TADIER OF ST. BRELADE
ANSWER TO BE TABLED ON TUESDAY 28th APRIL 2015**

Question

Does the Minister consider that a 'polluter pays' policy could be a viable way of reducing the amount of nitrates that are applied to fields, which subsequently find their way into the water table? If not, why not, and if so, what does the Minister think a workable scheme would look like?

Answer

Thank you for the question which is an interesting one. My officers are currently working on both a water strategy (using EU Water Framework Directive principles) and, as part of that, a nitrate reduction plan. This will recommend further workable measures and mechanisms that we need to put in place to continue to reduce nitrates in water supplies in the Island. The Nitrate Working Group (comprised of representatives from the Health Department, Jersey Water and the farming community) will make recommendations that will feed into these plans.

The 'polluters pays' principle is one of the cornerstones of EU and UK pollution regulation in the law. The EU Water Framework Directive (2000/60/EC) (and all of its subsidiary directives) is currently the main driver across the EU for achieving sustainable management of water across the EU and it also promotes the 'polluter pays' principle.

The Water Pollution (Jersey) Law, 2000 (hereafter referred to as the WPL) is the principal piece of legislation in Jersey to provide for the control of pollution in Jersey waters. Under Article 6, it states that in carrying out his or her functions under the law, the Minister shall have regard, as far as reasonably practicable, to several considerations, including 'a cost principle in respect of pollution, by which the costs of preventing, controlling, reducing and eliminating pollution are borne by the persons who cause and knowingly permit it'.

There are a number of ways this is reflected in the WPL, but the pollution offences are the most illustrative - any person who causes or knowingly permits pollution of any controlled waters shall be guilty of an offence and be liable to a fine (or imprisonment).

In order to secure a prosecution in this way, it is necessary to demonstrate that 1) pollution of controlled waters has occurred, 2) a person has caused or knowingly permitted pollution, and 3) that the pollution was the result of the defendant's activities.

This can be relatively straightforward to apply to an identifiable 'point source' of pollution, for example a spill from an oil tank, a slurry spill, or a spill of untreated sewage from a sewerage system. In these cases there is likely to be an identifiable polluter; an evidentially conclusive source, pathway and receptor for pollutant transit; an action or activity that has caused this pollution; and a demonstrable impact, all of which are required.

The application of 'polluter pays' to the nitrate problem

The polluter pays principle is difficult to apply to nitrate pollution within the current provisions of the Water Pollution Law (2000). Predominantly there is a real difficulty in being able to demonstrate any of

the evidential necessities to secure a prosecution. The high nitrate in Jersey's surface and groundwater comes predominantly from intensive agriculture, but is also exacerbated by other population pressures such as domestic and amenity sources of nitrogen (septic tanks or golf courses/gardens). Nitrate pollution is diffuse in nature, it comes from a number of sources and often happens cumulatively over time as a result of small decisions made and day to day management. It is made up of many small sources cumulatively having a large impact.

Therefore currently, the law is not set up to regulate diffuse pollution effectively using polluter pays principles. However, it is possible to address this through introducing some additional provisions under the Water Catchment Management Regulations and Orders available under Part 3 of the WPL. This is one of the mechanisms that the Department is looking at through the water strategy, and such provisions are likely to form a key part of the water strategy going forward. These will be formulated in a different way so that certain actions must be taken by all commercial users of nutrients or producers and users of organic wastes in the designated area and so will not be limited by the need to demonstrate impact in any given case.

Secondly however, regulation, whilst effective, is not a magic bullet. Diffuse Pollution is difficult to regulate without complementary incentives and education. Regulation on its own has been demonstrated to not be that effective in changing behaviour¹.

As previously mentioned, taking agricultural nitrogen as an example, sources of excess nitrogen in water are often a result of many farm level day-to-day management decisions. Any decision making is a complex mix of factors (such as belief, tradition, personal experience, knowledge, skills, time, cultural and social influences, economic signals and incentives) which then go to produce a view on the benefits and perceived disbenefits of any particular course of action and ultimately the action taken by the individual decision maker.

The Department of the Environment has been working with the farming community (in the Diffuse Pollution Project) using a mixture of education, advice and incentives to better understand the barriers and incentives to good agricultural practices and to see what improvements in water quality could be achieved. This was a necessary pre-cursor to proposing introducing additional regulation. The measures in the Diffuse Pollution Project have been mainly delivered at no additional cost to government through initiatives linked to the Rural Economy Strategy 2011-2015 –and have included economic incentives – a tightening of SAP (Single Area Payment) subsidy compliance requirements for good practice - and the Countryside Enhancement Scheme, along with talking to farmers about the barriers to good practice that they face and trying to solve them and visits, advice and training.

It is also perhaps worth mentioning that in respect of polluter pays there are also bigger questions of who exactly the polluter is and who should pay or bear the costs. Market signals to farmers incentivise intensively produced foods that are often priced in a way that does not fully reflect the environmental and social costs of producing them but that the public want and that supermarkets profit from. The complexity of the economics of the provision of environmental goods and services is one of the factors behind the development of other models such as payments for ecosystem service (PES) that are becoming more widely used elsewhere². Here, over and above minimum compliance with legislation land managers are rewarded financially for providing the 'ecosystem services' that others are the beneficiaries of – whether

¹ Evidence on cost effectiveness suggests that "Sanctions have previously proved relatively ineffective in changing behaviours". National Audit Office, 2010

² Mauerhofer, V., K. Hubacek, and A. Coleby. 2013. From polluter pays to provider gets: distribution of rights and costs under payments for ecosystem services. *Ecology and Society* **18**(4): 41.

that is the government acting on behalf of the public or a third party direct beneficiary such as a water company³. These other incentives act as an adjunct to the regulatory requirements driven by polluter pays regulation and try to equalise somewhat the other opposing economic drivers of land manager behaviour.

The Department of the Environment is still in the process of consulting with stakeholders and considering the right mix of measures and mechanisms to balance delivering the best outcome for the least cost. At this stage it is very likely to include some additional polluter pays mechanisms (regulation) along with a complementary supporting mix of advice, incentives and education.

³ DEFRA, Payments for Ecosystem Services, A Best Practice Guide, May 2013
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200920/pb13932-pes-bestpractice-20130522.pdf