

Date: 10th February 2010
Ref: Manufacturer Responsibility
Consultation – Farm Plastics
Contact: Aarun Naik
Environment Policy Adviser
Tel: 0247 685 8530
Fax: 0247 685 8531
Email: aarun.naik@nfu.org.uk

If this issue or area of work is of a particular interest to you and you would like to become actively involved in future consultations, please send your email address to the above contact to be added to the consultation panel.

Joint Defra, Welsh Assembly Government and Scottish Government Consultation on a Manufacturer Responsibility Scheme for the collection of Non-Packaging Agricultural Plastics (NPAP)

Background

Defra, Welsh Assembly Government and Scottish Government have jointly put forward proposals for a statutory Producer Responsibility (Manufacturer Responsibility) scheme for non-packaging agricultural plastics.

What is meant by statutory manufacturer responsibility?

The concept of “manufacturer responsibility” follows the principle that the industry involved in the manufacture, distribution and sale of particular goods should take greater responsibility for the disposal and/or recovery of those goods at the end of their useful life. In this case, it means those companies that manufacture and/or import non-packaging farm plastics will be obligated by law to fund the collection, recycling and disposal of the plastic material they put on the market.

What is meant by non-packaging agricultural plastics (NPAP)?

NPAP include items such as:

- Silage bale wrap;
- Horticultural crop cover;
- Mulch films;
- Bale twine;
- Fleece plant jacket;
- Polytunnel film;

These are different to ‘packaging plastics’, such as pesticide containers, fertiliser & seed bags. Packaging plastics are not included in the proposals. This is because they are already covered by the Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (“The Packaging Regulations”). These regulations require certain business to demonstrate they have recovered and recycled specified amounts of packaging waste each year. Under this system it is easy for producers of the plastic material to fulfil their obligations by employing a compliance scheme. Such schemes allow them to source clean packaging waste from easy-to-get-to places. Unfortunately, in reality this means packaging wastes from farms are never

The voice of British farming

Although every effort has been made to ensure accuracy, neither the NFU nor the author can accept liability for errors and or omissions. © NFU



considered, due to their relatively small quantity, contamination levels and the logistical problems surrounding their collection. Government recognises this and for that reason has felt the need to support the farming sector by introducing regulations that focus specifically on manufacturers of non-packaging agricultural plastics.

How will the proposed scheme work?

The proposals put forward in this consultation were informed by the findings of Defra's Business Resource Efficiency and Waste (BREW) programme on non-packaging agricultural plastics. The project investigated how farm plastic waste could best be collected for recovery from farms within the formal structure of a manufacturer responsibility scheme. The NFU was closely involved with this project (See <http://www.agwasteplastics.com>). In addition, the government also established an Advisory Group on Farm Plastics (AGFP) to develop the proposals. The NFU was represented on this group.

The system proposed in the consultation would work along the following lines:

1. Manufacturers/importers selling NPAP will have to join a compliance scheme. They will be obliged to pay into the scheme a recycling fee based on the tonnage of NPAP material they put on the marketplace.
2. The Compliance scheme will then use the funds to contract with existing waste collectors to provide a system of waste collection hubs.
3. Farmers will be able to self-deliver waste NPAP to any one of a number of participating hubs in their locality. There will be no charge for farmers at the point of delivery. These same hubs will also accept packaging plastics (as most already do) although there will likely be a charge for the collection of this waste stream.
4. Collectors will then deliver material to recycling plants for reprocessing. Reprocessors will submit data evidence to the compliance scheme to verify that material has been collected from farm and diverted from landfill. Compliance schemes will be audited by the regulator to ensure that manufacturers are meeting their statutory obligation.

In the 1990s, the NFU dedicated a significant amount of time and resources to the former Farm Film Producers Group, set up under a self-financing, levy-based, voluntary manufacturer responsibility scheme. This scheme failed because some importers refused to sign up and were therefore able to undercut the levy-based scheme causing it to collapse. A significant number of farmers and growers were affected. However the proposals put forward in this consultation involve regulations that will create a statutory rather than a voluntary scheme. This will put in place a mandatory national framework.

What are the benefits of such an approach?

If implemented correctly such a system could deliver a number of potential benefits:

- **Increase the coverage of farm waste collection services:** meaning that every farmer will at least have access to a collection scheme for their NPAP, for which they would pay no fee at the point of collection;
- **Reduced costs for farmers:** The introduction of a manufacturer-pays scheme will ultimately see the costs passed back to farmers in the form of increased plastic prices.

Yet this will not be in the form of a fixed, visible levy. Manufacturer responsibility could stimulate greater competition and price transparency between collection services helping to drive down costs and create a more consistent 'market rate' for farm waste collection. Similarly, manufacturers may look to gain a competitive advantage over their competitors by not passing the entire cost on to the product. Although farmers will see an increase in the price of plastic, this needs to be viewed this as the disposal costs becoming internalised in the purchase price of the product. When buying plastic, farmers may tend only to consider purchase price and may not generally be in the habit of factoring in disposal costs. Through a manufacturer responsibility system farmers may also get a better deal as they will only pay in accordance to how much they use. E.g. Whether a farmer is using 2t of polythene per year or 50t per year, they will pay according to how much material they use, as opposed to being charged on the weight/volume of waste at collection.

- **Increase the volumes of waste plastic material collected from farms and stimulate greater investment in recycling facilities:** There is currently little reprocessing capacity for farm plastics in the UK. Reprocessors will only invest in expensive recycling processes for cleaning and processing farm plastics once there is certainty of waste supply and security of market. The introduction of a mandatory system for the collection and recycling of waste could drive demand, making it more commercially viable for reprocessors to recycle farm plastic and therefore invest in greater capacity.
- **Opportunities for farm businesses to diversify into waste management:** through setting up waste collection hubs/farm collection services and contracting with compliance schemes to service the increased volume of plastics that would be put forward for collection.

The NFU has worked closely with Defra, plastic manufacturers and farm waste collectors on the development of these proposals. The NFU supported the principle of statutory manufacturer responsibility as we had believed it would offer genuine benefits to members and would be the most cost-effective option in the long term. However we had initially envisaged that any scheme would have come into force to coincide with the introduction of the Agricultural Waste Regulations in 2006/2007. In the meantime the situation on the ground has changed considerable and we are no longer minded to support statutory intervention as proposed in this consultation. Our draft response follows below.

Consultation Details

The consultation applies to both England and Wales. Copies of the consultation document and accompanying Impact Assessment can be downloaded from the Defra website at <http://www.defra.gov.uk/corporate/consult/agri-plastics/index.htm>. Hard copies can be requested by telephoning 0207 238 4904.

Members wishing to contribute to the NFU's formal response are invited to submit any comments to:

Aarun Naik, NFU Environment Policy Adviser
 Email: aarun.naik@nfu.org.uk
 Tel: 0247 685 8530

The deadline for comments is Friday 26th February 2010.

NFU Draft Response

Introduction

The National Farmers' Union (NFU) welcomes the release of this joint Defra, Welsh Assembly Government and Scottish Government consultation on non-packaging agricultural plastics and the opportunity to comment on the proposals put forward. We acknowledge the many years of work and considerable effort involved in getting these proposals to consultation. The NFU represents some 56,000 farm businesses in England and Wales involving an estimated 155,000 farmers, managers and partners in the business. In addition we have 55,000 NFU countryside members with an interest in farming and the countryside. The use of non-packaging agricultural plastics (NPAP) is particularly prevalent in the dairy, livestock and horticulture sectors and therefore the proposals considered in this consultation are of great importance. Before going on to respond to the specific questions of technical detail posed in the consultation, we first would like to outline our general position with regards to the concept of manufacturer responsibility and the model that is being proposed.

General Comments

For the last several years, the NFU has been working with Defra, plastic manufacturers, farm waste collectors and other stakeholders on the development of a statutory manufacturer responsibility scheme for non-packaging farm plastics. As Government is aware, we have been a key partner in the Agricultural Waste Plastics Collection and Recovery Programme and for the last four years we have devoted significant time and resources to the Advisory Group for Farm Plastics and its various sub-groups. This is because as an industry we are keen to see:

- Improved farmer choice in waste collection services;
- Greater farmer access to waste collection services;
- More affordable charges for farm waste collection services;
- Increasing volumes of waste plastic material collected from farms and greater investment in UK farm plastic recycling facilities;

The NFU would like to reiterate that we remain supportive of the general principle of statutory manufacturer responsibility. However we do not feel confident that model presented in these proposals is the best and most cost-effective way to deliver the key benefits we are seeking and have outlined above. This is due to a number of reasons which we will now explain:

Complexity

In our initial vision of manufacturer responsibility the NFU had envisaged one single national exemption scheme contracting directly with waste collectors and that obligations would extend across the whole of the UK. We note that the consultation document explains that a single exemption scheme is no longer possible and that instead there must be provision for multiple schemes. We understand the various legal reasons why this is now the case. Similarly we note that separate regulations will need to be laid in England and Scotland. We are extremely disappointed that these details were only communicated to us at the end of this four year process of developing regulations.

We fear the effect of having multiple exemption schemes as opposed to one scheme, the need for both schemes and producers to have to register separately in both England and Scotland and the existence of two parallel sets of regulations will add a level of complexity, confusion and cost into the system which is unnecessary for the relatively small volume of 45,000 tonnes of NPAP estimated to be placed on the market in Great Britain each year.

The lack of a UK-wide scheme

Initially we had also envisaged the participation of Northern Ireland in the same initiative. We utterly respect the right of Northern Ireland to choose not to participate in manufacturer responsibility. Yet we cannot get away from the fact that Northern Ireland's non-participation in the initiative creates a significant loophole that could seriously undermine the effective functioning of any scheme. It opens up the possibility of non-obligated plastic being moved across UK borders and thereby undercutting the price of obligated plastic – in much the same way as happened with the former Farm Film Producers Group, which as the consultation document notes, failed in 1997 because of this very reason. Before the NFU could consider supporting any proposals, we would need to be convinced they are watertight, can be effectively policed and are not easily open to abuse. We have reservations whether a Great Britain only scheme as opposed to a UK-wide scheme will be able to achieve this.

Costs of delivery

The NFU and other stakeholders have engaged in discussions on Manufacturer Responsibility based on the assumption that it would be delivered by hub-based collection schemes as put forward in Policy Option C in the consultation document and Policy Option 3b in the accompanying Impact Assessment. The NFU has always been unequivocally clear that we could only consider supporting proposals that could clearly demonstrate genuine cost benefits to farming businesses.

We note the Impact Assessment for Policy Option 3b (hub-based collection model) shows only a minimal net benefit with the £17.7million average annual benefit only just sufficient to cover the £17.5 to 20.3million average annual costs. This is the case even at the highest recycling target of 80%. In any producer responsibility model it is expected that costs will be passed from the obligated parties to their customers. We therefore fear that too great a share of the £17.5 to 20.3million average annual costs will be borne by farmers in the form of increased plastic prices.

We note that over £0.5million of the costs are to be spent on enforcement funds for the regulator – in the case of England, the Environment Agency. As an industry, farming is subject to a range of Environment Agency charging regimes and unfortunately our experience of the Environment Agency is that of an organisation that regulates at an extremely high. We therefore fear that these regulatory costs will only continue to rise, as unfortunately this has been the farming industry's experience of many of the Environment Agency charging schemes to date. As mentioned above, we anticipate a certain proportion of the costs of this scheme, including these estimated regulatory costs, will be borne by farmers in the form of increased plastic prices. We question whether this represents good value for money in the return we will see from the regulator.

We accept that the impact assessment has been based on an assumption that much of the waste arising for farms would have a "negative" value – i.e. require collectors to pay a gate fee to reprocessors to accept the value for reprocessing. We would anticipate that as the cost of oil

continues to rise and the value of and demand for recyclate increases accordingly much of this waste may subsequently acquire a positive value thereby making the costs of operating such a nationwide farm plastic collection and recycling scheme considerable lower. Yet arguably market forces may gradually facilitate this even in the absence of a statutory scheme. For instance, we consider the main factor limiting farmer use of existing farm waste collection schemes is that they cannot yet compete against cheaper costs of landfill. Yet escalating landfill prices, rising oil prices and policies prohibiting disposal of certain waste streams by landfill should drive more widespread collection and recycling of farm wastes in the future.

Is there need for statutory intervention?

The NFU has been a firm supporter of the principle of manufacturer responsibility for some time and we supported the idea of a statutory scheme when the idea was proposed by Defra in the 2004 consultation. At the time of the 2004 consultation, waste controls were still to be introduced to farming and there was a lack of widespread collection infrastructure in place to service farmers' needs. Therefore we saw manufacturer responsibility as the best vehicle to stimulate the development of affordable and accessible farm waste collection and recycling schemes that would enable farmers to comply with the Agricultural Waste Regulations which were subsequently introduced in 2006.

However we have to acknowledge that six years have now passed between the initial 2004 consultation and the release of the proposals we are commenting on here. During that time the situation on the ground has changed considerably. As time has gone by farm waste collection services have expanded and developed, coverage has improved and prices have become more consistent. There is still work to be done to improve coverage, accessibility and cost-competitiveness for farmers but the situation now in 2010 is markedly different to that in 2004. When the NFU joined Defra's Advisory Group on Farm Plastics in 2006 we did not anticipate it taking four years to get to this stage of consultation. The delays involved have been frustrating and disappointing. Furthermore, the laying of regulations, the setting up of exemption schemes and finalising of other necessary arrangements will likely mean that should Government decide to introduce manufacturer responsibility, a nationwide scheme will not become operational till 2012 – a further two years.

In short, these proposals have now arrived too late and have arguably been superseded by the changes taking place on the ground in response to market forces and consumer demand. Therefore at this stage, we have to seriously question whether it would be more practical and cost effective to explore alternative voluntary, industry-led approaches that would achieve increased, affordable collection and recycling of farm plastics as opposed to a government-led statutory approach.

In summary, whilst we would still agree with the general principles of manufacturer responsibility, we are no longer confident the proposed approach is necessary and feel the considerable costs involved (as detailed in the Impact Assessment) outweigh the benefits. The NFU remains committed to encouraging sustainable farm waste management but feel this could be better achieved by working together with farm waste collectors and plastic manufacturers to develop alternative and more cost-effective approaches to encourage the collection and recycling of waste farm plastics.

Response to questions posed in the consultation document

Although we have outlined our summary position above explaining that we do not feel we can support these proposals, we nevertheless have strived to engage with the consultation and answer the questions put forward.

Q.1 – Do you agree with having a defined list of products?

Yes. A definitive list would reduce any confusion and give clarity to all involved. However there should be the facility for any list of products to be regularly reviewed and updated if necessary. This would aid situations where new products become available. A mechanism should be in place that enables amendments to be made to the list without having to amend regulations.

Q.2 – Are there any products not on the list that you think should be included?

We note that trickle tape irrigation, net wrap and plastic tree guards are absent from the list.

Q.3 – Are there any products on the list that you do not think should be included?

Question 4 - Do you agree with the assessment of the market? Please provide any additional information you have on this market.

Yes we agree with the assessment of the market as most of these figures were supplied through the Advisory Group on Farm Plastics.

Question 5 – Do you agree with the situation described above? Please provide evidence for your views.

In general we agree with the situation described above. Yes, many farmers are not contracting with specialist farm waste collection/plastic recycling schemes due to the high costs of the service offered when compared to landfill. We agree that the actual amount of waste being recycled is difficult to determine but we are confident it falls considerably below the amount of NPAP material sold into the market. Unlike the collectors, we do not believe a huge proportion of farmers are storing waste NPAP on farm indeterminately. The NFU has certainly been very active in communicating to farmers their responsibilities under the Agricultural Waste Regulations. The Environment Agency also ran an agricultural waste campaign in the years following the introduction of waste controls to farming. We agree that coverage and choice of collection schemes varies to some extent across Great Britain. However data supplied by the Farm Waste Collectors' Association shows that all farms should be able to access a collection in their area and around 150 collection hubs are in operation.

Question 6 - Are you able to provide any further information on whether uncontrolled burning or burying of plastic waste is occurring, and if so, how prevalent this practice is?

We note that the evidence that farmers are undertaking uncontrolled burning or burying of plastic waste is anecdotal. The NFU has certainly worked hard to communicate to its members that burning or burial of waste is illegal and to encourage best practice in farm waste management. The NFU has worked very closely with the Environment Agency and other stakeholders on the Agricultural Waste Stakeholder Forum to publicise the requirements of the Agricultural Waste Regulations and to lead farmers to compliance. Around 90,000 farm businesses have now registered agricultural waste exemptions with the Environment Agency and we understand that the number of prosecutions has been minimal. We would like to remind Defra that most of this 'anecdotal evidence' arises from claims made by the waste management industry. The waste management industry obviously has a commercial interest in

painting such a picture and therefore we remain naturally suspicious and skeptical of such claims.

Question 7 - Do you agree with our assessment of how the current system works? If not, please describe. Please provide evidence if possible.

Yes. We agree with the assessment.

Question 8 - Are you aware of any other factors which may affect the NPAP waste stream. Please provide as much detail as possible.

Question 9 – Are there any other policy options Government could consider to increase the amount of waste NPAP being recycled? If so, please describe.

We refer you to the general comments made at the beginning of our submission. As we no longer feel able to support the proposals put forward in this consultation, the NFU would rather the industry work together voluntarily – i.e. The NFU joins with manufacturers and collectors to look at alternative approaches to improving farm waste collection and recycling. Some possible ideas we have already begun to explore as an industry group include identifying areas of the country where there are gaps in coverage, benchmarking of costs/price comparison monitoring of collection schemes, promotion and incentivising of the Farm Waste Collectors Assurance Scheme, use of environmental stewardship options to incentivise and reward farm plastic recycling. Any policy support or funding that may be available to help with these alternative ways forward would be welcome. We would be happy to talk with Defra in more detail about some of our ideas.

Question 10 – Do you agree with the definition of producer described above?

We understand what is meant by the definition and that it comes from already established producer-responsibility regulations.

Question 11 – Do you consider that individual producers should be able to comply with their producer responsibility obligations without having to join a scheme?

Question 12 – Do you agree that there should be no de minimis? If not, please state how and at what level this should be set. Please provide evidence including how many producers, and the tonnage of NPAP that would be excluded at the de minimis level you suggest.

Question 13 – Do you agree with the principle that there would be no exemption for biodegradable agricultural plastic products?

Our understanding at the moment is that the Environment Agency does not recognise any so called 'biodegradable' films etc to be fit for purpose. Should this situation change however, and products come on the market that can be certified to biodegrade to a standard that is acceptable to the Environment Agency, then there will be no need for such material to be collected and recycled or disposed of as it can be left to naturally biodegrade on farm. We therefore believe that if the proposals were to go ahead, there should be an exemption for such products - should they ever become available and be endorsed by the Environment Agency.

Question 14 – Should those who import NPAP for their own use be exempt from the requirements? How would it be possible to ensure the waste is recycled?

Question 15 – Do you think these targets are reasonable and achievable?**Please provide evidence of your view.**

If these proposals were to go ahead we think the targets are set at the right level to make them challenging yet achievable. The costs of the scheme will be determined to an extent by the level at which the targets are set. The struggle therefore will be to ensure the running costs of the scheme do not escalate too dramatically as the targets increase.

Question 16 – Do you have any alternative suggestions for the level of targets?**Question 17 – Do you have any comments on this option?**

If these proposals are to go ahead, Option B (On-farm collection model) should not be the preferred approach. The NFU believes the majority of stakeholders would agree that Option C (Hub-based model) would be the most practical and cost effective option. A scheme where every farm business is entitled to an on-farm collection would be excessively expensive to administer.

Question 18 - Do you agree with the frequency of minimum entitlement?**Question 19 - Do you agree with the requirement to prove purchase of the material from a registered producer?**

Yes. This would be essential to prevent fraud involving non-obligated NPAP. For instance, the Irish Farm Films Producers' Group (IFFPG), which runs the government approved scheme in the Irish Republic, has introduced a 6-digit label code. This is presented at collection as proof of purchase of obligated NPAP.

Question 20 - If yes, do you think the proposed method is practical? If no, please state your reasons.

See above.

Question 21 – Do you agree with the data requirements set out above? Please provide evidence of excessive administrative burdens if appropriate.**Question 22- Do you have any comments on the costs set out above?**

As discussed in our summary comments at the beginning of our submission, we believe these costs are excessive and do not represent value for money. They have the unfortunate effect of making the scheme expensive to operate. The money for these costs will be paid upfront by plastic manufacturers and will ultimately be passed onto farmers. The NFU cannot support farmers subsidising the Environment Agency at such a high cost. We also fear that these costs would only escalate. This is because the NFU's experience of the Environment Agency charging regime is that costs can increase dramatically yet little real transparency is ever provided for how such charges are arrived at.

Question 23 – Do you agree with the offences and penalties set out above?

Yes. We agree

Question 24 – Can you foresee any problems with this approach? Please describe the problems and suggest any solutions.

The need for two sets of regulation for England/Wales and Scotland is unfortunate and it is disappointing that this requirement was not made clear until relatively recently. We foresee many problems with this approach – mostly the cost associated with manufacturers having to

register with both sets of regulators – the Environment Agency in England/Wales and SEPA in Scotland. This adds more costs to the scheme which will be passed onto farmers in the price of NPAP. There may also be problems with inconsistent enforcement between the two countries. It also adds a level of unfortunate complexity to what should be a simple scheme for a relatively small tonnage of material – some 45,000 tonnes of NPAP.

Question 25 – Do you have any other comments on this option?

Question 26 - Please state which is your preferred option and reasons why? Please provide as much evidence as possible to support your answer.

If these proposals were to go ahead the preferred option would be Option C (Hub-based model) for reasons we discuss in our response to Question 17. However, as detailed in our summary comments at the beginning of this submission and in our response to Question 9, the NFU does not feel it can support the proposals put forward in this consultation and we feel that best option now would be to encourage industry to work together to develop alternative approaches to encourage the collection and recycling of greater amounts of farm plastic waste. We believe that this can be achieved more cost-effectively in the absence of statutory regulation.

Question 27 – Is there another option that we have not considered?

See above