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Llywodraeth Cymru  
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Welsh Government

## Consultation – summary of responses

# Summary of Responses to the Consultation on the Control of Pollution (Oil Storage) (Wales) Regulations and Government Response

24 June – 24 September 2015

Date of issue: **November 2015**

Welsh Government  
Cathays Park  
Cardiff CF10 3NQ  
Telephone 02920 825509  
Website: [www.wales.gov.uk](http://www.wales.gov.uk)

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Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ  
Tel: 02920 825509

Email: [water@wales.gsi.gov.uk](mailto:water@wales.gsi.gov.uk)

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## **Introduction**

### **Purpose of consultation**

On 24 June 2015, the Welsh Government published a Consultation on the proposed Control of Pollution (Oil Storage)(Wales) Regulations. The full text of the consultation is available at:

<http://gov.wales/consultations/environmentandcountryside/prevention-of-pollution-oil-storage-wales-regulations/?status=closed&lang=en>

The proposed regulations aim to reduce and prevent water pollution from inadequate and unsafe oil storage facilities that are above ground or in buildings. Key requirements will be for the storage container to be fit for purpose and to have a secondary containment system. This is normally a bund<sup>1</sup> or a drip tray, designed to contain any contents escaping from the storage container.

The proposed regulations also aim to replace existing provisions for agricultural fuel storage currently incorporated in the Silage, Slurry and Agricultural Fuel Oil Regulations 2010 (SSAFO). This will provide one set of standards for oil storage in Wales and remove an exemption included in the SSAFO regulations for pre 1991 oil storage facilities. In addition, farmers will no longer be required to notify NRW of the installation of an oil storage tank and the related offence provisions will no longer apply.

### **Consultation period and distribution**

The consultation ran for 12 weeks from 24 June to 24 September 2015 and was distributed to those shown on the list at Annex A.

It was also published on the Welsh Government website.

In addition, extensive pre-consultation discussions were held both directly with a number of key stakeholders and as part of the development of the Welsh Government's Water Strategy, published in May 2015.

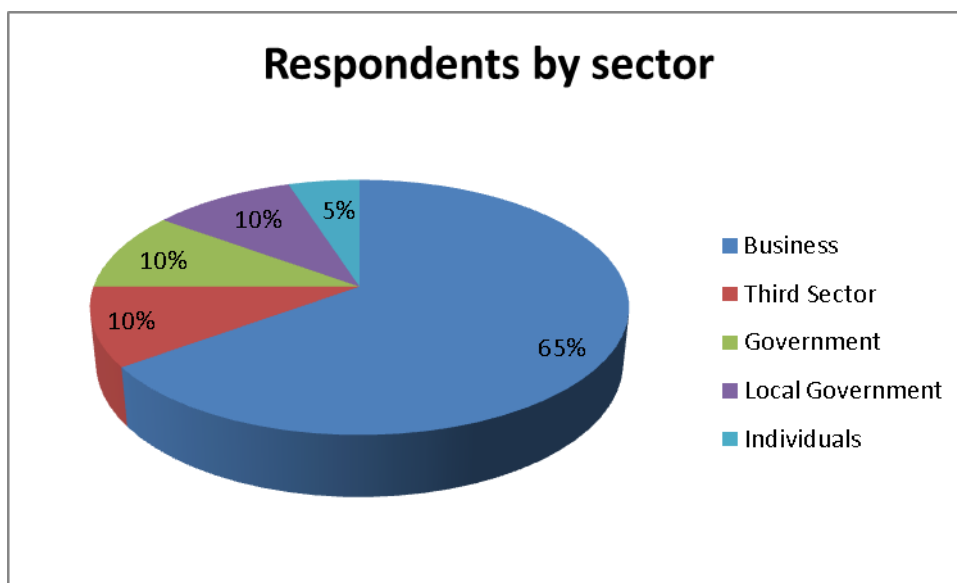
### **Responses**

20 responses were received from a range of sectors set out in Figure 1 (below). Of these 5 responses were received after the deadline but have been included. A full list of respondents and associated sector information is included in Annex B. In total 7 questions were asked, with provision for additional comments to support each response. A full list of the consultation questions is given in Annex C. Most respondents provided direct answers to the questions, with many supporting these with additional comments.

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<sup>1</sup> A bund is an outer wall or enclosure.

**Figure 1**



### **Welsh Government response**

The Welsh Government is pleased with the overall positive response to this consultation and will shortly bring forward regulations on oil storage. We acknowledge the views of the agricultural sector seeking exemption from the requirements of the proposed Regulations. However, similar regulations for agricultural fuel oil storage have been in place for the last 24 years. Given the risks associated with pre-1991 facilities operated under the Silage, Slurry and Agricultural Fuel Oil Regulations 2010 exemption, Welsh Ministers do not believe it appropriate to exclude agriculture from these Regulations. In addition, farmers will no longer be required to notify a new oil storage facility with NRW and there will be a single set of standards for all oil storage in Wales.

We have noted all the responses to the consultation and as a result a number of minor amendments have been made to the final Regulations and to the accompanying guidance and impact assessment. The changes we have made as a result of the responses are identified in in the appropriate "Responses to individual questions" section of this document.

The Welsh Government is grateful to those who supported the development of this consultation and to those who responded to the consultation.

## Overview

All responses are considered in this summary. There was strong support for the proposals from most of those who responded. However, agricultural sector responses did not support the inclusion of their activities, citing a lack of evidence for any change, inadequate assessment of related costs in the provisional impact assessment and the adequacy of the existing Silage, Slurry and Agricultural Fuel Oil Regulations 2010 (SSAFO).

The answers to Questions 1-6 are summarised below, along with examples of some of the individual comments received. Question 7 was a free format question, which was answered by 15 respondees. Some responses included suggested amendments to the draft regulations, the guidance and comments on the impact assessment. All of these have been considered in the drafting of the final Regulations, guidance and impact assessment

Most of the responses were from business, principally from trade bodies. With the exception of the agricultural sector, all those responding agreed that the proposed regulations would contribute to improved protection for the water environment.

Those with experience of the impact of oil pollution, including public health, emergency services, regulators and water supply companies provided strong support for our proposals. They cited examples of the impact of oil pollution on the environment, people's health and well-being and on water supply and treatment systems.

Organisations and companies involved in the installation of oil fired equipment, storage systems and those delivering oil were in favour of the proposed regulations. They have practical experience of tank failures, poor installations and customers who are reluctant to improve unsafe systems. They believe regulation is necessary to address those owners who have not improved the standard of their oil storage facilities on a voluntary basis over the last 20 years.

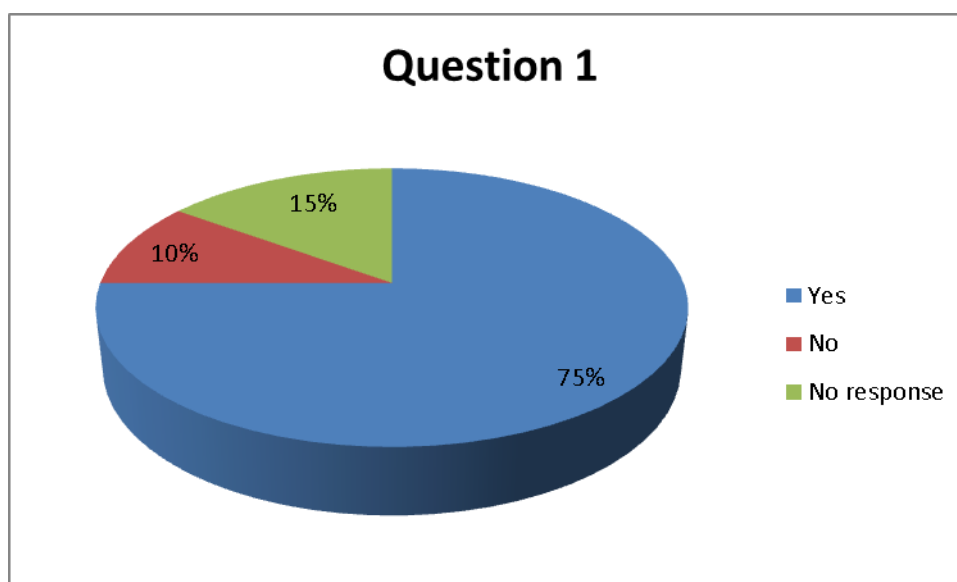
## Responses to individual questions

### Question 1

Although the number of oil pollution incidents in Wales has fallen in recent years, the reduction has not been as great as that in both England and Scotland, where similar regulations have been introduced. Some improvement in Wales would be expected as a result of UK wide voluntary initiatives such as the Oil Care Campaign<sup>2</sup>, the SSAFO Regulations and as UK companies apply a uniform standard across their operations. This question sought views on the effectiveness of the proposed regulations.

**Question 1: Do you consider that the proposed Regulations will provide improved protection for the water environment?**

Figure 2



The majority of those responding agreed. Those providing additional comments supported the need for regulation, citing serious incidents of oil pollution which had impacted public water supplies and sewerage systems. Regulations would also help meet Water Framework Directive requirements and reduce other adverse impacts, including those on public health. The importance of communicating the new standards and the need for adequate enforcement was emphasised by some respondents.

Agricultural sector representatives felt that there was insufficient evidence to support the proposed regulations. They felt that the reduction in oil pollution incidents in recent years indicated that existing initiatives and controls are adequate.

<sup>2</sup> See [www.oilcare.org.uk](http://www.oilcare.org.uk)

Responses included the following comments:

*“A considerable number of incidents involving oil storage have been reported to Public Health Wales. It is important to appreciate that incidents have implications beyond the physical environment.”*

*“We believe this will contribute to a reduction in the number of oil-related water pollution incidents.”*

*“the Welsh Government’s previous approach has been shown to be both successful and cost effective and should be continued”*

*“A discharge of heating oil ... from a storage tank at a hotel resulted in oil entering a drain which connected to the foul sewer. The oil entered our waste water treatment works”*

### **Welsh Government response**

A number of these responses provide evidence supporting our view that oil pollution from storage systems continues to be a significant problem in Wales, with wider impacts than those directly on the water environment. The impact on environment, people and water services of continuing spills can be very significant and costly. Whilst the agricultural sector does not agree that regulations would improve protection for the water environment, this may reflect the fact that agricultural fuel oil storage has been subject to regulation since 1991.

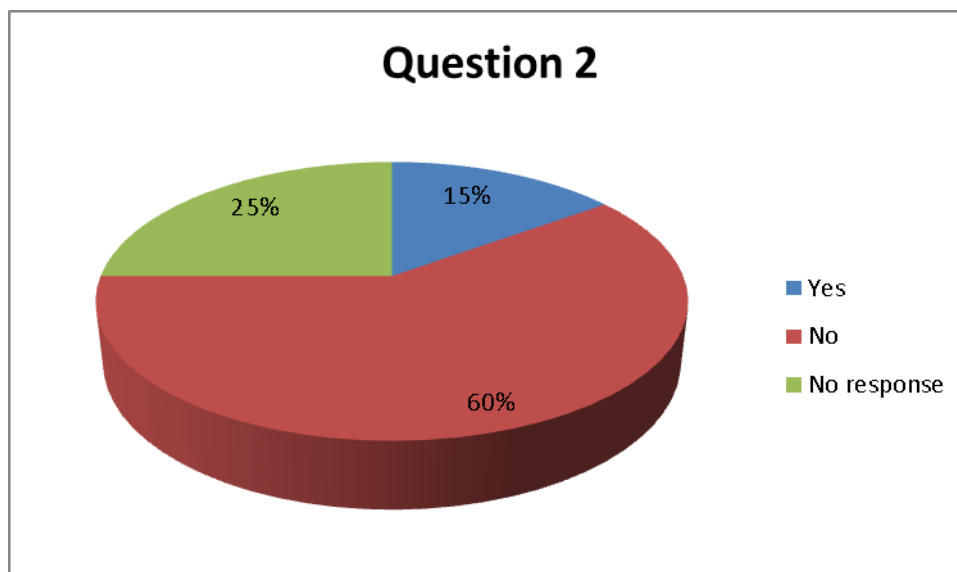


## Question 2

The draft Regulations included a comprehensive range of oil storage activities, with the main exceptions being underground oil storage, existing domestic oil storage, oil distribution activities and oil refining.

**Question 2: Are there any activities other than those specified in draft regulation 4 which should be exempted from the Regulations?**

Figure 3



Most responses supported the proposed exemptions. Those who commented recognised that the proposed exemptions are similar to those elsewhere in the UK. Some were concerned about the potential for pollution from underground tanks and several felt that existing domestic tanks should be addressed. One response suggested that the agricultural sector should be exempt as standards for oil storage are already provided for through the SSAFO (2010) Regulations.

Responses included the following comments:

*“National Incident Recording System statistics indicate that a high number of incidents and spills occur at domestic oil storage tanks, we feel that a much greater reduction in spillages could be achieved if there were no exemptions.”*

*“We suggest a cross check with exemptions for Waste Permitting or Waste Licencing Regs., where storage conditions are often vague”*

*“the 200 litre threshold should be increased significantly in order to cater for small and medium sized enterprises, including farms”*

## Welsh Government response

The Welsh Government welcomes the general support for the proposed exemptions. Our reasons for the exemption for underground oil storage were

outlined in our consultation. We will work with Natural Resources Wales to further examine the potential for targeted controls for these.

We do not propose to amend the exemption for existing domestic oil storage at this stage. However, we will work with NRW, those who supply and install oil fired equipment and storage facilities and oil delivery companies to raise awareness of the risks from these and to identify good practice through the Oil Care Campaign.

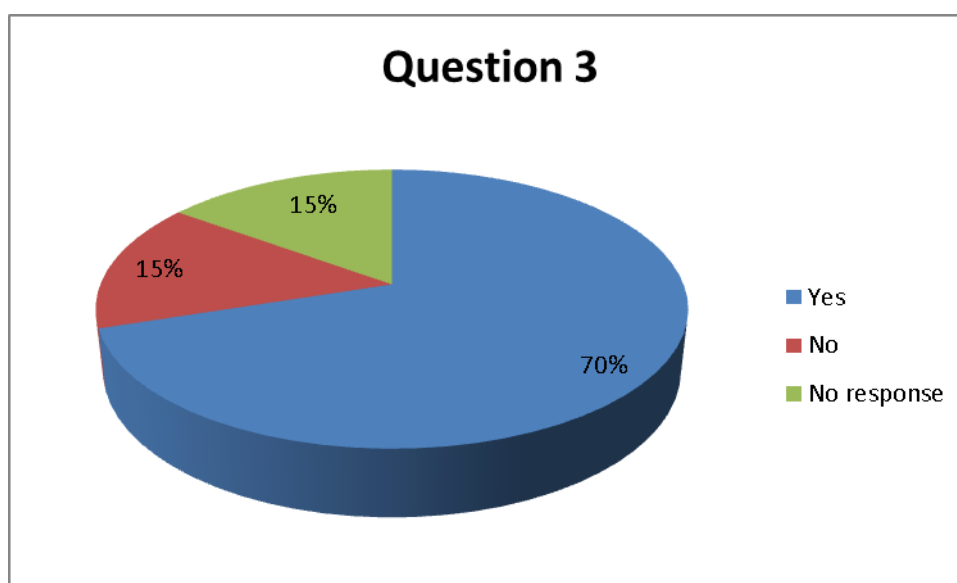
The inclusion of agricultural fuel oil within these Regulations will remove the current exemption from control under SSAFO for pre-1991 installations, where aging equipment poses an increasing risk of failure. It will harmonise and simplify the regulation of oil storage across all sectors in Wales. We therefore do not propose to exempt the agricultural sector from these Regulations.

### Question 3

The draft Regulations proposed a timescale of 2 years for existing oil storage facilities in higher risk locations (within 10 metres of a watercourse and 50 metres of a borehole) and 4 years for remaining facilities to comply with the requirements. This is in line with transitional provisions implemented elsewhere in the UK. All new and replacement facilities for oil storage will need to comply from the date the Regulations come in to force.

**Question 3: Are the timescales for the provision of secondary containment for existing tanks reasonable?**

Figure 4



The majority of respondents agreed that the proposed transitional provisions were reasonable. The agricultural sector did not agree. One such response indicated that a high proportion of respondents to a recent survey of farming businesses had indicated that they had pre-1991 installations. As a result, the potential impact of coming in to compliance would be greater than anticipated in the draft Regulatory Impact Assessment. One business sector response suggested a 10 year period for existing domestic tanks to comply.

One business sector respondent commented:

*“up to four years is a fair and reasonable period to implement the new standards without being a financial burden.”*

Whilst arguing against the inclusion of the agricultural sector, one response from farmers’ representatives commented:

*“that 5 and 10 years would be more appropriate to provide sufficient time for businesses to adapt to the regulation and take economic factors into account”*

## **Welsh Government response**

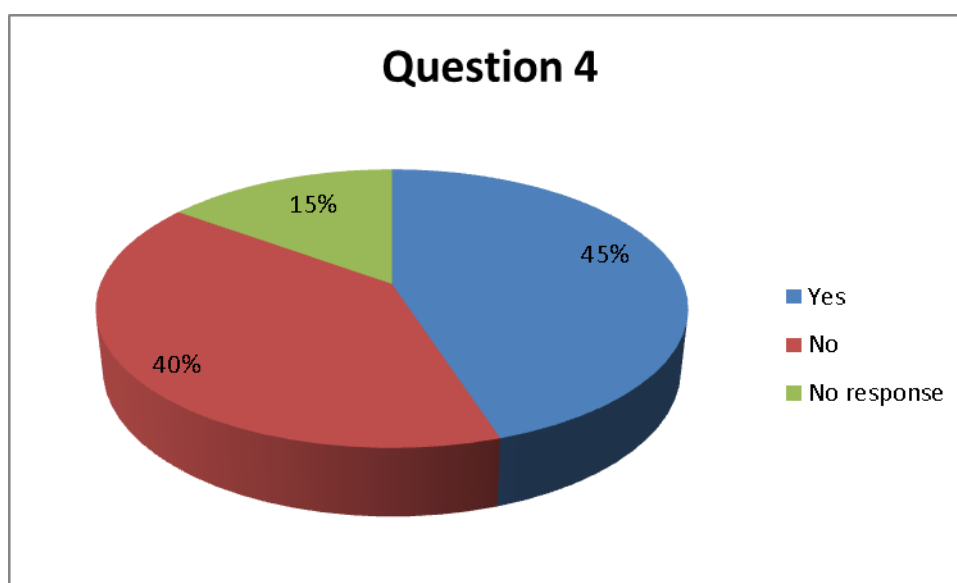
The Welsh Government is pleased to note the broad agreement with the proposed transitional provisions. Given that similar standards have been in place for the agricultural sector for 24 years, we do not believe that the proposed transitional provisions are unreasonable for any remaining non-compliant facilities in the sector. We are concerned that the industry is reporting that a significant proportion of agricultural businesses are relying on pre 1991 facilities have not been improved. Such systems are in excess of 24 years old and therefore likely to be increasingly at risk of failure. We will take this into account in developing our final regulatory impact assessment.

#### Question 4

The draft Regulations apply across all sectors – industrial, commercial, institutional, agricultural and domestic. Question 4 sought views on the proposed scope of the Regulations.

**Question 4: Have you any comments to make on the sectors to which the Regulations will apply?**

Figure 5



There was some cross-over in the responses to this question with those for Question 2, which related to “exempt activities”. However, of those who commented, several felt that our proposed approach was reasonable. Other comments related to the exclusion of underground tanks, existing domestic facilities and oil distribution depots. Those representing agricultural businesses reiterated their view that the sector is already regulated and should be exempt from these Regulations.

Responses from the business sector included the following comments:

*“all relevant sectors are covered”*

*“leaks of agricultural fuel oil continue to be a problem for us”*

*“the agriculture sector is already regulated on oil storage standards via SSAFO (2010) Regulations. .... we are in favour of voluntary measures working in partnership to improve environmental outcomes”.*

*“One thing of concern is that the exemption for existing storage facilities in domestic properties until renewal provides another reason to delay replacement thus increasing the risk of accidental spillage”*

## **Welsh Government response**

The Welsh Government notes that the agriculture sector was the only business sector seeking exemption from the proposed Regulations on the basis that they are already regulated. Other respondents are content with the scope of the Regulations, although several commented that there should be a longer term plan to ensure all domestic oil storage tanks are included.

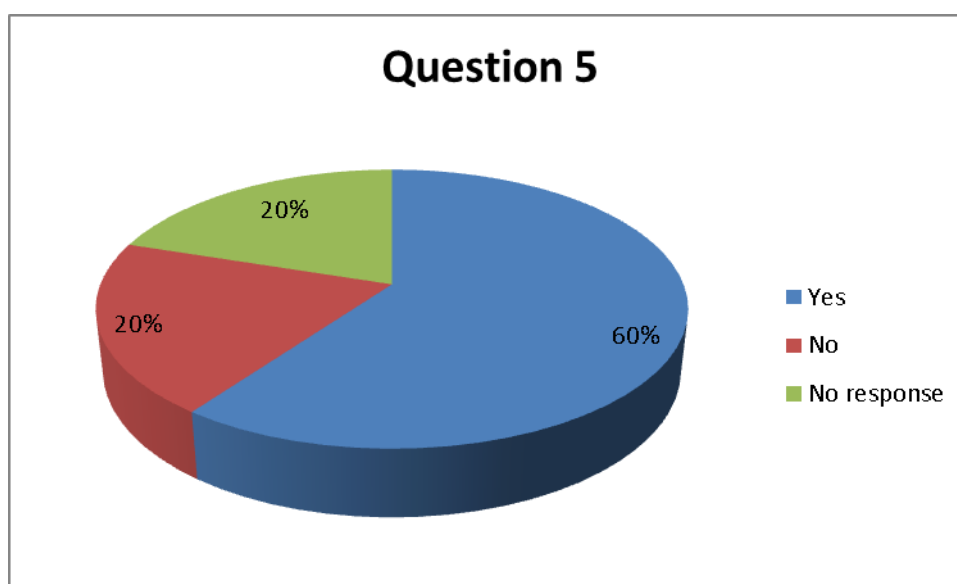
We do not believe it would be in line with our Working Smarter Review approach to maintain different regulations for different sectors for the same activity and do not, therefore, propose to exclude the agricultural sector from the scope of these Regulations.

## Question 5

The Welsh Government considers that it is appropriate for the regulator to have a wide range of provisions available for the enforcement of these Regulations. In addition to criminal sanctions, we are proposing that a range of civil sanctions should be available. We have not proposed that the regulator should have notice powers for these regulations, as we believe that they will be able to use existing powers if need be.

**Question 5: Do you consider the enforcement provisions are reasonable and effective?**

Figure 6



Most respondents agreed that the enforcement provisions are reasonable and effective. Some respondents expressed concern about implementation and the resources available to NRW to identify and prioritise facilities. Several responses suggested that it should be an offence for a delivery company to deliver oil to a non-compliant installation. One response suggested that local authorities should have enforcement powers.

NRW expressed the view that their powers under The Anti-Pollution Works Regulations 1999 can be relatively more complex and time consuming than the current process used under SSAFO for improving farm storage facilities. NRW also suggested that Local Authorities' Building Regulation and Planning teams could aid in reducing the potential regulation workload by ensuring, via their duties, that new or replacement oil storage facilities comply with the new Regulations. Environmental regulators within local government suggested that they should also have enforcement powers.

Responses included the following comments:

*"There is no detail on the "policing" strategy. There is no indication as to the frequency of NRW inspections – this should be stipulated."*

*“How will the higher risk storage facilities be identified and prioritised for inspection within the 2 year timescale?”*

*“We would question the necessity to impose a prison sentence and we would also express concern that, where the pollution incident is the result of criminal activity, the perpetrator of the crime - if brought to justice at all – will likely receive a lesser punishment than the farmer – the victim of crime - does for breaches to the regulation”*

### **Welsh Government response**

The Welsh Government is pleased that our proposal to provide the regulator with a wide range of enforcement powers, including civil sanctions has been accepted by those responding to the question. This will allow the regulator to take a proportionate approach to enforcement, reducing the need to resort to criminal law to only the most extreme cases.

We do not think it would be appropriate at this stage to make delivery to a non-compliant facility an offence. However, such a position may be more viable once the transition period is over.

We will investigate how local authorities could help implement these regulations as part of their wider environment and health role. We will work with NRW to support their delivery of these Regulations and to engage with the oil industry to ensure that those who supply and install oil fired equipment and storage facilities and delivery companies inform their customers of the standards and support compliance. Having a single standard for all installations in Wales will simplify matters for installers and delivery drivers in their discussions with their customers, without the potential confusion of sectorial or installation date exemptions.

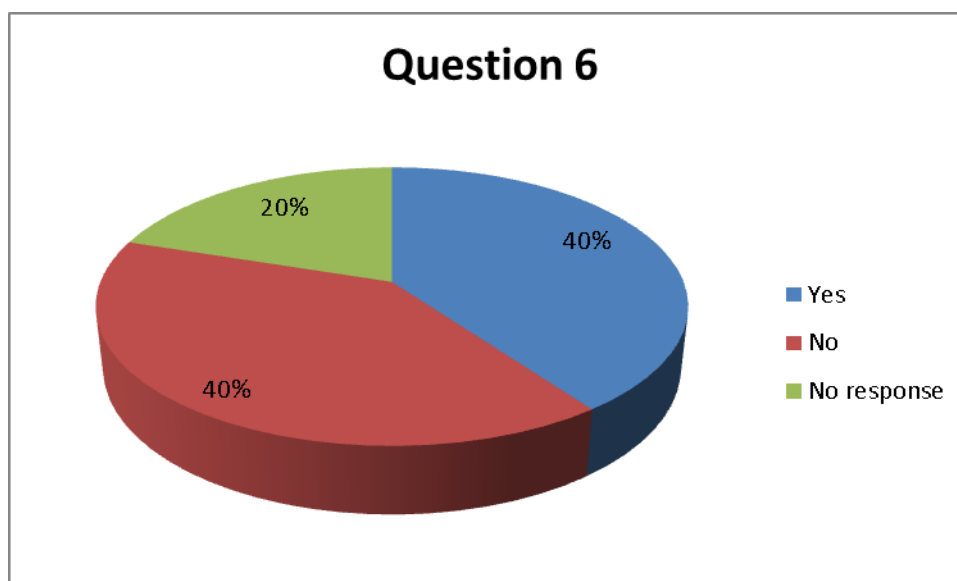


## Question 6

Question 6 sought comments on specific aspects of the proposed Regulations and requested detailed comments.

**Question 6: Have you any comments on particular aspects of the proposed Regulations or the regime in general? If yes, please provide details?**

Figure 7



Just under half of those who responded to the consultation provided comments in response to this question. Responses included reference to the importance of good guidance, awareness campaigns and the possibility of an annual tank inspection report as a requirement of insurance policies. The inclusion of reference to the relevant British Standard on oil tanks was recommended by several respondents and several comments were received regarding the illustrative drawings in the guidance.

One response questioned the 200 litre lower limit, as oil drums are generally 205 litres. Retaining a 200 litre limit would mean that many businesses might need to use drip trays. A number of detailed comments on the wording of the Regulations were included in responses to this question. One response suggested more detail should be included in the Regulations rather than Guidance.

Responses included the following comments:

*“Under 4.1 (a) – The British Standard 5410 now requires all oil storage tanks to be designed and manufactured to have a minimum life expectancy of 20 years”*

*“Oil spills and leaks from storage tanks have public health impacts too. There has been a considerable number of oil spill incidents (particularly from*

*domestic premises) reported to Public Health Wales. Residents experience health impacts or may have concerns following exposure to oil and vapours. Impacts arise when oils migrate around, under and into buildings - resulting in human exposure to odorous and potentially harmful vapours and sometimes requiring short-term evacuation. Adjacent land and properties may be affected with wider public health implications.”*

## **Welsh Government response**

We are grateful for the time taken to provide detailed comments on the Regulations and Guidance. Where appropriate, we have made amendments to the text of the Regulations and the Guidance.

The setting of the lower limit for oil storage containers for compliance with the containment requirements is deliberate, to ensure commercial operations where oil is stored in drums are clear about the need for these to have some form of containment. In many cases, where containers are stored in buildings, the requirement for containment is simply met through a raised lip at the doorway. Drip trays and banded pallets are readily available to ensure drums are provided with adequate protection. The low limit is also intended to prevent attempts to avoid the application of the regulations through the production of containers just below the regulatory limit, as has happened in other regimes.

## Question 7

This question provides an opportunity for respondents to raise any matters not covered by the structured questions above.

**Question 7: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

Most of those who responded to the consultation (13 out of 18 responses) used this question to address specific matters of concern to them.

Recommendations were made for improved guidance:

- on oil spills to include public health aspects,
- on waste oil facilities including waste oil burners
- to clarify the position for fuel sold from floating facilities
- updated diagrams
- to reflect changed definition of flammable liquid flashpoint
- on pressure testing of underground pipelines
- to reflect the links to building regulations

It was also suggested that technical improvements could be made to the Regulations to address fuel loss from siphonic action and to mandate the delivery mechanism to prevent “splash filling” and that the position for fuel additives such as “Ad Blue” and biofuels should be clarified. Several responses said that the wording of the Regulations with respect to containers of less than 200 litres capacity is ambiguous and requires clarification.

## Welsh Government response

We will be amending the guidance document in the light of the comments received and will work with stakeholders over the coming months to make sure it is both fit for purpose and well distributed. We will also amend the Regulations where appropriate to reflect the detailed comments received with respect to electrical equipment in bunds, the use of “splash filling” and anti-siphonic valves on small bore suction pipes and to ensure clarity relating to small containers, biofuels and additives.

## **Conclusion and next steps**

The consultation received a relatively small number of responses, with the majority being from the business sector, mostly from trade bodies. Most were supportive of the aims of the consultation and believed that the proposed Regulations would not only be effective in improving the protection of the water environment but would also have health and wellbeing benefits.

Farmers' representatives reflected strong opposition to the inclusion of agricultural fuel storage within these Regulations rather than SSAFO. However, this sector has been aware of the appropriate standards for oil storage for 24 years. We are concerned that many farmers are still relying on an exemption within SSAFO to avoid bringing their facilities up to the standards applying in all other sectors. There is a strong link between the age of an oil storage tank and an increasing risk of failure resulting in the spillage of the contents, emphasising the value of secondary containment for such facilities. Current standards for oil storage tanks provide for a twenty year design life. We believe that allowing a further period of 2 to 4 years to achieve compliance, in line with other businesses, is reasonable.

A large number of helpful comments were made in both the written consultation and in the discussions and correspondence with stakeholders prior to the consultation. Amendments have been made as a consequence to the draft Regulations, guidance and the regulatory impact assessment. The Welsh Government is grateful to those who made the effort to provide background information or to respond to the consultation.

A copy of the revised draft Regulations is attached at Annex D. We propose to take these forward in the coming months, with a potential implementation date in the spring of 2016. Both the guidance and the regulatory impact assessment will be revised and will be published when the Regulations are laid.

Once the Regulations have been finalised and approved, we will work with NRW, local authorities, water utilities, business representatives and the oil industry to publicise the proposed standards.

## **Annex A**

### **List of Consultees**

Amec.  
Associated British Ports  
Atkins Global  
Association of National Parks Wales

Brecknock Wildlife Trust  
Brecon Beacons National Park  
British Water  
Business Stream  
Business Wales

Canal and Rivers Trust  
Chartered Institute of Housing  
Chartered Institute for Environmental Health  
Citizens Advice  
Clairhill  
Coal Authority  
Coedcymru  
Community Housing Cymru  
Community land advice  
Confederation of British Industry  
Co-operative Group  
Country Businesses Association

#### Dŵr Cymru Welsh Water

Elan Valley Trust  
Energy Savings Trust

Farmers Union Wales  
Federation of Petroleum Suppliers  
Federation of Small Businesses  
Freightliner  
Friends of the Earth

Gofal Cymru

Home Builders Federation

Institution of Civil Engineers

Keep Wales Tidy

Landscape Institute

Llanishen Reservoir Action Group

Marine Conservation Society  
Mineral Products Association

National Farmers Union Cymru  
National Sewerage Association  
National Society of Allotment and Leisure Growers  
National Trust

The Oil Specialists  
OFTEC  
One Voice Wales

Pembrokeshire Coast.  
Public Health Wales

Royal Town Planning Institute  
Royal Society for the Protection of Birds;  
;  
Seven Rivers Trust  
Severn-Trent Water  
Snowdonia/Eryri National Park Authority

United Utilities

Water Health Partnership  
Water Regulations Advisory Service  
Water UK  
Wildfowl and Wetlands Trust  
Wildlife Trusts Wales  
Welsh Local Government Association  
Women's Institutes Wales  
Woodland Trust  
Wrap  
Wye and Usk Foundation

## **Annex B**

### **List of respondents**

Respondents comprised 1 private individual and the following businesses and organisations:

All Wales EPR Sub Group	Local Government
BAM Nuttall Ltd	Business
Canal and River Trust	Third Sector
Community Housing Cymru	Third Sector
Dee Valley Water	Business
Dŵr Cymru Welsh Water	Business
Farmers Union Wales	Business
Federation of Petroleum Suppliers	Business
Fuel Experts Association	Business
Heating Engineers & Allied Trades Federation	Business
Institution of Civil Engineering	Business
Lorax Systems	Business
Mid & West Wales Fire and Rescue Service	Local Government
National Farmers Union Cymru	Business
Natural Resources Wales	Government
Oil Firing Technical Association Ltd (OFTEC)	Business
OHES	Business
Oil Recycling Association	Business
Public Health Wales	Government

## **Annex C**

### **Consultation questions**

**Question 1:** Do you consider that the proposed Regulations will provide improved protection for the water environment?

Yes/No

If not, why not?

**Question 2:** Are there any activities other than those specified in draft regulation 4 which should be exempted from the Regulations?

Yes/No

If yes, please provide details.

**Question 3:** Are the timescales for the provision of secondary containment for existing tanks reasonable?

Yes/No

If not, why not?

**Question 4:** Have you any comments to make on the sectors to which the Regulations will apply?

Yes/No

If yes, please provide details.

**Question 5:** Do you consider the enforcement provisions are reasonable and effective?

Yes/No

If not, why not?

**Question 6:** Have you any comments on particular aspects of the proposed Regulations or the regime in general?

Yes/No

If yes, please provide details.

**Question 7:** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:



**2015 No. (W.)**

**WATER RESOURCES, WALES**

**The Control of Pollution (Oil Storage) (Wales) Regulations 2015**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations, made under sections 92 and 219(2) of the Water Resources Act 1991 and under section 62 of the Regulatory Enforcement and Sanctions Act 2008 require a person having custody or control of oil to carry out certain works and take certain precautions for preventing pollution of any waters which are controlled waters for the purposes of Part III of the Water Resources Act 1991. The Regulations apply in relation to Wales.

The Regulations also replace provision currently made in relation to agricultural fuel oil by the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (Wales) Regulations 2010.

Regulation 2(1) defines terms used in the Regulations.

Regulation 3 makes provision about the application of the Regulations. Regulation 4 sets out general storage requirements. Regulation 5 imposes detailed requirements as to the construction and installation of fixed tanks and ancillary equipment. Regulation 6 imposes detailed requirements in relation to mobile bowsers

Regulation 7 contains transitional provisions.

Regulation 8 provides that a breach of regulations 3 to 6 is a criminal offence.

Regulation 9 permits Natural Resources Wales, as regulator, to impose civil sanctions in relation to offences committed under regulation 7.

Regulation 10 provides that Natural Resources Wales may enforce these Regulations.

Regulation 11 amends the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010 by removing requirements as to agricultural fuel oil from those Regulations.

The regulations were notified in draft to the European Commission in accordance with the Technical Standards Directive 98/34/EC, as amended by Directive 98/48/EC).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

**2015 No. (W. )**

**WATER RESOURCES, WALES**

**The Control of Pollution (Oil Storage) (Wales) Regulations 2015**

*Made* \*\*\*

*Laid* \*\*\*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 92 and 219(2) of the Water Resources Act 1991<sup>(3)</sup> and by section 62 of the Regulatory Enforcement and Sanctions Act 2008<sup>(4)</sup> (“the 2008 Act”).

The Welsh Ministers have consulted the Secretary of State in accordance with section 59 of the 2008 Act and have carried out consultation in accordance with section 60 of that Act.

The Welsh Ministers are satisfied, in accordance with section 66 of the 2008 Act, that the Natural Resources Body for Wales (which is the regulator for the purpose of this Order) will act in accordance with the principles referred to in section 5(2) of that Act in exercising a power conferred by this Order.

A draft of this Order has been laid before, and approved by a resolution of, the National Assembly for Wales in accordance with section 62 of the 2008 Act.

**Title, application and commencement**

**1.**—(1) The title of these Regulations is the Control of Pollution (Oil Storage) (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales and come into force on [date to be inserted].

**Interpretation**

**2.**In these Regulations—

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<sup>(3)</sup> 1991 c.57. Section 92 was amended by the Environment Act 1995 (c.25: see section 120 of, and paragraphs 128 and 144 of Schedule 22 to the Act); the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675: see regulation 107 and paragraphs 8(1) and 8(5) of Schedule 26) and by the Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755: see paragraph 274 of Schedule 1. There are amendments to Section 219(2) which are not relevant to these Regulations.

<sup>(4)</sup> 2008 c. 13.

“container” means a single or double skinned fixed tank, a drum, a mobile bowser or (even if not connected to a fixed pipe or fixed pipework) an intermediate bulk container;

“drum” means an oil drum or similar container used for storing oil;

“environmental permit” has the same meaning as it does in the Environmental Permitting (England and Wales) Regulations 2010.<sup>(5)</sup>

“fixed tank” includes an intermediate bulk container which is connected to a fixed pipe or pipework ;

“oil” means any kind of oil except uncut bitumen

“premises” includes land but does not include vehicles or vessels.

“secondary containment system” means a drip tray, an area surrounded by a bund or catchpit, or any other system for preventing oil which is no longer in its container from escaping from the place where it is stored.

“small bore suction pipe” means a suction pipe with a pipe diameter of less than 8 millimetres;

### **Storage of oil**

**3.**—(1) Subject to paragraph (2), these Regulations apply in relation to the storage of oil on any premises.

(2) These Regulations do not apply in relation to the storage of oil—

- (a) in any container with a storage capacity of 200 litres or less;
- (b) that is subject to the terms of an environmental permit condition;
- (c) in any container which is situated wholly underground (unless that container is situated within a building);
- (d) on premises used-
  - (i) wholly or mainly as a private dwelling if the container in which the oil is stored was in use for storing oil before these Regulations came into force;
  - (ii) as an oil distribution depot; or
  - (iii) for refining oil.

### **Storage containers: general requirements**

**4.**—(1) This regulation is subject to regulation 7 (which makes transitional provision).

(2) Oil must be stored in a container which—

- (a) is of sufficient strength and structural integrity to ensure that it is unlikely to burst or leak in ordinary use; and
- (b) has been installed without adversely affecting that strength and integrity.

(3) The container referred to in paragraph (2) must be situated within a secondary containment system in relation to which the following requirements must be satisfied

- (a) except in a case to which paragraph (7) applies, the system must have a capacity of not less than 110% of the container’s storage capacity or, if there is more than one container within the system, of not less than 110% of the largest container’s storage capacity or 25% of their aggregate storage capacity, whichever is the greater;
- (b) the system must be positioned, or other steps must be taken, so as to minimise any risk of damage by impact so far as is reasonably practicable;
- (c) the base and walls of the system must be impermeable to water and oil;
- (d) the base and walls of the system must not be penetrated by any valve, pipe or other opening which is used for draining the system;

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<sup>(5)</sup> S.I. 2010/675.

- (e) if any fill pipe, or draw off pipe, penetrates the base or any of the walls of the system, the junctions of the pipe with the base or the walls must be sealed in such a way as to prevent oil escaping from the system.
- (4) Any valve, filter, sight gauge, vent pipe or other equipment ancillary to the container (other than a fill pipe or a draw off pipe) must be situated within the secondary containment system.
- (5) If the connection point to a fill pipe is not within the secondary containment system, a drip tray must be used to catch any oil spilled when the container is being filled with oil.
- (6) Where any drum is used for the storage of oil in conjunction with a drip tray as a secondary containment system, it is sufficient if the tray has a capacity of not less than—
  - (a) 25% of the drum's storage capacity; or
  - (b) if there is more than one drum used at the same time with the tray, 25% of the aggregate storage capacity of the drums.

### **Fixed tanks**

5.—(1) This regulation is subject to regulation 7 (which makes transitional provision).

(2) Where a fixed tank is used for storing oil the requirements in paragraphs (3) to (10) must be satisfied.

(3) Any sight gauge must be properly supported and fitted with a valve which closes automatically when not in use.

(4) Any fill pipe, draw off pipe or overflow pipe must be positioned, or other steps must be taken, so as to minimise any risk of damage by impact so far as is reasonably practicable and—

- (a) if above ground, must be properly supported;
  - (b) if underground—
    - (i) may not have mechanical joints, unless they are located at a place where they are accessible for inspection by removing a hatch or cover;
    - (ii) must be adequately protected from physical damage;
    - (iii) must have adequate facilities for detecting any leaks;
    - (iv) if fitted with a leakage detection device which is used continuously to monitor for leaks, the detection device must be maintained in working order and tested at least once every five years, or more frequently if appropriate to the device in question, to ensure that it works properly; and
    - (v) if not fitted with a leakage detection device—
      - (aa) any new pipe first used after these Regulations come into force must be tested for leaks before it is first used and further tests for leaks must be performed, in the case of pipes which have mechanical joints, at least once every 5 years and, in other cases, at least once every 10 years;
      - (bb) any pipe already in use on the date upon which these Regulations come into force that has not been tested for leaks in the previous 5 years must be tested within 1 year of the end of the relevant transitional period and thereafter, in the case of pipes which have mechanical joints, at least once every 5 years and, in other cases, at least once every 10 years. or
      - (cc) any pipe already in use on the date these Regulations come into force that has been previously tested for leaks less than 5 years before the end of the relevant transitional period that has mechanical joints must be tested at least once every 5 years and, in other cases, at least once every 10 years.
  - (c) if made of materials which are liable to corrosion, must be adequately protected against corrosion.
- (5) Any small bore suction pipe must be fitted with an anti siphon valve.

(6) The tank must be fitted with an automatic overfill prevention device if the filling operation is controlled from a place where it is not reasonably practicable to observe the tank and any vent pipe.

(7) Where a screw fitting or other fixed coupling is fitted, it must be maintained in good condition and must be used whenever the tank is being filled with oil.

(8) Where oil from the tank is delivered through a flexible pipe which is permanently attached to the container or a delivery pump —

- (a) the pipe must be fitted with a tap or valve at the delivery end which closes automatically when not in use;
- (b) the tap or valve must not be capable of being fixed in the open position unless the pipe is fitted with an automatic shut-off device;
- (c) the pipe must be enclosed in a secure cabinet which is locked shut when not in use and is equipped with a drip tray, or the pipe must—
  - (i) have a lockable valve where it leaves the container which is locked shut when not in use; and
  - (ii) be kept within the secondary containment system when not in use;

(9) Any pump must be —

- (a) fitted with a non return valve in its feed line;
- (b) positioned, or made subject to other measures, so as to minimise any risk of damage so far as is reasonably possible; and
- (c) protected from unauthorised use.

(10) Any permanent vent pipe, tap or valve through which oil can be discharged from the tank to the open must satisfy the following requirements—

- (a) it must be situated within the secondary containment system;
- (b) it must be arranged so that any oil discharged from the tank other to its intended destination is contained within the system; and
- (c) in the case of a tap or valve, it must be fitted with a lock and locked shut when not in use.

### **Mobile bowzers**

**6.—**(1) This regulation is subject to regulation 7 (which makes transitional provision).

(2) If a mobile bowser is used for storing oil, the requirements in paragraphs (3) to (5) must be satisfied.

(3) Any tap or valve permanently fixed to the bowser through which oil can be discharged to the open must be fitted with a lock and locked shut when not in use.

(4) Where oil is delivered through a flexible pipe which is permanently attached to the mobile bowser—

- (a) the pipe must be fitted with a manually operated pump or a valve at the delivery end which must—
  - (i) automatically close when not in use;
  - (ii) be provided with a lock; and
  - (iii) be locked shut when not in use;
- (b) the pipe must be fitted with a lockable valve at the end where it leaves the mobile bowser and the valve must be locked shut when not in use.

(5) Any sight gauge must be secured to the mobile bowser and be fitted with a valve or tap which must be locked shut when not in use.

## **Transitional provisions**

7.—(1) Where oil is stored in a container which is in use for that purpose when these Regulations came into force, regulations 4 to 6 do not apply until the end of the relevant transitional period.

(2) Where the container is situated less than 10 metres away from any inland freshwaters or coastal waters<sup>(6)</sup> the relevant transitional period is 2 years beginning with the date on which these Regulations come into force.

(3) Where the container is situated less than 50 metres away from a well or borehole the relevant transitional period is 2 years beginning with the date on which these Regulations come into force.

(4) In any case to which paragraph (2) or (3) does not apply, the relevant transitional period is 4 years beginning with the date on which these Regulations come into force.

## **Offences**

8.—(1) It is an offence for a person who has custody or control of any oil to breach any provision of regulations 4 to 6.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction to a fine or imprisonment for a term not exceeding 12 months, or to both; or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.

(3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), paragraph (2)(a) has effect as if for “12 months” there were substituted “6 months”.

## **Civil Sanctions**

9.—(1) The Natural Resources Body for Wales may—

- (a) impose a fixed monetary penalty;
- (b) impose a variable monetary penalty;
- (c) impose a restoration notice;
- (d) impose a stop notice;
- (e) accept an enforcement undertaking;

in relation to an offence under regulation 8 as if it were an offence under a provision specified in relation to that sanction in Schedule 5 to the Environmental Civil Sanctions (Wales) Order 2010<sup>(7)</sup>.

(2) The terms used in this regulation have the same meaning as in that Order.

(3) The provisions of that Order in relation to those sanctions apply as if they were provisions of these Regulations.

## **Enforcement**

10. These Regulations may be enforced by the Natural Resources Body for Wales.

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<sup>(7)</sup> S.I. 2010/1821 (W.178).

**Amendment of the Water Resources (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Wales) Regulations 2010**

**11.**—(1) The Water Resource (Control of Pollution) (Silage, Slurry and Agriculture Fuel Oil) (Water) Regulations 2010<sup>(8)</sup> are amended as follows—

- (2) in regulation 2 omit the definition of “fuel oil”;
- (3) omit regulation 5 and Schedule 3;
- (4) in regulation 6(1)—
  - (a) after “silo”, for “,” substitute “ or”;
  - (b) omit “or fuel storage tank”;
- (5) in sub-paragraph (a) of regulation 6(1)—
  - (a) after “silage”, for “,” substitute “or, as the case may be,”; and
  - (b) after “slurry” omit “or, as the case may be, storing fuel oil”;
- (6) in regulation 6(2)—
  - (a) after “silo”, for “,” substitute “ or”;
  - (b) omit “ or fuel storage tank”;
- (7) in regulation 7(1)—
  - (a) after “silage”, for “,” substitute “ or”;
  - (b) after the first occurrence of “slurry” omit “ or fuel oil”;
  - (c) after “silo”, for “,” substitute “ or”;
  - (d) after “system” omit “ or fuel storage tank”;
- (8) in regulation 9—
  - (a) after “silage”, for “,” substitute “ or”;
  - (b) after “slurry” omit “ or fuel oil”;
  - (c) after “silo”, for “,” substitute “ or”;
  - (d) after “slurry storage system” omit “ or fuel storage area”;
- (9) in regulation 10(1) omit “, 5(1)”.

*Name*

Minister for Natural Resources, one of the Welsh Ministers

*Date*

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<sup>(8)</sup> S.I. 2010/1493 (W.136).