GUIDANCE FOR MAKING AN APPEAL IN RELATION TO LAND DESIGNATED AS A NITRATE VULNERABLE ZONE UNDER THE NITRATE POLLUTION PREVENTION REGULATIONS 2008

Introduction

This guidance relates to Part 2 of the Regulations which provides for appeals to be made against the Secretary of State’s decision to designate certain areas of England as Nitrate Vulnerable Zones (NVZs).

The function of determining appeals is delegated to an independent Appeals Panel that will make its decision based on the evidence submitted.

You can only make an appeal in relation to land designated as an NVZ of which you are the owner or the occupier.

The closing date for submitting an application is 31 January 2009.

Appeal applications must be made on Form NVZ-AA1 attached to this guidance. Printed copies of the form can be obtained from the Defra Helpline (08459 335577). In addition to the completed Form NVZ-AA1, your application must include all the evidence being relied on to support the appeal.

Appeals may be made on either or both of the following grounds:
(a) The land does not drain into water identified by the Secretary of State as polluted
(b) The land drains into water that the Secretary of State should not have identified as polluted

Before submitting an appeal you should understand the reasons why your land has been designated. The following information may be useful:

1. The Nitrate Pollution Prevention Regulations 2008¹ – These Regulations designate specific areas of England as NVZs in line with the criteria set out in the Nitrates Directive, that is, land draining to and contributing to the pollution of a “polluted” water, specifically:
   • a surface water which has, or could have if action is not taken, a nitrate concentration greater than 50 mg per litre
   • a groundwater which has, or could have if action is not taken, a nitrate concentration greater than 50 mg per litre
   • a surface water which is eutrophic², or in the near future may become eutrophic if action is not taken.

² Eutrophication is the enrichment of water by nitrogen compounds from agricultural sources into the aquatic environment causing an accelerated growth of algae and other plant life, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.
Land may be designated if it meets one or more of the above criteria.

2. **Maps of Nitrate Vulnerable Zones** – available via the Defra website [http://www.defra.gov.uk/environment/water/quality/nitrate/nvz2008.htm](http://www.defra.gov.uk/environment/water/quality/nitrate/nvz2008.htm) or the Defra helpline (08459 335577). The interactive maps on the website can be used to determine whether your land falls within an NVZ and also the reason for its designation.


   The surface and ground water methodology used to make designations on the basis of high nitrate levels has been refined and improved since the last designations of NVZs made in 2002. It has been peer reviewed and accepted by reviewers so as to ensure it is fit for purpose and robust.

   The methodology for designating land on the basis that it drains to eutrophic waters has also been updated to reflect a better understanding of the science and the processes involved in eutrophication.

   **Note:** The maps on the Defra website provide details of the data which supported the designation of land draining to eutrophic waters. In the case of NVZs designated on the basis of polluted surface and groundwaters, it is not possible to show on the website detailed water quality monitoring data and assumptions in relation to every individual piece of land. The data has been aggregated on a regional basis. However, a complete set of the monitoring data used in making assessments for the 2008 designations is available in CD format by contacting the Environment Agency on 08708 506 506.

   Practical information on the appeals process, the grounds of appeal and the likely types of evidence that you may need to provide in support of your application is given below.
Grounds of appeal

The Regulations provide that an owner or occupier of any holding within an NVZ may appeal against the designation of that land on the grounds that their holding or part of it:

(a) **does not drain into water identified by the Secretary of State as being polluted** (i.e. you have evidence that your land has been incorrectly identified as draining to a polluted water and rather it drains to a different water which is not polluted)

*In the case of surface water and eutrophic NVZs, your evidence is likely to include a site map showing drainage flow of the land in question supported by an opinion from an authoritative source (e.g. a land surveyor, Internal Drainage Board).*

*In the case of a groundwater NVZ, your evidence is likely to include accredited hydrogeological information to demonstrate the land in question is not draining to a polluted groundwater.*

and/or

(b) **drains into water that the Secretary of State should not have identified as being polluted** (i.e. drains into water that has been incorrectly identified as polluted)

*For surface water NVZs, evidence might include accredited monitoring data that is comparable to that used to identify polluted waters*.  

*For a groundwater NVZ, your evidence is likely to include accredited hydrogeological information*  

*For eutrophic NVZs, supporting information might include evidence relating to environmental impacts that had not been previously considered in the weight of evidence approach applied against the indicators set out in the methodology.*

If your land is designated on the basis that it drains to water which meets more than one of the criteria for identifying polluted waters (described on page 1 of this guidance) you will need to indicate that fact in the tick box on page 2 of NVZ-AA1.

Where different types of NVZ apply to your land (i.e. surface water NVZ, groundwater NVZ and/or eutrophic NVZ), you will need to consider which ground of appeal you wish to invoke - (a) and/or (b) - in respect of each, and provide relevant evidence with your application.

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3 The methodology document describes the monitoring data used to identify polluted waters (e.g. frequency of sampling, duration and period of sampling)
Completing the application form

Please note that you can only submit an appeal in relation to land of which you are the owner or occupier. Applications must be submitted on Form NVZ-AA1 and accompanied by all supporting evidence. Applications must be submitted by **31 January 2009** as applications after this deadline will not be considered.

Please ensure that:

i. all identification information (e.g. name, address, map of land under appeal) is complete and accurate.

ii. you clearly state whether the land under appeal is within a surface water NVZ, groundwater NVZ or eutrophic NVZ, and the grounds for the appeal - (a) and/or (b).

iii. you enclose all relevant supporting evidence with your application, otherwise your appeal may not be considered.

iv. you enclose a stamped, addressed envelope, if you wish to receive an acknowledgement of your application.

v. where possible, you notify all other parties with an interest in the land of your intention to appeal to avoid duplicate applications.

Completed application forms, together with all supporting evidence, should be sent to:

The Secretariat - NVZ Appeals Panel
Defra
Area 2A, Ergon House
Horseferry Road
London SW1P 2AL

The Secretariat will refer all applications directly to the independent Appeals Panel.

Appeals Process

All applications will be decided by an independent Appeals Panel.

The Panel will determine the administrative and procedural arrangements for the appeal process and will aim to consider all appeals within six months. Secretariat support to the Panel will be provided by Defra. The Panel will consider all appeals in writing unless the Chair decides additional oral evidence is required to inform its decision.

The Secretary of State will inform all applicants, and any other owners or occupiers whose land is affected, of the outcome, as soon as possible. In the event of a successful appeal, the land affected by the decision will no longer be treated as being within an NVZ. The Panel's findings will be published on the Defra website.

For general enquiries regarding the appeals process, please contact the Secretariat - NVZ Appeals Panel at: nitratedirectiveteam@defra.gsi.gov.uk
APPLICATION TO APPEAL AGAINST DESIGNATION OF LAND AS A NITRATE VULNERABLE ZONE IN ENGLAND UNDER THE NITRATE POLLUTION PREVENTION REGULATIONS 2008

Notes:
- Applications must be submitted to Defra by 31 January 2009 and must be completed in full, otherwise they may be rejected.
- The completed application form should be sent to: The Secretariat - NVZ Appeals Panel, Defra, Area 2A, Ergon House, Horseferry Road, London SW1P 2AL
- The independent Panel’s findings will be published on the Defra website.

Name: _________________________________________________________________

Mailing Address: _________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

_____________________________________________________________________

Your status in relation to the land subject to this appeal _______________________
(i.e. owner or occupier)

Grid reference for land subject to this appeal: _________________________________
(please complete a separate form for each area of land designated)

I attach the map showing the land subject of this appeal ☐

(optional)
I enclose a stamped, addressed envelope and wish to be sent an acknowledgement of receipt of my application ☐
In the table below, tick the relevant boxes to indicate:

1. whether the land that is the subject of this appeal is located within a Surface water NVZ, Groundwater NVZ or Eutrophic NVZ (please tick all that apply if more than one)

2. the grounds of appeal upon which you are relying, namely:
   (a) the land does not drain into water identified by the Secretary of State as being polluted, and/or
   (b) the land drains into water that the Secretary of State should not have identified as being polluted

3. that you have attached evidence in support of your appeal

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<thead>
<tr>
<th>NVZ type</th>
<th>Grounds of appeal</th>
<th>Evidence attached</th>
</tr>
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<tbody>
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<td>A</td>
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<td>Surface</td>
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<td>Eutrophic</td>
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Please list below the evidence (e.g. monitoring data, hydrogeological report) which you are attaching in support of your appeal.

Signature:

Date: