

L.N. 104 of 2018

**ENVIRONMENT PROTECTION ACT
(CAP. 549)**

Nitrates Action Programme (Amendment) Regulations, 2018

IN EXERCISE of the powers conferred by articles 54 and 55 of the Environment Protection Act, the Minister responsible for the Environment, Sustainable Development and Climate Change, after consultation with the Environment and Resources Authority, has made the following regulations:-

Citation.

S.L. 549.66.

Amends
regulation 2 of
the principal
regulations.

1. The title of these regulations is the Nitrates Action Programme (Amendment) Regulations, 2018, and these regulations shall be read and construed as one with the Nitrates Action Programme Regulations, hereinafter referred to as "the principal regulations".

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "farmer", there shall be added the following new definition:

"farm structure" means buildings used for the rearing or breeding of animals/livestock for agricultural production and shall exclude fields;"

(b) in the definition "fertiliser", the word "vegetation;" shall be substituted by the word "vegetation:" and immediately thereafter there shall be added the following new proviso:

"Provided that any substance containing a nitrogen compound with a content of Nitrogen of 0.05% or less confirmed by a Nitrogen Test shall not be deemed to be a fertiliser for the purposes of these regulations.";

(c) immediately after the definition "Nitrates Action Programme", there shall be added the following new definition:

" "Nitrogen Test" means a test to determine the nitrogen content present carried out in accordance with the Kjeldahl method EN 13654-1 for Soil Improvers and Growing Media by an accredited body recognised by the Director;"

(d) the definition "organic fertiliser" shall be substituted by the following new definition:

" "organic fertiliser" means fertiliser which is obtained directly from livestock manure or which may be otherwise derived from organic matter with a Nitrogen content above 0.05% as confirmed by a Nitrogen Test;"

(e) immediately after the definition "slurry" there shall be added the following new definition:

" "soil improver/soil conditioner" means a carbon rich substance containing a nitrogen compound with a content of Nitrogen equal to or less than 0.05% as confirmed by a Nitrogen Test, applied on land to enhance and improve the soil organic matter content;"

(f) In the Maltese version, the term "ħama", wherever it occurs in the principal regulations and in the Schedules thereto, shall be substituted by the term "demel likwidu".

3. Immediately after regulation 2 of the principal regulations, there shall be added the following new regulation:

Adds new regulation 2A to the principal regulations.

"Administration and implementation.

2A. (1) The administration and implementation of these regulations shall be vested in the Department.

(2) The Department shall adopt administrative procedures as it deems fit to ensure that the provisions of these regulations are being adhered to.

(3) In cases where the Director has reason to believe that any of these regulations have been breached, he shall have the power to take action against any person whether registered in terms of these regulations or not."

4. Regulation 3 of the principal regulations shall be amended as follows:

Amends regulation 3 of the principal regulations.

(a) in sub-regulation (3) thereof, the words "and 12." shall be substituted by the words "and 12:" and immediately thereafter there shall be added the following new proviso:

"Provided that these are housed within the farm structure and/or its adjoining enclosure/s which shall consist of a

yard.";

(b) in sub-regulation (4) thereof the word "apply." in the existing proviso shall be substituted by the word "apply:" and immediately thereafter there shall be added the following new proviso:

"Provided further that these are housed within the farm structure and/or its adjoining enclosure/s which shall consist of a yard.";

(c) sub-regulation (5) thereof shall be substituted by the following:

"(5) Farmers having one half (0.5) of a tumolo of agricultural land or less, shall be exempted from the obligations in regulations 4 and 12:

Provided that where the Director has reason to believe that any farmer is using any of his agricultural land and, or holding abusively, the exemption shall not apply.";

(d) immediately after sub-regulation (5) thereof, there shall be added the following new sub-regulation:

"(6) Livestock farmers rearing certified organic animals in terms of the Organic Production and Labelling of Organic Products Regulations shall be exempted from the obligations in regulations 5, 7, 8 and 11 and may keep such livestock in fields which have been certified by the competent authority in terms of the said regulations, as organic:

Provided that the number of livestock that may be kept must not exceed the number of animals indicated in Annex IV to Commission Regulation (EC) 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control and any subsequent amendments thereto.";

(e) immediately after the new sub-regulation (6) thereof, there shall be added the following new sub-regulation:

"(7) Organic fertilisers not included in Schedules IIA and IIB are to have their Nitrogen content analysed and established by means of a Nitrogen Test and such results

shall be incorporated in the fertiliser plan."

5. In sub-regulation (6) of regulation 5 of the principal regulations the word "bovines" shall be substituted by the word "ovines".

Amends regulation 5 of the principal regulations.

6. Immediately after regulation 9 of the principal regulations there shall be added the following new regulation:

Adds new regulation 9A to the principal regulations.

"Soil improver/soil conditioner.

9A. (1) Holdings producing soil improver/soil conditioner shall apply to the Director for approval prior to each movement from the holding of such soil improver/soil conditioner.

(2) Applicants who apply in terms of sub-regulation (1) shall for each movement:

(a) carry out Nitrogen Tests to confirm the nitrogen content and submit the results thereof to the Director:

Provided that the expenses related to such tests shall be borne by the holding.

(b) submit to the Director for his approval a contingency plan which clearly indicates the alternative disposal solutions in the event that the soil improver/soil conditioner no longer meets the ≤ 0.05 % Nitrogen threshold.

(3) The Director may carry out an inspection on the holding where samples may be taken for testing prior to giving a decision in terms of sub-regulation (1).

(4) Holdings producing soil improver/soil conditioner shall be exempted from regulations 4, 5, 6, 7, 8 and 9 of these regulations."

7. Regulation 13 of the principal regulations shall be substituted by the following:

Substitutes regulation 13 of the principal regulations.

"Registration.

13. (1) Any person responsible for agricultural land and/or holdings shall register as such with the Department.

(2) In cases where a person applies to register in terms of sub-regulation (1) on an agricultural land and/or holdings which is/are already registered on another person, the Director shall refrain from registering the second person until the matter is definitely resolved:

Provided that in such cases the Director shall request from the persons claiming to be responsible for the land and/or holdings to indicate by means of a declaration made by a notary public, the title under which they are holding the land, with a view to resolving the matter:

Provided further that if the matter is not resolved, the dispute regarding who is responsible for the agricultural land and/or holdings shall be settled by the persons themselves by arbitration.

(3) In cases of agricultural land and/or holdings that remain unregistered, the Director may avail of any available information from other relevant authorities in an effort to identify the person responsible for such agricultural land and/or holdings."

Adds new regulation 13A to the principal regulations.

8. Immediately after regulation 13 of the principal regulations there shall be added the following new regulation:

"Training of fertiliser users.

13A. (1) Any person who wishes to make use of organic or inorganic fertilisers may be required by the Department to attend a training course on land application of fertiliser.

(2) The Department shall keep a register of persons and respective agricultural land and/or holdings making use of fertilisers and shall only permit the use of fertilisers to such registered users."

Substitutes regulation 18 of the principal regulations.

9. Regulation 18 of the principal regulations shall be substituted by the following:

"18. The Department shall draw up and maintain a National Nitrates Database containing the following information:

(a) registered persons responsible for agricultural land and/or holdings;

- (b) registered persons making use of fertilisers;
- (c) information concerning the holdings and agricultural land;
- (d) information concerning livestock buildings and storage facilities on a holding, including a link with the National Livestock Database;
- (e) information concerning land management practices;
- (f) information concerning the landscape, including the presence of any karstic features and natural topography, soil types, water sources and water courses;
- (g) information on checks conducted by other authorities;
- (h) findings of monitoring and controls by the Department;
- (i) list of advisors and technical experts;
- (j) list of manure transporters."

10. Sub-regulation 2(c) of regulation 19 of the principal regulations shall be deleted.

Amends regulation 19 of the principal regulations.

11. Immediately after regulation 20A of the principal regulations there shall be added the following new regulation:

Adds regulation 20B to the principal regulations.

"Responsibility for adhering to these Regulations in certain cases.

20B. (1) In the cases mentioned in regulation 13(2) of these regulations, the person responsible to ensure that a particular piece of agricultural land and/or holdings is/are in line with these regulations, shall be the person registered with the Department and any breaches shall be attributed to the person registered with the Department at the time of the breach.

(2) In case of agricultural land and/or holdings which have not been registered in terms of regulation 13, on which the Director has reason to believe that an offence against these regulations has been committed, the Department shall publish an enforcement notice in terms of regulation 19 in the Government Gazette and may implement the required intervention indicated in the said notice at its own expense after thirty (30) days from the publication date of the notice:

Provided that for instances which in the opinion of the Department admit of no delay, the Department shall implement the required intervention immediately:

Provided further that the Department shall have the right to recover any expenses incurred once the person responsible for that agricultural land and/or holdings is identified."

Amends
Schedule IV of
the principal
regulations.

12. Schedule IV of the principal regulations shall be amended as follows:

(a) the words "Regulation 4(3)" shall be substituted by the words "Regulation 3(3) and Regulation 3(4)";

(b) the words "[ideally males only]" shall be deleted and substituted by the words "[males and/or castrates only]" and the words "[if at all]" shall be deleted;

(c) the words "Over 2 years" shall be substituted by the words "Up to 2 years";

(d) the words "Up to 5" shall be substituted by the words "Up to 20".