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INSIDE

IN FUTURE ISSUES

Wetland Easement Required on FmHA Conveyance To Senior Lienholder

The United States Court of Appeals for the Ninth Circuit has ruled that the FmHA must create a wetland conservation easement on inventory property, even if it has to repay a prior lien to do so. *National Wildlife Federation v. Espy*, No. 92-35568, 1995 WL 19579 (9th Cir. Jan. 20, 1995). The inventory property in dispute had been conveyed by the FmHA to the property's senior lienholder, the Farm Credit Bank of Spokane, without creating easements to protect the wetlands on the property pursuant to 7 U.S.C. section 1985(g). In defending the conveyance against a challenge brought by the National Wildlife Federation and its Idaho affiliate, the FmHA argued that its conveyance did not trigger the wetland conservation easement requirement. The FmHA also argued that it had the discretion not to create the easement because to do so would have required it to pay off the debt owed to the Farm Credit Bank, and it did not want to expend funds for that purpose. Nonetheless, the court ruled that the conveyance was subject to the easement requirement and that the FmHA did not have the option to ignore it.

At issue was a 4,700-acre ranch in Idaho that the FmHA acquired from a delinquent borrower. About half of the acreage was subject to a mortgage held by the Farm Credit Bank of Spokane, including approximately 730 acres of wetlands. The FmHA paid the Bank for several years before quitclaiming the property to the Bank in satisfaction of the debt. When the property was conveyed, the FmHA did not retain an easement to protect the wetland acreage. The Bank subsequently sold the property to a third party.

The plaintiffs sought an order rescinding the conveyance, restoring the property to the FmHA's ownership, and forbidding the FmHA from disposing of the property without imposing wetland conservation easements pursuant to 7 U.S.C. section 1985(g). That statute, enacted as a part of the Food, Agriculture, Conservation and Trade Act of 1990, provides that, "in the disposal" of inventoried property, the FmHA "shall establish perpetual wetland conservation easements to protect and restore wetlands or converted wetlands that exist on [the] inventoried property." In contending that the statute did not apply here, the FmHA initially argued that its quitclaiming of the property to the Bank was not a "disposal" of the property. It maintained that only the sale or lease of the property was a "disposal," and that its transfer of the property to the Bank was an "abandonment."

The Ninth Circuit rejected the FmHA's argument that the conveyance was not a

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I.R.S. May Simplify Entity Classification Rules

The Internal Revenue Service [Service] recently announced that it is considering a proposal to simplify its entity classification regulations in order to allow taxpayers to treat domestic unincorporated business organizations as partnerships or as associations on an elective basis. I.R.S. Notice 95-14, 1995-14 C.B. ___. Under current Treasury Regulations, unincorporated organizations are separated into three tax patterns: associations (which are taxable as corporations), partnerships, and trusts. Treas. Reg. § 301.7701-1(b)(1978). While state law classification of the organization is not determinative for tax purposes, state law is used to determine the presence or absence of the classification criteria. *Id.* Under the present application of the Regulations, it seems clear that an entity organized as a corporation under state law must be classified as a corporation, and that a general partnership will be classified as a partnership for tax purposes. However, entity classification questions surround unincorporated organizations other than general partnerships, such as limited partnerships, business trusts, partnership associations, and limited liability companies [LLC's]. Apparently, the relatively recent growth in the adoption of state LLC statutes and the use of the LLC entity form has prompted the IRS. to reconsider the

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"disposal." The court ruled that the "FmHA did not abandon its property interest in the Ranch; it transferred that interest to the Bank in return for significant consideration." Noting that the FmHA had conceded that a "disposal" would have occurred if it had sold the property directly to a third party and had used the sale proceeds to pay the debt owed to the Bank, the court observed that the transaction between the FmHA and the Bank was in substance the same as a sale to a third party with the sale proceeds being used to pay the Bank. Accordingly, the court ruled the FmHA's quitclaim conveyance of the property to the Bank was a "disposal."

The FmHA also argued that when inventoried property is burdened by a prior lien, its decision to impose a wetland conservation easement is discretionary and not subject to judicial review. It claimed that because it would have had to pay off the debt to the Bank to create the easement, its decision on whether to spend its funds in this manner was exclusively within the FmHA's discretion.

The Ninth Circuit, however, disagreed with the FmHA's contention that it had the option to disregard the wetland conservation easement requirement. The court observed that "Congress used mandatory language in directing FmHA to impose wetland conservation easements on inventoried property." It held, therefore, that the "FmHA must impose wetland conservation easements on inventoried property in disposing of the property, even if it must repay a prior lien to do so."

The court also expressly rejected the FmHA's argument that Congress did not intend for the FmHA to spend government funds to create wetland conservation easements. The court observed that the property's value is decreased whenever an easement is imposed, and "[f]rom the taxpayers' perspective, it makes no difference whether FmHA pays for wetland conservation easements by devaluing property or by repaying a prior lienholder."

The Ninth Circuit also ruled that the district court's power to grant the relief sought by plaintiffs was not limited by state law. The court found that the grant of authority under the Administrative Procedure Act, 5 U.S.C. §§ 706(1), (2)(C), to "set aside" unlawful agency action gave the "district court, in the exercise of its jurisdiction under the federal statute, the authority to void a property transaction and order a transfer of title where necessary." The propriety of that relief here depended on whether the third-party purchasers took the property in good faith and without notice of the FmHA's obligations under federal law to create wetland conservation easements on the property. In reversing the district court's dismissal of the complaint, the Ninth Circuit remanded the action to the district court to resolve that issue.

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Regulations. Perhaps the most troubling concern to the Service is that, unlike limited partnership acts, the various state LLC statutes are not patterned on a uniform act, so classification must be based more heavily on the agreement of the parties and the unique nature of the particular state statute at issue. [It should be noted, however, that the National Conference of Commissioners on Uniform State Laws has formed a drafting committee to draft a Uniform Limited Liability Company Act based on the Revised Uniform Limited Partnership Act.]

The Service's criteria for determining the tax classification of an organization as specified in the Regulations include four items: (1) continuity of life; (2) centralization of management; (3) liability for corporate debts limited to corporate property; and (4) free transferability of interests. [Treas. Reg. § 301.7701-2(a)(1983). In 1977, the Service issued regulations which would have made partnership classification more difficult. However, these regulations were withdrawn almost immediately upon being issued. 42 Fed. Reg. 1038 (1/5/77).] The determination of whether a particular organization is to be treated for tax purposes as a partnership or as an association depends on whether such corporate characteristics predominate. The Regulations provide that unless the corporate characteristics predominate, the organization will be classified as a partnership for tax purposes. Thus, if the organization possesses more than two of the corporate characteristics, it will be classified as a corporation for tax purposes. Treas. Reg. § 301.7701-2(a)(3)(1983).

In practice, determining whether a particular organization possesses certain corporate characteristics is often tedious and time consuming, and may require the examination of numerous documents, relationships, and events. However, sufficient flexibility does exist to permit practitioners to assure that an organization formed as a partnership or limited liability company under state law will be taxed as a partnership by failing to have more than two of the four corporate characteristics. With Notice 95-14, the Service appears to be viewing this flexibility as the functional equivalent of an election to be taxed as a partnership.

Notice 95-14 appears to be a very significant change in the focus from the 1993 agenda of the United States House of Representatives Subcommittee on Select Revenue Measures, Committee on Ways and Means. On February 2, 1993, the subcommittee announced that it would hold hearings on issues "to examine how current tax laws apply to limited liability companies, a relatively new entity developed under state law." Press Release #1, Subcommittee on Select Revenue Measures, Committee on Ways and Means, United States House of Representatives, Feb. 5, 1993. At that time, the subcommittee appeared to be disturbed about the growing use of limited liability companies as a means to avoid the corporate income tax while providing the economic benefits in doing business as an entity.

The subcommittee recognized that the present Treasury Regulations used to determine whether an entity is a corporation or a partnership for tax purposes are inadequate. The subcommittee also recognized that the regulations were issued for purposes totally unrelated to testing limited liability companies, but that they

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were being used for such purposes. In addition, the subcommittee recognized that the Regulations, as applied to limited liability companies, may not accurately reflect the true nature of such entities for tax purposes. However, since early 1993 the Service has issued several Revenue Rulings concerning various state L.L.C. statutes to the effect that LLC's organized under such statutes may be classified as either a partnership or as an association taxable as a corporation depending on the provisions in the LLC's articles or operating agreement.

The Service maintains that the proposal in Notice 95-14 would simplify the classification process and save resources that are presently devoted to the process of applying the regulations to classify organizations formed under state statutes in order to achieve partnership tax status for organizations that are essentially identical to corporations. In place of the present regulations, domestic unincorporated business organizations would be able to elect whether to be taxed as a partnership or as an association if they have at least two associates and an objec-

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Agro-Chemical Reduction Policies in the Netherlands

By Dr. G.A.A. Wossink

This article was written during a Fulbright fellowship at North Carolina State University. The author wishes to thank G.A. Carlson and T. Feitshans for valuable comments.

Introduction

Agriculture contributes substantially to environmental problems in the Netherlands, particularly through acidification of the environment and pollution of groundwater and surface water. These problems are brought about by livestock farming with a huge manure surplus and crop production with high inputs of pesticides and nutrients.

Acidification is mainly caused by emissions of sulphurous oxides (SO_x), nitrogen oxides (NO_x), and ammonia (NH_3). Most of the sulphurous and nitrogen oxide deposits in the Netherlands are airborne, i.e., are emitted abroad. In contrast, eighty-one percent of the ammonia deposition can be traced to national sources, of which ninety-four percent is brought about by agriculture. Of this, dairy farming accounts for sixty percent; pig production for thirty percent; and poultry for ten percent.

Pollution of groundwater and surface water by nitrogen and phosphate is caused by application of high levels of manure and fertilizer. Nitrogen concentrations in groundwater are very high in some areas of the Netherlands. An important factor in these areas is the concentration of intensive livestock production farms, which gives a very high animal density. It is assessed that the maximum standard (50 mg nitrates per litre groundwater) is exceeded in seventy percent of the sandy soil used for agriculture and in almost forty percent of the total agricultural areas. Furthermore, it is estimated that 300,000 hectare [ha], or fifty percent of the cultivated land in the sandy soils, are saturated with phosphate, leading to P-leaching into the groundwater.

With respect to pesticide use, the Netherlands has the highest input intensity measured in kg active ingredients of all of the European countries measured in active ingredient [a.i.] per ha. The high use figures for nematicides (soil fumigation, particularly in potato cropping) are a typical Dutch feature. However, problems attributable to chemical crop protection are not confined to the Netherlands; in France (average use 6 kg a.i. per ha), Spain, and even Sweden (average 1 kg a.i. per ha) residues of pesticides have been found frequently in surface and subsoil water and also in drinking water .

The overall European Union [EU] environmental policy and that of the individual Member States is based, though varying substantially, on a command-and-control approach. This common choice is more a result of administrative traditions than the outcome of a cost-efficiency analysis. In the Netherlands the nitrogen policy is now changing from a general, physical command-and-control approach towards more individual, economic measures. The historical background and a description of this new system is presented in more detail with some early adoption experiences.

Environmental Policy of the European Union

The EU aims to harmonize and hasten environmental policy-making within Europe. To this end, every five years a so-called European Policy-and-Action Program is drawn up. The last one, entitled "Towards Sustainability" was launched in May 1992 and covers the period till 2000 A.D. (CEC, 1992). The basic aim of the program is to achieve an ecologically and economically sustainable development of society. Agriculture is one of the five target sectors selected by the Commission for special attention. The other four are: industry, energy, transportation, and tourism. The attention on agriculture can be explained by the sector's large share in the budgetary expenses of the Commission and by agriculture's large share of total rural land.

Targets to be met by the year 2000 are formulated for several issues of concern to the agricultural sector. The objectives formulated for nutrient and pesticide use are:

- Maintaining current levels or reducing levels of nitrates in groundwater;
- Reducing the incidence of surface waters with a nitrate content exceeding 50 mg per litre, or levels which cause eutrophication;
- Stabilizing or increasing organic material levels in the soil; and
- Reducing the use of pesticide per unit area and switching over to an integrated farming system.

Also included is a list of actions to be undertaken:

- Strict application of the EU Nitrate Directive;
- Setting of regional standards on the emission of ammonia for new livestock units and silos (silage);
- Reduction program for phosphate use;
- Allocations of premiums and other compensatory payments to be subject to full compliance with environmental legislation;
- Registration and inspection of sales and usage of pesticides; and
- Promotion of integrated pest management (in particular by education) and of organic farming.

The Policy-and-Action Program stresses that attempts are being made to coordinate policies because of cross-compliance, particularly the Common Agricultural Policy [CAP] and the environmental policy. Specific solutions are not advocated, however.

The most far-reaching, and most detailed, of the actions is the EU Nitrate Directive, which was issued in 1991. The overall objective of the Directive is to prevent and reduce nitrates pollution of the aquatic environment associated with agriculture. The maximum standard for nitrates is 50 mg per litre of water. Further, the Nitrate Directive provides guidance on how and when Member States should deal with the nitrates problem, i.e. how an action program for each Member State is to be developed. In response to the Directive, the Member States have to implement the following provisions by specified dates:

1. All waters must be monitored by December 1993, and *zones vulnerable* to nitrate pollution must be identified.
2. A *code of good agricultural practice* must be established before the end of 1993 to avoid unnecessary nitrate emission.
3. A *national action program* must be formulated before the end of 1995, which must be implemented before 1999.

Groundwater is a major source (seventy percent) of drinking water in the Netherlands, therefore the Dutch government appointed the whole country as a vulnerable zone. This was an important decision since the EU Nitrate Directive applies only to these zones.

The codes of good agricultural practice will focus on the handling of nutrients (chemical fertilizers and manure). The action program must be seen as a strengthening of the aforementioned codes as they

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should set compulsory rules for nutrient handling. The EC Nitrate Directive points at that application of animal manure must not exceed 170 kg nitrogen per hectare by 1999, including manure from grazing livestock. An exemption up to 210 kg per hectare nitrogen can be granted until 1999. Compliance with these standards will naturally be most crucial in regions with intensive animal husbandry, as in the Netherlands. However, Member States may set down less restrictive amounts as long as this does not violate the water quality objectives of the Directive, i.e., 50 mg nitrates per litre groundwater.

Crop Protection Policies in the Netherlands

There is a whole range of acts indicating the involvement of the Dutch government in crop protection. These acts particularly concern phytosanitary measures and registration of pesticides and do not focus on pesticide use. Central is the Pesticides Act of 1962, which regulates the registration of pesticides in the Netherlands. The sale, transport, storage, and use of a pesticide is prohibited unless explicitly allowed. The most important criteria for a pesticide being authorized (time limit of ten years) are: effectiveness for the purpose and acceptable side-effects on the environment and public health (toxicity, persistence, residue tolerance etc.). Registered pesticides are always restricted to specific applications with regard to crop, pests, method and time of application, and dosage. This information is published in an annually issued Crop Protection Guide.

Since all pesticides have side effects of some sort, beneficial and damaging effects must be assessed. This procedure is entrusted to the Committee for the Registration of Pesticides. In 1993 this committee was drastically reorganized in response to severe criticism from both the environmental movement and industry. One major criticism was the impossibility for environmental and consumer organizations to lodge an appeal against (renewed) registration of a pesticide. The lack of openness in decision-making and the inaccessibility of records on registered pesticides were questioned in particular. In addition, no data were available on the potential side effects of some pesticides.

Industry's main complaint was the inefficiency of the Committee for the Registration of Pesticides' procedures. New and stricter environmental requirements led to a complete review of all pesticide registrations and a ban on several important products. This change, together with the delays involved in the registration of new products, resulted in a lack of appropriate pesticides for specific purposes and to hoarding of old pesticides for which extension of registration became uncertain.

Recent Dutch pesticide policy is largely the product of the Policy Document "Crop Protection in the Netherlands" which takes stock of bottlenecks and possibilities and proposes some policy incentives. This Document, submitted to the Parliament in 1983, aimed to reduce the use of pesticides but, since it lacked clear, quantified objectives, it had no impact. In 1987, the Policy Document "Towards a Goal-Oriented Long-Term Plan for Crop Protection" was issued. By presenting objectives, methods, starting points, and conditions for phasing in tasks, this provided the basis for a goal-oriented policy. In 1990, this led to the issuing of Multi-Year Crop Protection Plan— MYCPP, approved by the Cabinet in 1991, which was the start of a fundamental new pesticide policy in the Netherlands. This document clearly outlined the task for all ten branches of agriculture, estimated the costs of change, and defined new research objectives. The three main points of the Plan are as follows:

- Reduction of dependence on pesticides. By the year 2000 all branches in agriculture must have integrated farming systems.
- Reduction in the use of chemical pesticides. By the year 2000, the quantity of active ingredients used per year must be fifty percent of the 1984-88 level; by 1995 the reduction should be thirty-five percent.
- Reduction of the emission of pesticides to the environment: a fifty to ninety percent reduction, according to the type of emission, is required by the year 2000.

These three items are known as the *volume policy*. In addition, the MYCPP states that all registered pesticides have to conform to far more stringent environmental criteria in the year 2000. The principles underlying this *compound policy* are derived from a general, non-agricultural, Dutch memorandum of 1989. They comprise the EU Directive for drinking water and criteria for soil protection from pesticide accumulation.

The MYCCP was based on an extensive inventory in which pesticide use in each subsector (and per sector for each product) was investigated. For each of the ten subsectors, detailed tasks and measures for the reduction of pesticide use were formulated in so-called Background Documents. Note that arable farming is by far the most important sector with respect to pesticide use in the Netherlands. The Plan strongly advocated the use of favorable and supporting policy instruments such as research, information and publicity, and farmer education. This implies that the Dutch government anticipated that technical developments (integrated cropping) would bring about a reduced dependence on pesticides. Nevertheless, a general regulating levy per kg a.i. for all pesticides (to influence behavior; funds obtained are earmarked to remain in the sector, it is not a tax) was suggested at the political presentation of the Plan in 1991 in the case of not meeting the 1995 reduction targets.

Since the MYCCP was issued, the Pesticides Act has been revised, fundamental research and research for integrated/organic farming systems have been stimulated by additional funds, and extension work has been expanded. In view of the general consensus, the strong public pressure, and the increased willingness of the growers to comply with environmental requirements, the desired reduction in the quantity of pesticides is expected to be achieved. Since 1992, progress in pesticide reduction is assessed on the basis of a compulsory sales administration. This implies that for policy evaluation the reduction targets by category of pesticides are decisive.

The MYCPP estimated the costs incurred in crop protection in the Netherlands as a result of reducing pesticide use ("volume policy"). For the period 1990-2000 an income loss of 328 NLG per hectare per year for the whole arable farming sector was calculated (1 NLG = 0.6 U.S.$).

Prospects for achieving the objectives of the "volume policy" are hopeful. At the EU level, however, negotiations mainly concern the registration of pesticides and not the volume of total pesticide use. It is expected that in the near future, more pressure from consumer organizations will restrict the use of particular pesticides. Environmental groups strongly support a ban on all compounds that do not comply with environmental criteria. Logically, agricultural circles support finetuning the policy on compounds with the volume policy. However, research indicates that a large part of the "problematic" pesticides will still be incorporated in future optimal production plans. This stresses the need for new, more environmentally friendly crop protection methods and extension work in this field.

To support growers and extension officers, three "environmental yardsticks" are currently being developed and tested by the environmental organization CLM (Center for Agriculture and Environment) that cooperates closely with farmers: one for leaching into groundwater (spring and autumn), one for effects on water organisms, and one for effects on soil organisms. The yardsticks assign so-called environmental impact points (EIP) to pesticide applications for each of the three

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effects. The methods used to calculate the EIP are derived from the ecological evaluation models utilized by the Dutch government for its pesticide registration procedure. The reference point of the environmental yardstick has been set at 100 EIP. This means that at a score of 100 EIP per application, the impact on the environment is still acceptable. If the score amounts to 500 EIP the environmental standard is exceeded five times.

As pointed out, the MYCCP suggested a general levy per kg a.i. in the case of defaulting on the 1995 reduction targets. Strengthening of the volume policy by means of levies is not necessary given the trend in use figures. Reinforcement of the compound policy, on the other hand, could ask for additional policy instruments. A levy based on Environmental Impact Points is suggested as an option. Such a levy could be gradually increased so that interdiction would become just an administrative procedure.

Nutrient Policies in the Netherlands

In the Netherlands, problems of pollution by nutrients (N,P, and K) are mainly caused by overproduction of manure in intensive livestock farming in too small an area, which has led to a huge manure surplus. The surplus was 14-16 million metric tons manure in 1987 and is about 16 million tons now. Note that the surplus calculation relates to the farm level; for the "national farm," there is not a surplus. Annually, cattle produce about 55 million metric tons; pigs, 20 million metric tons; and poultry, 3 - 3.5 million metric tons of manure in the Netherlands.

The overall objective of the policy is to achieve a balance between production and utilization of manure by the year 2000. This implies that the total amount of nitrogen and phosphate applied in the form of manure, other organic nutrients, and chemical fertilizers must equal the crop uptake. This objective is set out in the National Environmental Policy Plan.

Dutch nutrient policy was established in the beginning of the 1980's. Initial efforts [the Interim Law] did not stop the increase, and further action was needed. This led to the Three Phase Plan (phase periods 1987-1990; 1991-1994; and 1995-2000) addressing the year 2000 goal of nutrient equilibrium. Note that the policy focuses primarily on phosphate rather than on nitrogen. Concerning nitrogen, only indirect measures exist allowing twice as much nitrogen as phosphate to be discharged with the phosphate in a certain amount of manure.

In the first phase (1987-1990), the Manure Law and the Soil Protection Act replaced the Interim law. The main objective was to stabilize the problem. The Manure Law ascribed manure production rights (quotas) to each individual farm according to livestock population and agricultural acreage in 1986. Livestock population was not permitted to increase at farms with insufficient possibilities of deposition. Hence, registration of number of animals, land use, and acreage was required (manure bookkeeping). The allowable manure application depended per farm on land use and acreage. In the case of a surplus, documents to prove delivery to other farms are required. Moreover, this surplus is subject to taxation. The national Manure Bank, also established as part of the policy, has an important role in efficiently distributing the manure (storage, transport to deficit regions) and in establishing processing plants. Farmers pay 20-30 NLG per m^3 manure for disposal.

The second phase (1991-1994) aims at gradually reducing the application rates and at preparing farmers for the third phase. Beginning in 1994, manure quotas are tradeable. Note that quotas were ascribed to each livestock farm in 1986. Every farm is allowed to buy (additional) quotas. On a county basis, surplus and deficit regions have been assessed in the Netherlands. Transfer is only possible within a surplus region (if simultaneously with the draft of a ammonia reduction plan and a Environmental Management Act license) and from a surplus to a deficit region. Trading implies a twenty-five percent reduction of the production permit in kilogram P_2O_5. Note that buying quotas only offers the opportunity of farm expansion. It is no solution for a farm's manure surplus. Delivery of surplus manure to other's farms or to a processing plant still needs to be arranged. In practice, trade in quotas is rather limited. Prices vary between 15-20 NLG per kg phosphate.

Note that the policy does not set any explicit standards for animal density or direct rules for manure storage capacity. Because of the manure application rules, however, the storage capacity should be at least six months. Additionally, the ammonia policy plan stresses measures to stimulate more efficient usage of nitrogen in animal feed, low emission housing systems, sealing of manure storage, etc. Implementation of these measures has taken place through educating farmers, investment schemes, and contracts with feed industries ("covenants"). Furthermore, ammonia is combatted through the Environmental Management Act. This Act sets restrictions on expansion of livestock farms so that expansion can be allowed only if the acidification is below 30 mole acid per hectare annually. There is in addition an Interim Law on Ammonia Emission. With respect to industrially prepared cattle feed, there is not a law but a Gentlemen's Agreement (covenant between government and the industry). This agreement affects ammonia emission indirectly, i.e., by reduction of the N content in feed stuffs.

In 1995 the third phase will start and must achieve the overall objective; i.e balance between production and utilization for both phosphate and nitrogen by the year 2000. The main points of the third phase are:

- Introduction of the Nutrients Accounting System and the prohibitive levy,
- Introduction of loss standards,
- Reduction in manure quotas,
- Standards on ammonia emission for new intensive animal housing systems (green label), and
- New nitrogen fertilizer application standards.

The first two items are discussed in more detail in the next section.

The Dutch Nutrients [Mineral] Accounting System

The basic idea of the nutrients accounting system is that only a limited amount of nutrients may be left "on the farm", i.e the *loss standard*. After 1997 the loss of N, P and K from all types of input (fertilizer, compound feed etc.) will be restricted. With the introduction of the nutrients accounting system the policy will be extended to nitrogen.

In 1995, all livestock farms must begin to use the system as a management instrument. Beginning in 1996, livestock farms will face a severe levy on surpluses above the loss standard. The levy as proposed is high (30 NLG per kg phosphate, for instance) and is expected to provide a strong incentive to meet the loss standards. The same system will be introduced as a management instrument in arable farming and horticulture in 1997; levies will be introduced in these sectors in 1998.

Several inputs purchased by the farmer contain the mentioned nutrients. Roughly the following groups can be distinguished: starting material, feed, fertilizer, and other. Nutrients, nitrogen in particular, are also supplied by the environment, i.e. by deposition, mineralization on peat soils, and N-fixation. On the other hand, products that are sold or disposed of contain nutrients as well: animals and animal products, vegetable products, manure and offal/leavings. The difference between this surplus and the loss standard is subject to a prohibitive levy. Note that the supply and removal of N, P, and K has to be corrected for stock differences between two balance dates as in ordinary accounting practice.

The data necessary to account for the flow of nutrients to and from the farm must be gathered from different sources. In the Netherlands, suppliers of compound feed and fertilizer and buyers of milk periodically (i.e. once a quarter) provide an overview of the flow of nutrients to the farmer. The nutrient flow linked to

the animals is to be calculated as the product of the live weight and a nutrient standard per kg live weight. Most problematic to assess and to audit is the flow manure. A system of certificates of delivery has been agreed on. However, the nutrient content of manure is highly variable. Manure sampling could be required.

Handling the data for the mineral accounting system can be done separately (stand alone), integrated with production records, or integrated with financial accounts. The advantage of integration with production records is that it supplies the farmer with management information. A problem is that production records are usually branch specific, i.e. separate for dairy, poultry, etc. So on a mixed farm, an enlargement of the production records will be needed. The third option offers the best prospects. All Dutch farmers have compulsory financial accounts done by specialized accountancy agencies to make a tax return, in contrast with the farmers in most other European countries. The integration of financial and nutrient accounts will result in a considerable saving of accounting time. Data have to be entered only once and are directly available in a format that fits in the audit trail. On the other hand, the farmer's involvement will be less, and the results will not be available before closing the fiscal hookeeping records.

Since there is a direct relationship between the nutrient flows and the financial flows on the farm, auditing of the nutrient account in its role as a policy instrument can simply be done by comparison of both statements. Most flows of nutrients have a counterpart in the financial accounts. In the situation of a profitable farm taxed on net income, a conflict of interest exists between the two accounts. An entry which is accounted for as a cost results in less taxable income (attractive); the same entry in the nutrient account contributes to the surplus of N, P, and K and is subject to the appropriate levies (which is not attractive).

The nutrient accounting system offers the possibility to assess whether changes in farm organization are required and which measures would be most cost effective.

The foregoing demonstrates that the Dutch government and the local authorities see their role as setting the conditions for development towards a balance between manure production and its utilization. The (once national) opinion that agricultural entrepreneurs themselves know best how to meet these requirements is losing support, however.

At the moment the mineral accounting system is a matter of intensive political debate. Recently a report was published arguing that the high levies required make the system too susceptible to fraud. A likely political compromise is that farmers can choose either to (1) accept the nutrient accounting system for N and P, or a refined version of the existing manure bookkeeping system on P_2O_5 to demonstrate the nutrient situation at their enterprise is well balanced or (2) to accept new physical measures resulting in a reduction in cattle stock per farm. Research shows that for intensive livestock farming, the crop uptake objective (estimated at 70 kg phosphate per hectare, excess loss 5 kg) could lead to a reduction of more than a third in animal numbers.

Summary

Agro-environmental policy in the Netherlands is primarily carried out through (1) a manure policy applying to livestock farms and (2) a pesticide policy applying to arable farming in particular. Both policies are based on command-and-control regulations. Given the EU Nitrate Directive, other announced EU Directives, and the EU negotiations on pesticide registration, it is expected that other measures, particularly economic incentives, will become necessary.

Editor's Note: An extended version of this article, including endnotes and references, can be obtained from Mrs. Joan Grimes, NCSU, phone (919) 515-4526.

I.R.S./Continued from page 3

tive to carry on business and divide the gains therefrom so long as such organizations are not formed as corporations under state law.

Notice 95-14 states that the election applies only to those entities having at least two members. However, one of the issues on which the Service is specifically requesting comments is the proper treatment of unincorporated organizations having a single member. As the notice points out, several state LLC statutes permit formation of single-member limited liability companies. Similarly, while a partnership must generally have at least two partners under state law, it is possible to have a partnership with a single member for tax purposes where the existence of another member is ignored because such member's interest is too small. Under present law, single member organizations are classified either as associations taxable as corporations or as agency arrangements.

Notice 95-14 requires that all of the members of an organization would be required to consent to the election. Likeise, if no election is made, the organization would be classified as a partnership. However, existing organizations classified as associations would continue to be treated as associations unless and until an election were made to be treated as a partnership. Elections made by existing corporations would be construed as a liquidation of the corporation and the formation of a new partnership. This would produce a significantly undesirable tax result requiring gain recognition on liquidating distributions at both the corporate and shareholder levels.

Notice 95-14 is important to practitioners engaged in estate and business planning for farm and ranch clientele. The possibility to make an election to select entity form may provide additional flexibility in meeting the estate and business planning needs of the farm and ranch client without the need to satisfy (or fail to satisfy) state business association laws. For instance, using a particular business organization to hold a business or assets may facilitate division of the assets into portions that may be given to family members. This provides not only practical flexibility in sharing the business or assets among family members, but also permits advantageous use of the annual exclusion and may reduce the amount of the taxable transfer for transfer tax purposes by virtue of discounts attributable to lack of marketability, minority ownership, and/or lack of liquidity. Furthermore, business organizations can be used to create fractional interests among family members and to take presently appreciating property out of the elder generation's estate by transferring interests with low current value but to which most of the future appreciation will be allocated to the junior members of the family.

The Service is inviting comments on the simplification of the current classification regulations as well as the approach specified in Notice 95-14. A public hearing has been scheduled for July 20, 1995, at 10:00 A.M. in the auditorium of the Internal Revenue Building in Washington, D.C. Written comments must be submitted by July 3, 1995.

—Roger A. McEowen, Kansas State University, Manhattan, KS

CONFERENCE CALENDAR

Agricultural Law Symposium, Kansas State University
May 12, 1995, Wichita, Kansas Airport Hilton; call 913-532-1501.

Drake University's Summer Agricultural Law Institute
June 5-8; 12-15; 19-22; 26-29; July 3-7; 17-20
Call 515-271-2947 or 2065.

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The **law review** of this last year's Educational Conference in Memphis is in the mail. If you do not receive your copy by mid-May, please contact Bill Babione at 501/575-7646.