

# **Sample Cases**

## **2015**



## 6. Cross section of Appeal Cases

### Case 1: Agri-Environment Options 3 Scheme (AEOS) – Appeal Allowed by the Agriculture Appeals Office

An application to the Agri-Environment Options Scheme (AEOS) scheme was made in 2011 and included the Species Rich Grassland (SRG) action. The appellant was informed in March 2015 that three parcels selected for SRG were found at validation in 2014 to have a crop category of forage with a parcel use of 'grass year 5', meaning 2014 was only the 5<sup>th</sup> successive year the parcels had been in grass. The letter stated that records showed that from 2007 – 2009 the parcels were declared with a crop category of arable and a parcel use of fallow whereas SRG parcels must be grassland parcels that have not been cultivated in the last 8 years. The penalty indicated that the parcels were not eligible for payment under the AEOS Terms and Conditions, would not be paid in 2014 and a clawback would be applied for payments made on the parcels to date.

At the Oral hearing, the Department highlighted that a key criteria pertaining to SRG parcels is that they had not been cultivated in the past 8 years. The Department records showed that between 2007 and 2009, three of the SRG parcels were designated as arable and fallow meaning that they had been ploughed and were lying idle. As a consequence the Department's case was that the three parcels were not eligible for SRG and monies paid were to be recouped. The appellant explained that he had inherited the property from a late uncle who had been in REPS and who, prior to his demise, had been unwell and not engaged in any tillage for years. The appellant was not able to re-engage the planner that his uncle had used and was given no records. A new planner was engaged who walked the lands before the AEOS application, and he was of the view that the land was mature pasture. The appellant stated he had not had sight of past Single Payment Scheme applications, and the planner was of the view that the land should have been entered as grass, not fallow, in past years. It was stated that there had been a land eligibility inspection in 2009 and the inspector had said that the land was grass.

The Appeals Officer reviewed all information provided, had regard to the Terms and Conditions of the Scheme and the relevant EU legislation. They considered the Specifications for the AEOS and Natura 2000 Scheme on Species-rich Grassland which states *'These must be full LPIS grassland parcels that have not been cultivated in the last 8 year.'* Following the oral hearing the Department confirmed that the 'crop found' on all the parcels during the 2009 inspection was grass / permanent pasture. The Appeals Officer considered the definition of permanent pasture in the SPS 2009 Terms and Conditions: *"Permanent pasture" shall mean land used to grow grasses or other herbaceous forage.....that is not included in the crop rotation of the holding for five years or longer'*. In considering all available information, including the evidence in respect of the previous landowner, and in particular the information supplied by the Department after the oral hearing, the Appeals Officer was satisfied that the three parcels were in grass in 2009 and was of the view, taking into consideration the definition of permanent pasture, that on balance it was likely that the parcels were in grass in 2007 and 2008 and prior to that. The appeal was allowed.



## Case 2:        **Agri-Environment Options 3 Scheme (AEOS) – Appeal Disallowed by the Agriculture Appeals Office**

The Department approved a contract for an AEOS 1 Scheme application in 2010 for one mandatory action of Wild Bird Cover (WBC) and a number of complementary actions. A cross check found that the plot assigned for WBC was declared as forage on the 2012 Single Payment Scheme (SPS) application. A rapid field visit in 2013 found that the WBC action had not been carried out on this plot. As the single mandatory action had not been complied with, it was deemed that the application did not meet the Terms and Conditions of the Scheme, the contract was terminated and recoupment of all monies paid was sought. The appellant sought a review of the decision on the basis of the historical significance of the surrounding area which included an old graveyard, holy well, park and various amenity services open to the public. The appellant also claimed to be unaware when applying for AEOS that they were not allowed plough the parcel selected for WBC.

At the oral hearing the appellant outlined the historical significance of the area around which they had selected the plot for WBC, and explained that they had fenced off an area selected for WBC. The appellant explained it was only at a meeting in 2011 that they found out this parcel they could not be ploughed. The appellant confirmed the WBC was not sown since the AEOS plan commenced. The appellant stated they had not thought to inform the Department that the WBC was not sown, even following a phone query on the size of the parcel. The appellant explained their involvement with local groups in restoring and improving this historical area through the LEADER programme and their commitment to improving the environment. The appellant also outlined medical issues and a hospital stay in 2013.

The Appeals Officer considered the case, having regard to the EU Regulations, Terms and Conditions governing the scheme and the principles of natural justice. The Appeals Officer noted that AEOS required the following: either 2 Mandatory actions or 1 Mandatory and 1 Complementary action, before an application can be considered valid. In relation to the mandatory action selected, WBC, the scheme specification state *'Each year of your contract, sow a seed crop mix that provides winter cover and a food source for farmland birds and other fauna. Alternatively, you can sow a two year mix plus a one year mix in the third year. The choice of site is critical. The crop must be grown on suitable lands capable of producing and sustaining the crop i.e. soil and aspect that are capable of producing a cereal crop. Do not sow this crop on unsuitable lands, because it will fail to establish...'* The Appeals Officer considered the inspection report which outlined that the parcel was in permanent pasture, was wet in nature, contained a lot of rushes and had not been tilled in years. The Appeals Officer found that the appellant did not attempt to plant any seed crop at any time during the duration of the plan. The Appeals Officer found the appellant became aware in 2011 that the parcel could not be ploughed but did not bring this issue to the attention of the Department at any time prior to penalty notification. It was acknowledged the appellant was environmentally conscious. The Appeals Officer found that the appellant did not comply with the scheme conditions for WBC, and, in not complying with this mandatory action, the entry requirements of the scheme were not met. The medical evidence was considered however it was found that the non compliance began in 2011 and 2012, prior to the health issues outlined. The appeal was disallowed.



**Case 3: Agri-Environment Options 3 Scheme (AEOS) – Appeal Allowed by the Agriculture Appeals Office**

The Department approved a contract for an AEOS 3 Scheme in 2013 for a number of actions, including Water Trough Installation. The appellant submitted a claim for a Water Trough with an invoice dated March 2014. The Department informed the applicant that the invoice was not eligible for re-imbursement as it was in the name of another person other than the participant. The appellant submitted another invoice to the Department in their own name, dated May 2014. The Department stated that the water trough installation action was ineligible under the Scheme, as per Paragraph 8.3 of the Terms and Conditions *'the receipt must be made out by the Vendor in the name of the applicant'* but as date of the second invoice was after the deadline for completion of works of 31<sup>st</sup> March 2014, the Department informed the appellant that the action was ineligible for reimbursement. The Department also outlined that the penalty would apply to the next AEOS payment, in accordance with the penalty schedule (Annex 4) of the Terms and Conditions of the Scheme.

The appellant explained that a water trough was purchased and installed in March 2014 in advance of the deadline under AEOS 3 and explained that the water trough was purchased using the appellant's late father-in-law's account with the local Co-op, for convenience, and this account has been used since the appellant had started farming. The appellant explained that the local Co-op had kindly provided a second receipt, but it was dated with the day that the docket details had been changed into the appellants name by the Co-op, due to limitations with the Co-op computer system, not the date of purchase and installation of the water trough.

An oral hearing was held and the appellant presented the report of the Department inspector who had carried out an on-farm inspection of investments in April 2014, whose report stated that all was in order. The Department explained that an action includes both a physical inspection and a paperwork check. They explained that each invoice submitted did not meet the Checklist requirements for the Department's requirements for the scheme and the action was considered incomplete. Subsequent to the oral hearing the appellant submitted a Credit Sales Invoice from the local Co-op, dated March 2014 and a letter from them of September 2014 confirming that the appellant was solely using the late father-in-law's account.

The Appeals Officer took into consideration all the evidence submitted, field inspection carried out and the date that the appellant's new herd number was assigned. The Appeals Officer accepted that although the name supplied by the vendor was that of the appellant's father-in-law, it was not possible for the Co-op to change the name on the system at that time. However the Appeals Officer found that it was the appellant and not their deceased father-in-law that purchased the water trough. They found that the evidence presented showed that the appellant made the purchase within the given deadline. The Appeals Officer decided that the water trough purchase should be reimbursed and no penalty for non-completion of the action should be imposed. The appeal was allowed.



#### Case 4:       **Afforestation Grant and Premium Scheme - Appeal Allowed by the Agriculture Appeals Office**

A forestry application was initially made in 2008 under the Forestry Environmental Protection Scheme (FEPS) with a proposed planting area situated in a West of Ireland Peninsula. It was outlined as not being situated in a prime scenic area but the Department viewed it as being in *other high amenity landscape* and it was indicated that afforestation would impact on an area commonly used by the public for recreation. The certification report and aerial photography on the Department's online Forestry System (IFORIS) confirmed the proposed area as agricultural land. The application was referred to third parties for review, namely the National Parks and Wildlife, local County Council and local Fisheries Board. The application was refused in 2008 without a field inspection because the site was deemed to be peat-land and therefore ineligible under the rules and conditions of the FEPS Scheme. The decision was appealed and the Department agreed that the presence of the peat on site was overstated but the appeal was disallowed on the grounds of landscape considerations, elevation, exposure, aspect, a small plot of peat-land and proximity to a national scenic route.

The site was applied for again under the Afforestation Premium and Grant Scheme in 2010 with the peat-land plot excluded in the application and minor species changes. The site was deemed moderately sensitive with a requirement for a landscape plan by the Forest Service. In the interim the site had been partially designated as visually sensitive (*Prime Special*) under the County Development Plan 2009-2015. The application was refused by the Department in 2010 for landscape reasons. This decision was supported by the Department's Landscape Architect by way of a desk inspection.

The site was applied for a third time under the Afforestation Premium and Grant Scheme in 2012. The Department's Landscape Architect carried out a field inspection, and this report supported allowing the application subject to minor species changes. However, the application was again disallowed by the Department in 2013 by virtue of having been previously disallowed on appeal. An oral hearing was held and the Appeals Officer considered all evidence presented and examined the Forest Service's Indicative Forest Strategy, *County Development Plan (CDP) 2009-2015*, Tourist Maps, aerial photography on the Department's Forestry System (IFORIS), an extensive number of good quality photographs of the site and its surrounds. The Appeals Officer accepted the landscape was visually sensitive with a part of the site designated as *Prime Special* in the CDP 2009 – 2015 and marked as a tourist route, but the landscape was not presented as being unique and also noted that there were other plantations along this route and their landscape effect is minimal. The Appeals Officer found no evidence to suggest that the *Department's Landscape Guidelines* would be breached with the proposed afforestation of the site and also accepted the Expert Report of the Department's Landscape Architect supporting afforestation approval on the site. The Appeals Officer accepted the appellant's Forestry Consultant's view that exposure, stability and as a consequence windthrow risk are not significantly different to other locations in the West of Ireland and risk reduction measures were within the control of the owner. The Appeals Officer also found that the visual effect of the forest operations are unlikely to be significant due to the relatively small size of the proposed plantation and are likely to be short term in duration. The appeal was allowed.



## Case 5: Beef Data Programme – Appeal Disallowed by the Agriculture Appeals Office

Appellant was informed in June 2014 that the net amount payable under the Beef Data Program (BDP) 2013 was nil. The Terms and Conditions of the BDP required that the prescribed data under Commitments 1 and 2 must be completed on all suckler cows and their calves born in the herd. The appropriate survey forms relating to both Commitments were issued from ICBF to the applicant in October 2013 and March 2014 for completion, and the 31<sup>st</sup> May 2014 was the closing date for acceptance of the forms. The appellant's Commitment forms were received by ICBF at the end of August 2014, which was outside of the required timeframe.

The appellant sent a letter to ICBF in August 2014 enclosing completed data for 2013. The appellant stated that the Beef Data Programme Input Sheets were not received due to mistaken postal delivery by An Post. The appellant only became aware of this in July 2014 when the letter from DAFM confirming non payment was received. A letter from An Post was submitted stating that *'While we are unable to say for definite what became of this letter, we cannot rule out the possibility that it was mis-delivered to an address with a similar sounding name in this area'*. The Department found that other correspondence sent out from the Department for SPS 2013 and 2014 was received by the applicant and that the payslip for BDP was sent to the appellant's address in June 2014 with no issues. The Department concluded that it was feasible to suggest the said forms were delivered as appropriate and the decision regarding non payment should stand. At the oral hearing it was explained that a number of animals had been registered to the appellant under the Beef Data Programme 2013 but the scheme payment requirement that Commitment 2 be completed for at least 75% of the cows and calves in the was not met. The Department's view was that the letter from An Post was insufficient evidence, and that all other forms that had been sent to this address had been received and returned. The appellant outlined their case including referring to local postage issues. The Department explained that the ICBF sends out forms, and if the first form is not returned, or is only partially filled in, a second form is sent out. The Department said that forms were sent out in October 2013 and March 2014. The appellant claimed that these were the only letters that were lost for 5 or 6 years.

The Appeals Officer considered the Terms and Conditions of the Scheme, the relevant EU legislation and the circumstances particular to this scheme. They found under Section 13 'Responsibility of the Applicant' that *'It is the responsibility of the applicant to familiarise him/herself with the Terms and Conditions of the Scheme, return all completed forms within the required timeframe, and be aware of the consequences for breaches of the Scheme'*. The Appeals Officer took into consideration the fact that pre-printed Single Payment Scheme (SPS) maps and application form were sent to the appellant during March 2014 and both were received, as evidenced by signed SPS form received by the Department on 14<sup>th</sup> May 2015. It was the BDP forms sent in March 2014 and in October 2013 that were claimed not to have been received. The Appeals Officer considered all the evidence submitted but found that the appellant had a responsibility to be aware of the timeframes within which data should have been returned. The appeal was disallowed.



**Case 6: Statutory Management Requirement (SMR) 4 Cross Compliance – Appeal Disallowed by the Agriculture Appeals Office**

An inspection was carried out in March 2015 by Department of Agriculture, Food and the Marine officials, on behalf of the Department of the Environment to determine compliance with the European Union (Good Agricultural Practice for the Protection of Waters) Regulations 2014 (Nitrates Regulations SI 31 of 2014) which is Statutory Management Requirement (SMR) 4 relating to Cross Compliance.

An inspection had been carried out in 2012 with a 3% penalty on the Nitrates SMR 4 imposed at that time. At the 2012 inspection, the storage of farmyard manure in the field had been highlighted. Subsequent to the inspection, a farmyard manure pit was constructed to avoid further penalty. Another inspection was carried out in March 2015 which found 'Evidence of inadequate collection of livestock manure, other organic fertilisers and soiled water'. Specifically the inspectors found inadequate collection of soiled water from the manure pit, milking parlour and assembly area, leading to indirect discharge to groundwater. The 2015 inspection found that the manure pit was inadequate and it also highlighted an issue with the milk tank washings in the dairy. This resulted in a repetition sanction of 9% being applied, as there had been a 3% penalty applied within the previous three year calendar period.

At the Oral hearing, the appellant's advisor said that the appellant has a new slatted shed and has set up a new dung stead. The appellant highlighted that they were committed to abandoning the new manure pit and all manure would in future be spread direct to the field within the period permitted. The appellant said that he had undertaken to correct all issues, and completed a number of actions in May 2015 including clearing out the dung stead and putting it out of use, fitting pumps to slatted house tanks and ensuring that dairy waste water is going into the slatted house unit.

The appellant's Teagasc consultant outlined that a farm development plan and farmyard restructuring plan had been agreed for the farm a few years back, but due to inclement weather and low returns/ high costs from farming the implementation of these plans was delayed until 2013/2014. However since the 2012 inspection, the farmer had carried out significant work on the farmyard at great cost, with the addition of roofed housing, slurry storage facilities and restructuring of waste conveyance facilities.

The Appeals Officer noted that the appellant had carried out work to rectify the problems found on the day of inspection, however noted that breaches of the Nitrates regulations were found at the inspection. The Appeals Officer was sympathetic to the difficulties, the current facilities provided and the efforts that the appellant was taking to rectify the situation. However the Appeals Officer found that the level of reduction/ penalty applied was correct, in line with the Terms and Conditions of the Scheme and in compliance with the EU Regulations. The appeal was disallowed.



**Case 7: Statutory Management Requirement (SMR) 5 Cross Compliance – Appeal partially Allowed by the Agriculture Appeals Office**

The National Parks and Wildlife Service (NPWS) carried out an inspection on the appellant's farm and the Department notified the appellant in April 2014 of a penalty of 20% being applied on 2013 payments under the Single Farm Payment (SPS) and/ or Disadvantaged Areas Scheme (DA), REPS and AEOS where applicable. The 20% intent sanction was imposed in relation to non-compliances found in respect of Statutory Management Requirement (SMR) 5 Conservation of Natural Habitats and of Wild Flora and Fauna. The inspection found woodland and scrub was removed in a Special Area of Conservation (SAC) and some drainage had also been carried out at the site.

At the Oral hearing, the Department explained that the NPWS inspection reported that works were undertaken without consent, there was reclamation of land and deepening of drains, which was deemed destruction of the SAC. The Department established that the appellant was partaking in REPS 4 and checked the REPS maps for reference to the SAC site and permitted areas. The Department had the view that the appellant was fully aware it was an SAC area and it was identified as a designated site on their REPS plans, the site was re-designated in 2005 and the appellant was notified of this December 2005 by the NPWS. The Department stated that the appellant carried out the works on the land without any consent from NPWS. The appellant stated that the area of land where work took place was considerably less than the NPWS had stated and questioned the definition of intent in the regulations. The appellant also explained there were mitigating circumstances due to the poor weather conditions at the time, 2012/2013 was a very wet year and there were concerns regards poaching. The appellant explained they had no intent of reclaiming the land but there was water running everywhere and it had to be taken off the field to prevent the land being damaged. The appellant's representative said that scrub was not removed during the bird nesting season between 1<sup>st</sup> March and 31<sup>st</sup> August. The appellant also stated that they were unaware that this land was designated as SAC.

In considering the case, the Appeals Officer had regard to the Terms and Conditions, the relevant EU legislation and the circumstances particular to this case. The Appeals Officer noted that it was accepted by both parties that some work was carried out in the SAC. The Appeals Officer considered Commission Regulation (EC) No 1122/2009, Article 72 which deals with the 'Application of reductions and exclusions in the case of intentional non-compliance' which states: *'...where the non-compliance determined has been committed intentionally by the farmer, the reduction to be applied to the total amount referred to...shall, as a general rule, be 20% of that total amount. However, the paying agency may, on the basis of the assessment provided by the competent control authority in the evaluation part of the control report...decide to reduce that percentage to no less than 15% or, where appropriate, to increase that percentage to up to 100% of that total amount'*. They also considered Article 71 which deals with 'Applications of Reductions in the case of negligence'. The Appeals Officer accepted the Department's argument that the appellant should have been aware that this was an SAC site, as it was identified as such on their REPS plan, and accepted that the appellant should not have carried out work on this site without prior NPWS approval. The Appeals Officer found that the Department was correct in imposing an intent penalty on the application. However, in view of the mitigating circumstances outlined at the oral hearing, of unprecedented heavy rainfall that lead to flooding, it was the finding of the Appeals Officer to reduce the penalty imposed from 20% to 15%. The Appeal was partially allowed.



**Case 8:       Single Payment Scheme (SPS) - Late Application – Appeal Allowed by the  
Agriculture Appeals Office**

The appellant forwarded a copy of his 2014 Single Payment Scheme (SPS) application and Swift-Post receipt to the Department in October 2014 after being made aware when querying payment that the Department contended the original was not received. The Department decision stated the closing date for receipt of valid SPS applications was 15<sup>th</sup> May 2014 and the onus remains firmly with the applicant to ensure the application is submitted on or before the closing date. The Department confirmed it had received an empty application envelope by tracked postage.

The appeals grounds included that the appellant had completed the application with the help of Teagasc and posted it on the way home and could not understand how the envelope could arrive empty going directly from the Teagasc Office to the Post Office.

The Department side stated there were no documents in the envelope received; their procedure is that all envelopes are opened for data capture and empty envelopes are recorded on a database with the actual envelope retained. The Department stated the circumstances were outside any application of force majeure.

The Teagasc Advisor confirmed it would be normal to meet clients, complete the forms as required and get them signed, then place them in an envelope, seal and address it and give it to the client to post on the way home. The Teagasc advisor said that file notes indicate the 2014 SPS application at appeal was signed in his presence.

The evidence showed an SPS amendment form was received by the Department from the appellant on 9<sup>th</sup> June 2014 to include additional land.

The closing date for Single Payment applications was 15<sup>th</sup> May 2014. The 2014 Terms and Conditions state at Section 2 that in the event that the Department does not receive your completed 2014 SPS application, which you sent by post, you will be required to produce proof of postage. The only acceptable proof of postage is (a) Express Post Receipt and (b) Registered Post receipt.

The Appeals Officer found that this case was governed by Section 2 of the Terms and Conditions and the appellant held a valid swift post receipt as required. The Appeals Officer also found that the amendment form was received by the Department on 9<sup>th</sup> June 2014, which fell within the 25 calendar day period after the 15<sup>th</sup> May closing date for the acceptance of late SPS applications. The Appeals Officer found that if the appellant was contacted on the day the Department received the SPS amendment it would have been possible to have an SPS application copy lodged before the final closing date for the acceptance of late applications. The appeal was allowed.



**Case 9: Good Agricultural Practice for Protection of Waters Regulations - Nitrates  
Derogation – Appeal Allowed by the Agriculture Appeals Office**

Farmers, in the absence of a Nitrates Derogation, are obliged to ensure that the total amount of organic nitrogen (N) from livestock manure applied to their land (including that deposited by the animals themselves) does not exceed 170 kg N per hectare in a calendar year. The Department records indicated 192 kg N per hectare for this farm in 2013. The appellant had also breached the 170 kg limit in 2011 and 2012 and a further 'repetition' sanction was applied for 2013 amounting to 45% of the area based EU payments.

The appellant's grounds of appeal included that 40 ha of land was rented in each of the years 2011, 2012 and 2013, but the land was not included on their SPS application as the owner would not give the LPIS numbers or maps. The appellant stated livestock had been transferred to the rented land. The Appeals Officer was confined to examining the case for 2013.

At the hearing the appellant confirmed that he went to the Department office to explain the situation and was given a Record 4 form which was completed and posted. It transpired the appellant did not get credit for the movement of the stock stated on the Record 4. Proof was offered of the movement dates. The Department Inspector confirmed the cattle on the Record 4 form were not credited for Nitrates purposes, but other cattle notified through movement monitoring system were credited. The appellant stated that the owner of the farm onto which the cattle were moved had no cattle of their own.

It is the responsibility of applicants to be aware of the Nitrates requirements. Statutory Instrument No. 610 of 2010 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010, Section 20 (1) states: "... *the amount of livestock manure applied in any year to land on a holding, together with that deposited to land by livestock, shall not exceed an amount containing 170 kg of nitrogen per hectare*".

The Appeals Officer found that the Record 4 form (*Notification of Temporary Movement of Cattle or Sheep – other than cattle moved under AIM*) was received by the Department in August 2013 notifying the movement of 29 cattle. However, the Appeals Officer found that the Department had deemed that the receiving farm had cattle and as a consequence the Record 4 form was not accepted. The Appeals Officer through further examination found the owner of the lands onto which the 29 cattle were moved had no cattle of their own, and as a consequence the Record 4 form was acceptable.

The Appeals Officer determined that the appellant should receive credit for the cattle contained on the Record 4 form and allowed the appeal. The outcome was a reduction in organic nitrogen from livestock manure applied to 148 kg N per hectare which meant that no breach had occurred in 2013.



# **Case 10: Good Agricultural Practice for Protection of Waters Regulations – Nitrates - Appeal Partially Allowed by the Agriculture Appeals Office**

Organic nitrogen levels were 210 kg per hectare for 2013 and the 170 kg per hectare Nitrates limit was exceeded, and as a result of 2013 being a 2<sup>nd</sup> repeat breach within three consecutive years the appellant was subject to a “further repetition sanction” giving rise to an 81% penalty on 2013 payments.

The grounds of appeal included that the appellant’s late husband had managed all cross compliance issues up to 2009 and the appellant had engaged the services of an agricultural advisor since 2014. The appellant had reduced the area farmed by over 50%, not realising a reduction in stock numbers was required to comply with Nitrates.

The Nitrates Regulations – Statutory Instrument 610 of 2010 and the 2013 Single Payment Scheme Terms and Conditions applied. In the absence of a derogation the Nitrates limit of 170 kg per ha applied to the holding in 2013. In respect of the area farmed the Appeals Officer found that it was unchanged since before 2006. The Appeals Officer found the 2012 breach was a further repeat breach of Nitrates, over 2011 and 2010, and gave rise to a 15% penalty based on a trebling of a background 9% from 2011 with the outcome (27%) being reduced back to 15% as required by Regulation for the maximum sanction under negligence. The 81% sanction for 2013 was arrived at by the Department trebling the background 27% from 2012 on the basis of being a further repeat breach.

The Appeals Officer found Article 71(5) of Commission Regulation (EC) 1122/2009 states for cases of negligence that; *...the maximum reduction shall, however, not exceed 15 % of the total amount referred to in Article 70(8). Once the maximum percentage of 15 % has been reached, the paying agency shall inform the farmer concerned that if the same non-compliance is determined again, it shall be considered that he has acted intentionally within the meaning of Article 72. Where a further non-compliance is determined thereafter, the percentage reduction to be applied shall be fixed by multiplying the result of the previous multiplication, where applicable, before the limitation to 15% as provided for in the last sentence of the second subparagraph has been applied, by a factor of three.* Section 92 of the preamble to Commission Regulation (EC) 1122/2009 states with regard to cross-compliance obligations, *..., it should be provided that as of a certain moment, repeated infringements of the same cross-compliance obligation should, after a prior warning to the farmer, be treated as an intentional non-compliance.*

The 81% sanction was thus an ‘intent’ level sanction applied through repetition and the Appeals Officer found that Article 71(5) required the Department to inform the appellant at the time of imposing the maximum 15% negligence sanction for 2012, that if the same non-compliance is determined again, it shall be considered that the appellant acted ‘intentionally’. The Department records provided showed no evidence the appellant was notified that a further repeat breach would be deemed intentional. The Appeals Officer decided in the absence of the required notice regarding ‘intent’ to reduce the 81% sanction to the 15% ceiling applicable to ‘negligence’ breaches, the appeal was partially allowed.