

**British Aggregates Association
10 Brookfields
Calver, Hope Valley
Derbyshire S32 3XB**

Tel/Fax: 01433 639879
Mobile: 07711 492 378
phuxtable@british-aggregates.com
www.british-aggregates.co.uk

22nd July 2009

**Adrian Brookes
DEFRA Area 2C,
Ergon House
Horseferry Road
London SW1P 2AL**

waterresources.consultations@defra.gsi.gov.uk

**Olwen Minney
Water Policy Branch, Climate Change & Water Division
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ**

water@wales.gsi.gov.uk

Dear Olwen and Adrian

Consultation on implementing the abstraction elements of the Water Act 2003

The British Aggregates Association (BAA) represents the interests of some 90 members. 60 are independent and privately-owned SME quarry companies throughout the UK with some 10% of national output and operate from over 100 sites. We are active members of the CBI Minerals Group.

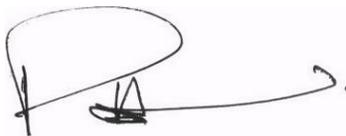
Many member operations take place below the water table and it is necessary to dewater to enable extraction. In most cases little or no net water abstraction occurs with water being returned to the same aquifer or one adjacent. We believe that imposing an abstraction license in such cases amounts to bureaucratic overkill and these operations should be exempt.

We would note that in the current recessionary conditions in the country that this imposition is particularly and unnecessarily onerous. Additionally the industry is currently facing an unprecedented level of government consultation and new regulation much of which is neither welcome nor necessary; and contravenes both UK and EU better regulation intentions and targets.

Smooth transition from currently exempted activities is essential to avoid unreasonable burden on our SME operators and imposing the new regime from October 2009 is totally unrealistic not least as the Agency always looked for a 2-year implementation through to end 2010.

The ability to dewater is essential for our members to remain in business. In the hopefully unlikely case where a permit might be refused it is essential that full compensation provisions always apply.

Our detailed responses are attached.



Peter Huxtable Secretary



Section 2 – Transitional arrangements

- Q1 Subject to a right of appeal, should the Agency be able to change the type or number of licences applied for or treat an application as a variation of an existing licence?**
Any required transfer licence must confer a protected right on the holder the same as for full transfer licenses as quarry dewatering is an essential requirement to continue in business.
- Q2 Should any special transitional provisions be made to deal with these existing consents or should they expire naturally at the end of their time limit?**
No comment.
- Q3 Do you agree that 4 years is a reasonable qualifying period? If not, what do you suggest as an alternative and why?**
4 years should normally be a reasonable qualifying period provided the technical guidance clearly outlines what constitutes “actually abstracted water from a source of supply”
- Q4 Do you think a one year application period provides abstractors of newly licensable abstractions with sufficient time to submit their applications?**
No. The proposal for requiring applications for abstraction licences under the transitional provisions to be submitted by 30 September 2010 is unrealistic and we see no reason why the two years periods envisaged in “Taking Water Responsibly” should not remain; and propose that the deadline for submission of applications should be moved to 30 September 2011.
- Q5 Once a currently exempt abstraction becomes licensable under the 2003 Act and if a full licence is granted, it will be subject to annual charges. Do you have any comments about this or any of the other charges that will be payable for an application under the transitional provisions?**
A new charges relating to an activity that already occurs would be most unwelcome, and where little or no net abstraction occurs a charge should be waived.
- Q6 Do you consider a period of up to 5 years from the end of the application period to be a reasonable time for the Agency to reach a decision on all applications? Should the time for determining a licence application be shorter or longer?**
Uncertainty about the outcome of the determination of an application could affect investment decisions by operators particularly as the proposed deadline for compensation gets closer. We would propose that the deadline for determining all applications should remain 30 September 2015 but that the deadline for submission should be 20 September 2011 (see answer to Q4 above) thus reducing the period for determination to 4 years.

Section 3 – Removal of exempt area status

- Q7 Do you agree with the proposal to apply the normal threshold in areas previously exempt from licence control in line with the rest of England and Wales?**
No comment.

Section 4 – Compensation

- Q8 Do you agree that a period of 6 years following an appeal decision is a reasonable period of time in which to make a claim for compensation?**
The Government gave an undertaking that that there would be a presumption in favour of granting newly licensable abstractions at the time the 2003 Act was passed. The implications for operators who currently extract or plan to extract minerals below the water table by

dewatering are very significant because a license refusal could shutdown an operation. For SME operators with one or two quarries, it could put them out of business.

The compensation provisions are therefore of critical importance to the sector.

Q9 Do you agree that at least 10 years is a reasonable period of time to convert a plan into an application and then, following an appeal decision, make a claim in this category? Should this period be shorter or longer?

Mineral extraction operations may take place over a period of in excess of 25 years and dewatering may only be required towards the latter stages of the development. An operator may therefore not require an abstraction licence for in excess of 10 years. The process of obtaining this licence may take several years and operators will need to plan to take account of this when deciding the appropriate point at which to apply for the licence which ensures no disruption to their operations.

Provided there is no restriction on how long a licence may be applied for in advance of the requirement to dewater then 10 years would be a reasonable period in which to submit an application and if necessary pursue this to appeal. However as stated elsewhere, we do not believe that an arbitrary cut off for claiming compensation is either fair or reasonable where the time required to complete the application and then make a claim is not within the control of the applicant. Again we would submit that guidance should set out clearly those circumstances were, due to delay attributed to the operator, the cut off would apply.

Q10 Do you think it is reasonable that no compensation be paid to abstractors who are public authorities or where the abstraction is causing serious damage to the environment?

No comment.

Section 5 – New exemptions

Q11 Do you support the proposed exemption for ports and harbours?

No Comment.

Q12 Do you agree with the proposed exemption for dredging operations?

No comment.

Q13 Does the definition of authority cover all public bodies with a statutory duty to undertake dredging?

No comment.

Q14 Do you agree with the proposed exemption for water meadows and that this should be limited to the abstraction or impounding of water within a water meadow where that is necessary solely for the management, operation or maintenance of a water meadow?

No comment.

Q15 Do you agree that the Mersey and Weaver River Authority exemption from licence control relating to the abstraction of water with a high saline content from specified underground strata should continue as at present, albeit in a new legal form?

No comment.

Q16 Do you support the proposal that all new impounding works constructed by or on behalf of Internal Drainage Boards in exercise of their functions and within their appointed areas should be exempt from licence control or, if not, why not?

No comment.