

9th May 2006

**Andy French
AEQ5 DEFRA
7/H10 Ashdown House
123 Victoria Street
London
SW1E 6DE**

Dear Andy

Consultation on the Pollution Prevention and Control Act 1999 - review of the regulatory approach to some 'Part B' activities

We thank you for the opportunity to comment on this consultation.

The British Aggregates Association represents the interests of some 55 privately-owned and independent quarry companies throughout the UK operating out of over 100 individual sites with some 10% of national output. We also have 25 associate members who have interests in and offer services and equipment to our industry. Some of our members also have asphalt and ready-mix concrete facilities and/or operate landfill sites. We were formed in late 1999 and our membership has grown steadily. BAA is an integral part of the consultation process with ODPM, DEFRA, DTI, Treasury and Customs and Excise. We are members of the CBI Minerals Committee and the Construction Products Association. We also have formed strong links in Europe. BAA maintains the highest regard for environmental matters and operates a Restoration Guarantee Fund similar to the SAGA scheme which we launched in October 2002.

You will recall the BAA response dated 31 December 2003 to the further opportunity to comment on the second review of the (draft) Process Guidance Notes for the Minerals Sector, and I enclose a further copy. You should be aware of the continued considerable dissatisfaction of our industry with the bad regulation of the current LAPPC regime. This current Review of the Regulatory Approach should form the basis for this level of dissatisfaction to be addressed.

Our comments to your specific questions are as follows:

Q1: Is the activity a significant source of local, national or transboundary air pollutants, including any which would compromise achievement of existing national air quality policy or objectives, European obligations or other international agreements or future commitments which are likely to be developed?

No, insofar as the activities covered by PG Notes 3/1; 3/8; 3/14; 3/15a; 3/15b; and 3/16. These activities do not produce a significant source of air pollutants.

Q2: Is the proactive approach (a) necessary, or (b) desirable to avoid pollution occurring or minimise its impacts? Could other regimes, such as statutory nuisance,

Clean Air Act, waste regulation, or planning, provide sufficient mitigation? Are there cases where Part B sectors have achieved all the likely major improvements for the foreseeable future and those achievements can be maintained and enforced through a simpler regulatory system?

The proactive approach in respect of the activities covered by PG Notes 3/1; 3/8; 3/14; 3/15a; 3/15b; and 3/16 is not strictly necessary, but it may be desirable. Other existing regimes such as statutory nuisance, Clean Air Act, waste regulation, or planning are very unlikely to be effective. Perhaps the Health & Safety at Work Acts could provide a suitable regime with their emphasis on competency and continuous improvement. Under a regime operated under the Health & Safety umbrella, HSE would enforce at quarries, and Local Authorities at other locations.

Q3: Should some or all activities which have primarily a nuisance impact return to statutory nuisance regulation?

Statutory nuisance regulation already exists, but its existing implementation and enforcement is generally carried out by the same Local Authorities who (with a few notable exceptions) are responsible for the generally poor implementation of the LAPPC system; so a statutory nuisance system is likely to fail for that reason alone. When the extreme variability and unpredictability of 'justice' as handed down by Magistrates Courts (and indeed other Courts) is considered, it can be seen that any return to statutory nuisance regulation might be a somewhat worse situation than the current unsatisfactory one.

Q4: What are the views of businesses in each relevant Part B sector on the merits of prior approval as against reactive controls?

Any system of prior approval requires a standard template of 'Objectives'.

The existing templates such as PG Notes 3/1; 3/8; 3/14; 3/15a; 3/15b; and 3/16 concentrate far too much on 'Methods' by which the Objectives might be achieved. Any template of Methods inevitably lags behind current best practice and technology, and risks becoming fossilised and of limited value in addition to actively preventing the development of new best practice and new technology. Another difficulty with the existing PG Notes 'Methods' templates are that they are already gold plated, and are far too often further gold plated by Local Government during the implementation phase.

However, a simplified system of prior approval could ensure that an Objectives template is competently designed by Central Government in close consultation with industry practitioners including SMEs. What is needed is a very clear short and simple definition of 'Objectives'. Then each operator can use its particular management skills in arriving at the best solutions to achieving the Objectives in its own unique situation. The regulators can then exercise judgment as to their effectiveness, with a properly functional Appeals Process to promptly resolve any disagreements between enforcer and enforced.

In respect of the sectors within which PG Notes 3/1; 3/8; 3/14; 3/15a; 3/15b; and 3/16 exist, the Health & Safety at Work Acts may perhaps provide the appropriate framework.

The Health & Safety Executive has the expertise and coverage in respect of quarries (where many of the installations are located), so the HSE's Mines & Quarries Inspectorate could take this under their wing. Benefits would include a common

national standard of regulation and enforcement, by people who are already very familiar with our industries, where a dramatic reduction in deaths and injuries has been achieved from our joint BAA/QPA/HSE Hard Target initiatives.

Where these installations are not located within quarries, Local Authorities could continue but only if their competence was drastically upgraded.

It is essential to have a properly functional Appeals Process to promptly resolve any disagreements between enforcer and enforced.

Q5: Would any other Part B sectors be suited to these or any similar simplified approaches to PPC applications and permits?

Not known.

Q6: Is there any scope for using any alternative instruments to control air pollution from any Part B sectors?

The exemptions available by way of the trivial releases clauses of the 2000 Regulations appear to be highly relevant in the cases of PG Notes 3/1; 3/8; 3/14; 3/15a; 3/15b; and 3/16.

Q7: Is there any scope for amending the definition of 'triviality' so that, while LAPPC Part B sectors remain within PPC, more low risk installations might be exempted?

Yes.

Q8: Are there: (a) any other existing activities' not regulated at present under Part B, and/or (b) processes or technologies currently being developed which should in future be regulated under Part B?

No.

Thank you for this opportunity to respond and we trust that our points will be considered. If you require any further information or clarification, please do not hesitate to contact me further.

Yours Sincerely

Peter Huxtable
MA(Cantab) CEng FIQ FIMMM
Secretary