

5th December 2006

**Anne Wood
Permitting & Planning Interface Consultation
Planning – Resources & Environment Policy Division
Department for Communities & Local Government
4/B1 Eland House,
Bressenden Place,
LONDON
SW1E 5DU**

Dear Anne

Planning and Pollution Control - Joint DCLG/DEFRA consultation on options for improving the way planning and pollution control regimes work together in delivering new development.

Thank you for inviting us to comment on the above papers.

The British Aggregates Association (BAA) represents the interests of over 80 members. 55 are independent and privately-owned SME quarry companies throughout the UK with some 10% of national output and who operate from over 100 sites. We are active members of the CBI Minerals Group.

Several of our members operate waste, recycling and landfill facilities and so have direct experience of the problems associated with the interface between land-use planning and pollution control. Quarry restoration schemes often involve the import of inert materials for use in restoration of sites.

We believe it is essential to retain separate land-use planning and pollution control regimes and that any development involving both regimes must be land-use planning led. Whilst there may be some overlap, retaining the current system minimises unnecessary duplication, over-regulation and additional costs and bureaucracy which would inevitably occur otherwise. This would also impose a disproportionate impact on SME companies like most BAA members.

The recently published Davidson Review recommends (item 7) that Defra and DCLG should move quickly to incorporate the final outcomes of this review into the environmental permitting and planning systems. This recommendation also calls for a full review of the regulation of inert waste with the aim of adopting a more proportionate and risk-based regulatory landscape.

BAA consider that application and imposition of three items would improve the process mechanism both in cost and time, and contribute significantly to the government's guiding principles of better regulation:

- Re-introduction of the pre-1991 presumption in favour of development.
- Strict imposition of time constraints for consultees – and a nil response indicating approval and no objections.
- Tougher enforcement and much higher penalties for illegal tipping and a commensurate reduction in charges to responsible operators.

We set out overleaf the answers to the specific questions raised in the consultation.

Question 1

This consultation paper focuses on the interface of land-use planning and the Environment Agency's responsibilities for waste management and pollution control permitting. Do you agree with the scope of the consultation?

Yes but we also think it is necessary to have regard to the interface between MPAs and LPAs where a two tier planning regime exists. Developments involving waste materials are dealt with by LPAs who often do not have the expertise to fully appreciate the issues eg re-contouring of land during the construction of a golf course using imported inert materials. These activities are also generally exempt from waste licensing. Compare this to the situation highlighted in the Davidson Review. The use of similar materials to restore mineral workings must not only be fully addressed at the planning stage by the preparation of detailed schemes for approval by the Minerals and Waste Planning Authority, but also requires a PPC permit from the Environment Agency. A level playing field must be provided which clearly in this case does not occur.

Question 2

The current arrangements for transposing the requirements of EU legislation provide for potentially overlapping responsibilities. Do you consider that this can be unhelpful for working across the interface between planning and pollution control?

Most definitely yes. The Davidson review notes the problem of "double-banking" where European legislation covers similar ground to that already covered in existing and adequate domestic legislation and where regimes are not coherently merged in the implementation process. The transposition of the EU Mine Waste Directive is presently being addressed. The matters addressed by this Directive are to all intents and purposes currently fully addressed by Planning, and Mines and Quarries legislation. There is in this instance a very clear danger of not only "double-banking" in transposition but of introducing a third regulatory regime with resultant additional bureaucracy, cost and time impacts.

Question 3

The consultation presents examples of problems encountered when working across the planning and permitting interface. From your experience do you agree with the problems described:

a) when remediating land affected by contamination?

We have no particular views on this issue.

b) from regulatory duplication in information requirements?

We agree but in addition the problem is often compounded by the Environment Agency not responding in reasonable time to an MWPA consultation or subsequently changing their position on a particular issue between the planning and permitting process. There is also duplication between the Environment Agency's role in nature conservation and that of the Planning Authority, Highways Agency, Natural England and local Wildlife Trusts.

b) considering the implications for health?

We agree. Health issues can arise not just in respect of permitting. For example, the Industry has a good working relationship with the Health and Safety Executive for addressing worker health issues associated with dust.

c) in securing effective input to planning applications?

We strongly agree. It is incumbent on the Environment Agency and other consultees to provide full, consistent and timely responses when consulted on a planning application and in pre-application discussions, but this often does not happen. It would be helpful in the interests of

better regulation if it became mandatory that no response within the stated timeframe was deemed as indicating no objection. A mechanism also to deal with deliberately late and stalling objections needs some further consideration.

e) in promoting community confidence in decision-making?

We agree

Question 4

One area of expressed concern is the sequencing of planning permission and pollution control permits. Do you see merit in:

- a) the planning context being confirmed first through the grant of planning permission before the pollution control permit is issued?**
- b) the pollution control permit being issued before planning permission is sought?**
- c) both the planning permission and the pollution control permit being sought in parallel?**
- d) flexibility for the applicant to pursue necessary authorisations in the order they see fit?**

Ideally there should be no requirement to twin track applications since this could involve excessive cost given the inherent risks in the planning system. We believe that the applicant should have the flexibility to elect for the sequencing they think appropriate on a case by case basis, which is essentially covered in option (d).

Question 5

Do you agree that the criteria set out in paragraph 5.2 are the right ones to test the development of new options against? Consultees are invited to suggest amendments or offer further criteria.

We agree with the criteria. But in bullet 3, as well the reference to reduced costs to business, we should like to see explicit reference to reduced delay

Question 6

One option for improving the interface between planning and pollution control could be to prepare and implement protocols (or administrative improvements) that set out roles and responsibilities between planning and pollution control authorities. Do you:

- a) support this option?**
- b) feel it would be sufficient by itself to address your concerns?**

Protocols would be of assistance provided they are given sufficient status that where they are not followed an applicant would have powers to appeal to the Secretary of State. They would not, however, be sufficient to address all our concerns. It is essential that full consultation takes place during the preparation of any protocols. There should not be a plethora of reference points and any such protocols should be incorporated into a single comprehensive, brief and simple guidance document for ease of reference.

Question 7

One option for improving the interface between planning and pollution control could be to publish specific practice guidance on working across the planning and pollution control interface so as to deliver the expected ways of working set out in PPS10 and PPS23. Do you:

- a) support this option?**
- b) feel it would be sufficient by itself to address your concerns?**

We support this option but it again would not be sufficient in its self. Full consultation should take place with industry in the preparation of such guidance and as stated above it should be incorporated into one single, brief, simple and comprehensive document.

Question 8

One option for improving the interface between planning and pollution control could be to amend the approach set out in Schedule 4 of the Waste Management Licensing Regulations 1994 to separate more clearly the roles and responsibilities of planning and pollution control authorities. Do you:

a) support this option?

b) feel it would be sufficient by itself to address your concerns?

Yes, but in practice it is difficult to see how this could be done. For example, the legal framework for the preparation of environmental impact assessments necessitates an overlap. It would therefore not be sufficient to address our concerns.

Question 9

One option for improving the interface between planning and pollution control could be to discharge some waste permitting requirements through the planning permission. Do you support this option?

This option may be superficially attractive but is likely to be inappropriate in most circumstances. There remains a clear need for MWPAs to deal with planning and land-use issues including physical development and for the EA to deal with processes that have the potential to pollute land, air and water. As we have stated in connection with question 1 above, there is already a need for greater clarity regarding the responsibilities of the Minerals and Waste Planning Authority and the Local Planning Authority so any broadening of the planning process might simply shift the interface problems. As stated above there is a need for clear guidance on what constitutes “permitting requirements”

Question 10

In the particular case of construction sites one option could be for particular waste permitting requirements to be discharged through the granting of a planning permission for the development envisaged.

Do you support this option?

This can be an issue where there is an opportunity for use of waste in an effective and sustainable manner but delays in EA handling of applications prevents the project proceeding due to time constraints.

Question 11

In the particular case of proposed new development on contaminated land one option could be for those matters addressed by the relevant pollution control authority through their waste management licensing to be excluded from the set of factors that the local planning authority is expected to consider in assessing whether the proposed development is appropriate.

Do you support this option, either:

a) by itself?

b) or as part of a permit that consolidates all pollution control responsibilities along the lines of that proposed in the Urban Task Force report, ‘The Remediation Permit: towards a single regeneration licence’?

c) or, irrespective of any changes to the remit of the local planning authority would you favour a permit along the lines of that proposed in the Urban Task Force report, ‘The Remediation Permit: towards a single regeneration licence’?

We have no comments to make.

Question 12

One option for improving the interface between planning and pollution control could be for local authorities to be the regulator for discharging all pollution control activities. Do you support this option?

This is superficially attractive, but we do not believe it is a realistic option. The split between land-use planning and the control of potentially polluting processes should be retained. Both processes must be carried out by the respective regulators in a competent, adequately resourced, consistent, professional and transparent manner

Question 13

One option for improving the interface between planning and pollution control could be to prescribe methods of working essential to good delivery, for example the parallel submission of applications for planning permission and pollution control permit applications. Do you support this option?

Our answer is the same as for Q.4 that is the applicant should have the flexibility to elect whether applications are dealt with in parallel on a case by case basis.

Question 14

Are there other options for improvement not mentioned in the consultation document that should be considered?

Further consideration needs to be given to the interface with other agencies such as the HSE on health, safety and stability issues, Highways Agency on transport aspects, and Natural England and English Heritage etc on nature conservation issues and curator aspects etc which arise during the planning and permitting process as referred to above.

Question 15

Do you agree with the assessment of the advantages and disadvantages of the options set out in the RIA, and have you specific experiences which could help with developing this assessment further (e.g. relevant quantitative data)?

We generally agree, though we are disappointed that the implications for the Minerals and Recycling industries are not specifically assessed.

Yours Sincerely

Peter Huxtable

Secretary, British Aggregates Association