

22nd December 2006

**Linda Scott
Planning Division
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ**

Dear Linda

Application of the Environmental Impact Assessment Directive to “Stalled” Reviews and Periodic Review of Old Mineral Permissions in Wales

Thank you for inviting us to comment on this proposal.

The British Aggregates Association (BAA) represents the interests of some 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 have 5 members currently with operations in Wales. We are part of the consultation and lobbying process both in the UK and Europe – and are also represented through the CBI (Confederation of British Industry) and CPA (Construction Products Association).

In general we are supportive of changes in the application of the EIA regulations where it is necessary to conform to EU requirements presuming that this is being consistently interpreted, applied and actioned throughout each and all of the 25 member states.

However, on the limited checks we have made on the so-called stalled cases throughout England and Wales, it is not as clear-cut as to the reasons why progress has not taken place. Certainly it is not in all cases due to failure from the operators to comply, and in several cases it is clearly due to individual planning authorities. For this reason, without suitable mechanisms we could not support denial of compensation in instances where permissions are revoked due to failures by the authorities to act in a reasonable manner.

Regarding the proposals for future periodic reviews and for dormant sites, we consider that any automatic actions concerning suspension of sites that have not operated for more than two years is too draconian without some prior mechanism. We would propose that in such cases, authorities should advise the operator and/or mineral owner of intention in the first instance and there needs to be a process to establish the situation in each individual case. However, as our members are mainly small SME privately-owned and family concerns we would be looking to ensure a proportionate approach to any environmental assessments and any paperwork particularly to keeping bureaucracy low – but mainly not to involve a lot of additional cost over the current situation.

Overall we believe that this is a heavy-handed mechanism to address the situation – and a voluntary and cooperative approach would have been more appropriate.

Our response to your individual questions is appended. If you require any further information or clarification please do not hesitate to contact me further.

Yours Sincerely

Peter Huxtable

Question 1

Do you agree the scope of the proposed regulations? If not, please describe how it might be amended.

Generally yes, but requires a more balanced approach on the current 19 cases where fault is not always with the operator; and a proper process of implementation for dormant sites including compensation where appropriate.

Question 2

What are your views on the proposal to apply the automatic sanction of suspension of operations for failure to provide sufficient information to enable the relevant authorities to determine whether an ES is required under the Regulations?

This agreed for those of the 19 stalled cases where it is clearly and unequivocally proven that the operator or mineral owner is at fault, if necessary by using an independent adjudicating body.

Question 3

Do you agree that 6 months is the optimum period to be specified in the proposed regulations after they come into force for the provision of the relevant environmental information from applicants in stalled cases? If not, what is the reason and should the period be longer or shorter?

6 months seems fair.

Question 4

What are your views on the proposal to require mpas to make prohibition orders where the requisite environmental information has not been provided within two years of the suspension of operations?

This is fair – but should not be applied retrospectively.

Question 5

What are your views on the proposal to require mpas to consider in every case whether to make suspension orders on the expiration of 12 months suspension?

An appropriate mechanism is required – this should not be an automatic process.

Question 6

What are your views on the proposal to amend paragraph 3(2) of Schedule 9 to the 1990 Act so that an MPA may presume that operations have permanently ceased where suspension has endured for a period of 2 years and the environmental information required has not been provided without reasonable excuse, subject to an applicant being able to prove to the contrary?

A full and proper investigation is required in each and every case.

Question 7

What are your views on the circumstances in which it would be appropriate for the Welsh Assembly Government to make use of the default powers available under paragraph 11 of Schedule 9 to the 1990 Act?

A full and proper investigation is required in each and every case.

Question 8

Do you have any other comments on the proposed regulations, including any practical implications you think they might have?

No

Question 9

Do you have any comments on the partial RA at Appendix A, including quantification of the costs and benefits of each of the options identified?

Preference is for option 1 – and with safeguards option 2. Option 3 is draconian and removes access to compensation mechanisms which is contrary to common law principles.