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Martin Mance
Planning – Resources & Environment Policy
Communities and Local Government
1/J5 Eland House, Bressenden Place,
LONDON
SW1E 5DU

Dear Martin

EU Directive 2006/21/EC (The Mining Waste Directive) – Proposals for Transposition in England and Wales

Thank you for inviting us to comment on this consultation.

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 currently have some 60 members with operations nationally. We are part of the consultation and lobbying process both in the UK and Europe – and are also represented through the Minerals group of the CBI (Confederation of British Industry), and CPA (Construction Products Association).

We fully support the unanimous view of other industry colleagues and the CBI Minerals Group that the Directive is transposed through EPP with the Planning authority as the *principal* authority. (Option 2(a))

BAA has been closely involved since the late 1990s with Brussels and with all UK government departments in the development of this Directive which was a direct result of a series of large-scale metal mining tailings dam failures in Spain and Romania. It essentially addresses the stability and safety of dams and tips. These issues were recognised by all parties as already being competently and comprehensively covered by existing UK legislation much of which was developed following Aberfan, and the UK was seen as a good model for developing the EU Directive. It was demonstrated by the industry that mining so-called "waste" was something of a misnomer and totally different to the potentially polluting form of waste covered by the EU Landfill Directive and environmental regulation.

BAA member operations are surface aggregate quarries where the only materials other than primary sales and scalpings are overburden and topsoil which are materials to be used in site bunding and final restoration of the site. These materials are inert and non-hazardous and should not constitute waste requiring a management plan under Article 5 of the Directive.

DEFENDING BRITAIN'S BAA QUARRIES

We have serious concerns on your current proposals:

1. There is a disproportionate emphasis on environment polluting aspects which are already covered by other UK legislation. This is coupled with a serious misconception and understanding in government about what is involved in quarrying operations in the UK.

2. There is little or no recognition that UK current legislation, and planning permissions, are more than adequate to meet the requirements of the new Directive. In this respect comparing notes with industry colleagues elsewhere in Europe, they seem to be having a considerably lighter touch or no change from existing regulation. We also note that Scotland is taking a more sensible and pragmatic approach as outlined in their current consultation proposals running to 7th July which recognises the integrated nature of planning consents and the nature of overburden and topsoil.

3. There is little or no recognition that the current planning permission for sites covers and includes the required "waste management permit" under article 5.

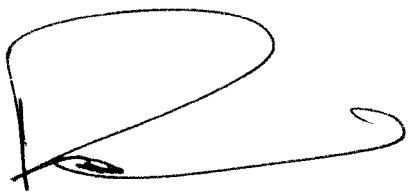
Overall we believe that the current government proposals are disproportionate to the requirements of the Directive, and are not in line with UK and EU policy to lighten the bureaucratic and regulatory burden on business. They would as currently envisaged place unnecessary demands and burdens on industry and disadvantage us against most other EU countries, and even Scotland

The transposition of this Directive is being rushed through in England and Wales before key requirements and technical guidelines outlined in Article 22 have been agreed, and we would suggest an 18 month to 2 year delay to enable more time to ensure transposition is made in a more suitable manner than currently proposed and to meet the serious concerns of the entire extractive industry. This would be proposing a similar situation to the precedent set in the UK over the EU Environmental Liability Directive. We also understand that other EU states are making similar moves.

Our detailed comments on your specific questions are appended.

If you require any further information or clarification please do not hesitate to contact me further.

Yours Sincerely



Peter Huxtable, Secretary
MA(Cantab), CEng, FIMMM, FIQ

Principal Issue

1. Do you agree that the Environmental Permitting Programme offers the best option for transposing the Mining Waste Directive? If not, would you prefer to see the planning and existing consents option or the hybrid option used as the means of transposing the Directive? If your preference is for one of the latter two options, what are your reasons for this view?

EPP seems to provide the least bad option for transposing the Directive but needs to be with the planning regime.

2. If you agree that the Environmental Permitting Programme offers the best option, do you also agree that the Environment Agency should act as the competent authority (or regulator), or do you think that the planning authority should be the principal competent authority under this option?

We strongly believe that the Planning Authority should be the principal competent authority in line with our discussions with government, most recently on 1st April, a view which is as you know supported unanimously by the operating industry and the CBI Minerals Group. (Option2a).

The Impact Assessment concludes that there is no significant difference in the cost of implementing options 2a and 2b. The mineral planning authorities are ideally placed as they have the competence, knowledge and experience. We believe that any reluctance some of them have had reflects adequate resourcing which may need addressing by government.

Article 5 (1) of the Directive states what is to be included in the waste management plan. It covers the minimisation, treatment, recovery and disposal of extractive waste. All these activities are intractably linked to the overall extraction and working of the mineral. They are fully addressed in current planning applications and consents which embrace the requirement for a "waste permit". There will be considerable and totally unnecessary confusion and fragmentation of regulatory control, and possible duplication, if the same competent authority does not administer both regimes.

Other Questions

3. Do you think that: (a) the prerequisite for planning permission should be applied to Article 7 permits as proposed in the draft transposing Regulations; or (b) there are alternative ways of ensuring that the competent authority complies with the requirements of Articles 7(3)(b) and 11(2)(a) of the Directive? *{Paragraph 3.66}*.

No. We do not believe that the prerequisite for planning should be applied to Article 7 permits. In practice it will only be possible to grant an Article 7 permit once the Article 5 waste management plan is in place (Article 7.2 (2)). The content of a waste management plan mirrors that of a modern planning application and therefore it would plainly be a case of putting 'the cart before the horse' to seek approval of the working plan in advance of the planning permission. However there may be circumstances where this would be appropriate and operators should have the flexibility to obtain approval of their Article 5 Waste management plans and Article 7 permits in advance of planning permission.

4. Do you agree that the local fire and rescue authority for the area would be best placed to act as the 'competent authority' for the purposes of the emergency external plan under Article 6? If not, who would be best placed to act as competent authority for the external emergency plan, and what are your reasons for this suggestion? *{Paragraph 4.11}*

No. Annex 111 of the Directive defines Cat A sites as those where failure or incorrect operation could give rise to a major accident on the basis of a risk assessment and those sites that contain hazardous or dangerous substances.

We believe that the competent authority should be designated for each Cat A site on the basis of the risks identified.

We believe that the Local Authority through its emergency planning officer should be the coordinating competent authority. They would be best placed to call on the resources of the appropriate body which could include the Environment Agency, HSE, and the Fire Service.

5.The Government would welcome views on the proposals for implementing Article 6 requirements on major accident prevention. Do you think the draft regulations at Annex E are appropriately based on the 'COMAH' model, and are they sufficiently clear? *{Paragraph 4.14}*.

No comments

6. The Government would welcome any further views on the best approach, or approaches, to financial guarantees (or equivalent), as required under Article 14 of the Directive. *{Paragraph 4.24}*.

We are pleased to note that the Government intends to take full advantage of all derogations in the Directive (paragraph 2.11) and as a result the requirement for financial guarantees will relate only to Cat A facilities. The Industry expects that the number of Category A facilities will be limited to a handful. However we are concerned to note in paragraph 3.71, the suggestion that for those *"sites where Article 7 does not apply, a high level test would be applied, rather than a specific guarantee being required"* There is no requirement for such a test in the Directive and this proposal must be deleted.

Regarding the form of guarantee, BAA has a mutual guarantee fund as described in Article 14.1 and we believe that this is appropriate to meet the requirements of the Directive.

7. Do you have any views on which authority (or authorities) would be best placed to prepare and maintain the inventory of closed waste facilities required under Article 20 of the Directive? *{Paragraph 4.28}* 62 EU Directive 2006/21/EC on the Management of Waste from the Extractive Industries (The 'Mining Waste Directive')

We believe that Minerals Planning Authorities in consultation the British Geological Survey would be best placed to prepare and maintain the inventory of closed site. These authorities already hold extensive databases on the mineral extraction operations within their jurisdiction.

Part 2 of the Mines and Quarries Tips Act 1969 places a duty on Mineral Planning Authorities to maintain a register of disused spoil heaps within their jurisdiction and this 40 years of experience in maintain the register should place them in a good position to take on board the requirement to maintain the inventory of closed sites..

8. Do you have any comments on the proposed implementation of the transitional provisions for existing waste facilities? In particular, do you agree that 1 May 2010 should be specified as the date by which operators of existing waste facilities are required to submit their applications for permits under the EPP and hybrid options, in order to ensure that the competent authority has sufficient time to process these applications by 1 May 2012? *{Paragraphs 5.3 – 5.5}*.

We strongly disagree.
The Directive states that Member States must ensure any *waste facility* which is already in operation on 1 May 2008 complies with the provisions of the Directive by 1 May 2012 except for those set out in Article 14(1) for which compliance must be ensured by 1 May 2014.
Article 7 permits will only be required for Cat A facilities and for non-hazardous non-inert waste facilities. In the case of the former compliance must be achieved by 1 May 2014 and the latter compliance must be achieved by 1 May 2012.

The EPP core guidance stipulates 4 months as the period for the determination of environmental permits.

Given the government's view that the number of Cat A facilities is likely to be small and there will be adequate time for the competent authority to resource itself to handle these applications we are of the

opinion that a doubling of the stipulated period for determination to 8 months would be more than adequate to ensure compliance.

We therefore propose that the date for the submission of an Article 7 permit for a Cat A facility should be 1 October 2013 and for a non- Cat A Article 7 permit should be 1 October 2011

9. Do you agree with the Government's proposals for applying transitional provisions to existing operations which do not involve waste facilities, in particular, the establishment of a 12-month time limit for approved waste management plans for such operations to be in place? *{Paragraphs 5.6 – 5.9}*.

We strongly disagree.
This appears to be impractical, unreasonably onerous and an over-precautionary measure which seems to be lawyer-inspired purely to avoid any possible EU infraction proceedings.

There is confusion in the consultation as what the Government proposes. Paragraph 5.8 states operators would only have until 1 May 2009 to submit their applications for the waste management plan, yet the waste management plans must be in place (approved) within 12 months.
It would certainly be perverse if sites with the lowest risk would be required to have plans some 5 years ahead of high risk (category A) sites.
We would suggest that current planning consents and permissions should be considered de facto equivalent to the requirement for an Article 5 waste plan under the Directive to minimise the duplication of bureaucracy and unnecessary over-regulation on the industry, and also on the regulators.

10. Do you have any views on the Government's proposals for applying the transitional provisions in respect of waste facilities closed before 1 May 2008 and certain waste facilities that will be effectively closed by 31 December 2010? *{Paragraph 5.15}*.

We support the proposal not to make any legislative changes to cover after-closure procedures for facilities closed by 1 May 2008 as this is already adequately covered by existing planning and Mines and Quarries legislation. We believe exiting planning and M&Q legislation also adequately covers the requirements of the Directive that apply to facilities that will be effectively closed by 31 December 2010

11. Do you consider that there are specific circumstances in relation to mining and quarrying activities that would justify the inclusion of a provision in the Regulations, so that the conditions in the EP permit take precedence over any conflicting conditions that may arise in the planning permission for the site? What problematic inconsistencies do you envisage arising that might justify such a provision? *{Paragraph 6.7}*.

Yes. We believe that the significance of the interface between the EP and planning regimes has been grossly underestimated. The handling of mine waste is an integral part of quarrying operations that will continue to be regulated under the planning regime. We would question, in any event, the conclusion in paragraph 6.4 that inconsistencies between permit conditions and planning permission which cause any confusion for operators and regulators are rare in landfill and other controlled waste activities

12. If provision is not made in the Regulations to give precedence to the EP permit over planning conditions, do you think there should be a requirement for planning authorities to conduct a review of all relevant permissions, as and when EP permits are issued? Alternatively, do you think that mining and quarrying operators should be able to request that the planning authority review the planning conditions in a particular case, and that at the same time, a power should be provided for planning authorities to be able to conduct a review where they considered it necessary? *{Paragraph 6.12}*.

Yes. If the Planning Authority is designated as the competent authority this review can be carried out as part of its normal monitoring and enforcement obligations. It will however not be sufficient to rely on S.73 of the Planning Act to enable this review to take place as new powers must be introduced to

provide the legislative framework for this review. The legislation must ensure that only those changes required to enable the Directive to be implemented will be made by the competent authority so that there is not risk that the mineral development itself can be reviewed.

13. Do you have any views or comments on the Impact Assessment that accompanies this consultation?
The value of the Impact Assessment conclusions set out the summary analysis and evidence sheets for each option must be questioned due to the uncertainty regarding key parameters such as the interpretation of the definition of inert extraction waste and whether the so called residues (overburden and soil) will be classified as "waste" for the purpose of the Directive.

The technical data required for the preparation of a waste management plan is already required as part of a modern planning application. The Minerals Planning Authority currently has by far the best technical expertise, background and experience to assess this data.

The cost difference between the different options is marginal at 5% and does not perhaps fully reflect experience-base nor the effect of three rather than two regulatory bodies being involved.

Questions specifically relating to transposition in Wales

14. What would be the advantages and/or disadvantages of requiring a financial guarantee from an operator seeking a permit for a waste facility?
The requirements of the Directive apply equally to Wales as they do to England (and indeed to Scotland and Northern Ireland). The UK Government have stated that they will take full advantage of the derogation set out in para 3 of Article 2. This derogation must also apply to Wales and therefore a financial guarantee must only be required for non-hazardous non-inert and cat A waste facilities.

15. Have you any evidence or analysis of the implications of such a guarantee for the amended waste regime?
No

16. How would you envisage such a financial guarantee working along side the restoration bonds required by some minerals planning authorities?
No comment.