25 June 2008

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Dear Ian

EU Directive 2006/21/EC (The Mining Waste Directive) – Proposals for Transposition into Scots Law

Thank you for inviting us to comment on the 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 UK output and who operate from over 100 sites. 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).

We would like to point out that the 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 metal mining tailings dam failures. 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 the Aberfan disaster in 1966. It was demonstrated by the industry that mining so called "waste" was totally different to the potentially polluting form of waste covered by the EU Landfill Directive. All BAA member operations are surface aggregate quarries where the only materials other than primary sales are overburden and topsoils, which are materials to be used in site bunding and final restoration.

We have serious concerns on the current situation in the UK:
1. There is a disproportionate emphasis on environment polluting aspects that are already covered by other UK legislation.
2. There is little or no recognition that the UK current legislation is adequate to meet 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 legislation

Yours sincerely

Richard Bird
Executive Officer

Enc: Answers to Questionnaire

British Aggregates Association - Consultation on the Mine Waste Directive Answers to List of Questions.

Q1 Do you have any views on procedures for considering whether extracted material should be classified as a non waste by product?

Aggregate processing quarries do not produce waste as such. All materials that are extracted are potentially marketable including overburden and topsoil. In the event that these materials are not sold on, or are deliberately left on site for visual bunds, then these materials will be used in the restoration of the site when extraction ceases or during the period that the quarry is being worked. It is generally accepted that these types of materials are referred to as by products in that they are not the main reason for extraction in the first place, but they are nevertheless a potentially marketable product and are therefore **definitely a non waste product**. As a procedure it would suffice to note this point in the planning application for the mineral extraction, and can become simply part of the planning conditions for that site.
At this stage it is worth noting that there would appear to be a national shortage of suitable inert material normally used to restore old quarry sites. This has come about owing to different regulations concerning the depositing of inert waste in places such as golf club sites as opposed to depositing in and restoring old worked out quarries. It therefore follows that any so called non waste by product will more likely be an asset to be left on site for future restoration.

Q2 Do you agree that the Scottish Government should take advantage of all available derogations in the Directive?

Yes most certainly.

Q3 Do you agree that the planning application process is the most appropriate means of transposing the MWD?

Yes most certainly

Q4 Do you agree that HSE, like SEPA, should become a statutory consultee for all mineral planning applications?

No most certainly not.
The HSE in the form of quarry inspectors become involved with quarry workings when they are up and running in order to ensure that the quarry operates under the Quarries Regulations 1999 and other relevant pieces of legislation. It is difficult to see how a quarry inspector can effectively comment on a minerals planning application when it is not yet up and running. What we are talking about here is the safety and stability of the slopes of tips and until they are formed (if at all). Part VI of the Quarries Regulations 1999 cover the whole question of tip safety adequately.
As soon as a new quarry is operational, it is the duty of the operator to inform the HSE in order that the quarry inspector can visit the site. If the planning application is for an extension to an existing quarry, then the quarry inspector is already aware of that site.
Today it is considered that there are already not enough HSE quarry inspectors on the ground and to bring in the HSE to comment on mineral planning applications is totally unnecessary and can lead to more delays to planning applications, and would be a waste of the inspector's valuable time.

Q5 Do you agree that the meaning of "development" should be amended to include the "management of extractive waste"

Yes ok but how do you define "waste"? Better and more consistent to use the term "management of extractive waste and non waste by products." The revision to the Waste Framework Directive dated 17 June 2008 defines waste under Article 3(1) *"waste" means any substance or object which the holder discards or intends or is required to discard* This would confirm the point made in answer to Question 1 that aggregate quarries do not produce waste as nothing at all is discarded in the first place or throughout the operating period of the quarry. (Which begs the question why is this legislation being applied to aggregate quarries in the first place?)

Q6 Do you agree that permitted development rights for new applications should be removed from Summer 2008 and by 1 May 2012 for existing sites?

Yes agreed.

Q7 Do you agree that there should be a general requirement for mining waste to be subject to the principles of Best Available Techniques Not Entailing Excessive Cost and that this should be demonstrated through waste management plans.

Yes agreed.

Q8 Do you agree that operators, following discussions with HSE and SEPA should be able to identify the nature of mining waste involved?

No. HSE should not be involved at the planning application stage. It should suffice that the operator should clearly state what is intended to happen to any "waste" or non waste by product in their planning application. As this is normally simply a note to state what will happen to any overburden or topsoil in the short and long term it hardly warrants a prior "discussion" with SEPA. If on the other hand SEPA have a query in their role as a statutory consultee, the matter can be raised at that time.

Q9 Do you agree that compliance with Article 4 should be demonstrated through waste management plans?

Yes but this is already covered under existing legislation. The Quarries Regulations 1999 cover it from the point of health & safety and environmental regulations policed by SEPA cover it from the point of the environment and pollution aspects.

Q10 Do you agree that the process for considering waste management plans for non waste facilities are workable?

Yes

Q11 Do you agree that planning permission for Category A waste facilities should be withheld until adequate financial guarantee is in place?

We do not have an opinion on this question, as it would appear to relate to landfill operations and not quarries. It is this kind of question that highlights the need to end

the confusion concerning the regulations surrounding the reinstatement of old mineral workings.
Firstly there are landfill sites that operate under a permit from SEPA. Some of these sites may actually be located in worked out quarries.
Secondly there is the MWD that refers to so called "waste" from metaliferous mines and other extractive operations.
Thirdly there is the situation whereby aggregate quarry operators and the like wish to "recover" the worked out areas with inert waste but cannot do so because of the complexity of the regulations, none of which appear to relate to the simple operation of recovery.

Q12 Do you agree that placing a general requirement on operators is an appropriate means of securing the competency requirement of Article 11?

No definitely not. The question of competency is already covered under the Quarries regulations 1999. Any requirements under environmental regulations, for example water sampling, is already covered and is currently monitored by SEPA. There is no requirement for any further restrictions or requirements that may become part of the planning consent.

Q13 Do you agree with the proposal to specify 1 May 2010 as the date that operators must submit the information required by the Directive?

We most 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.

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

Given that the number of Cat A facilities is likely to be nil or extremely small, there will be adequate time for the authority to resource itself to handle these applications and we are of the opinion that the 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.

Q 14 Do you agree that operators of non waste facilities must submit the information required by the directive within 18 months of the Regulations coming into force?

No we do not agree. We propose 1 October 2011. Eighteen months is too soon for something that will be seen as another piece of unnecessary EU legislation.

Q15 Do consultees agree that existing Section 67 procedures provide the most appropriate mechanism for bringing planning permissions into line with waste management plans?

Yes agreed.

Q16 Do provisions of the 1967 Act provide sufficient and appropriate powers to enable planning authorities to bring existing consents into line with the Directive if needed?

Yes.

Q 17 Do you agree that existing sites requiring an Article 7 Permit should be required to submit a planning application by 1 May 2010?

No we do not agree and as answered in Q13 and Q14 we would propose 1 October 2011.

Q18 Should the Regulations specify a fee for considering waste management plans?

No. The waste management plan for most aggregate quarry operations will be simple description of what will happen with the overburden and topsoil. A fee would not be justified in this case.

Q 19 Do you have any thoughts on how the inventory requirements of the Directive can be met.

Discussions with HSE quarry inspectors, local planning authorities and the BGS at Edinburgh may be a way forward.

Q20 Do you agree that the regulations should require operators to prepare major accident prevention policies and on site emergency plans covering the environment.

No definitely not. This is already a requirement under the Quarries Regulations 1999 and no doubt from an environmental point of view is already covered by SEPA site visits.

Q21 Do you agree that the public awareness requirements of Article 6(6) should be undertaken by the operator?

No comment. Most of the information required under Article 6(6) is already provided by the operator.

Q22 Do you agree that public awareness requirements should be implemented by 1 May 2012 for existing sites and with 6 months of planning permission for new sites.

No. For the reasons given in Q21. The question does not appear to differentiate between so called hazards and the simple use of topsoil to act as a bund (for example)

Q23 Do you agree with the proposed consultation and notification procedures?

Yes and No. the consultation is fine but some of the notification times are too short.

Q24 Do you agree that existing enforcement powers are adequate to secure compliance with article 6?

No comment.

Q25 Do you agree that "local authorities" should be identified as the "competent authority" for the purpose of Article 6?

No comment.

Q26 Do you agree that local authority emergency planning teams should be consulted on all planning applications which involve Category A waste facilities?

No comment.

Q27 Do you agree that external emergency plans should be prepared within 6 months (or such longer period, not exceeding 9 months, as may be agreed in writing) from the date that planning permission is granted for a Category A waste facility?

No comment.

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