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**Consultation on Revised Waste Exemptions from Environmental Permitting**

Thank you for the opportunity to comment on your consultation pack of revised exemptions from environmental permitting.

The British Aggregates Association (BAA) represents the interests of some 80 members of which 60 are independent and privately-owned SME quarry companies throughout the UK with some 10% of national output and who operate out of over 100 sites. 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) Minerals Group and CPA (Construction Products Association).

In response to the many concerns expressed by quarry operators involved with inert landfill operations or in their essential role to meet restoration obligations under mineral planning permissions several members of the BAA have contributed to the current Review of Inert Waste Regulation through the industry chaired EA Landfill Regulation Group Inert Wastes Sub Group. The formation of this group and the dialogue with DEFRA and the EA has been welcomed.

BAA supported the QPA Position statement of June 2006 and also published its own document in November 2006.

<http://www.british-aggregates.co.uk/documentation/doc57.pdf>

Whilst welcoming the tightening of the 9/19 exemptions to stop the abuse in some areas (eg golf courses) and create a more “level playing field” we remain very concerned that over-regulation and costs will be imposed unnecessarily particularly on SME operators during a major recessionary period – and much greater clarity coupled with simplicity is urgently needed than is in the current consultation document to reassure operators that

DEFRA and the EA are genuinely looking at lifting the burden on industry rather than complicating or gold-plating.

We had been specifically looking for quarry restoration to be recognised as a “recovery” activity in line with many other EU members and the intention of the current revision of the EU Waste Directive, and are disappointed that the current proposals do not yet enable this or show any indication of reaching this requirement.

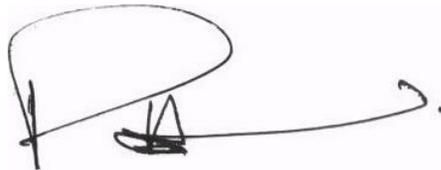
The arrangements for “policing” the areas of previous abuse of 9/19 exemptions are not appropriate to the current rogue elements who will no doubt find alternate ways of avoiding being caught by the changes!

We also note some totally unacceptable proposals most specifically the loss of the para 13 exemptions; and the perverse inclusion of a new 50,000t clause for asphalt plantings – whilst limiting 9/19 to only 500 t.

The views of BAA to your specific questions and some more detail are attached.

If you require any further information or would like to discuss any aspects further please do not hesitate to contact me.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Peter Huxtable', with a large loop at the start and a long horizontal stroke ending in a small hook.

**Peter Huxtable**

MA (Cantab), CEng, FIMMM, FIQ

Secretary



## **BAA detailed response - Revised waste exemptions from environmental permitting**

### **(a) Proposals set out in the consultation document**

#### **1. To embody the principals and the criteria used in the formulation of these proposals in Government Guidance for future reviews.**

We believe that regulation should be proportionate and in principle we therefore support and welcome the risk based approach adopted and its place in Government guidance for future reviews. However, efforts should be taken to improve the evidence base and reduce subjective assessment when considering the raft of "other factors". This should help to ensure that the risk associated with an activity is more accurately assessed. As it stands we believe that the approach adopted has mistakenly identified existing Para 13 exemption for the manufacture of soils and aggregates as high risk and falling outside the proposed exemptions.

A more interactive approach between assessors and operators may result in improvements but these needs to be predominantly at local level to minimise delays and confusion. Many of our members report that the use of "local" assessors has always been significant in resolving issues.

#### **2. To not provide the exemption for the storage of waste associated with Part B activities.**

In principle we support the move towards simplification by grouping all elements of the one activity into a single Part B environmental permit managed by a single regulator (the local authority). However conflict will arise where the permit relates to a specified mobile crusher which may possibly move from site to site whereas the waste storage will be linked to a specific site. If the proposal is to combine both elements in to a single permit this will not work for mobile plant where separate permits for the crusher and waste storage will still be required. The owner of the crusher may well be different from the owner of the waste storage and monitoring and enforcement will become impossible. Therefore we support the inclusion of waste storage in to the standard permit for static plant (e.g. asphalt plants) but not necessarily for mobile plant where it may be monitored by the local authority beyond their administrative boundary.

#### **3. To change the regulation of on-farm producers of mushroom compost from the Environmental Agency to Local Authority regulation through a Part B environmental permit.**

We have no comment to make on this proposal.

#### **4. To provide an exemption for Local Authorities to register crushing, grinding or size reduction operations where they consider the activity too trivial for a Part B permit Environmental Permit.**

This proposal is supported subject to clear and reasonable guidance emerging on what counts as trivial.

## **5. To introduce three- yearly registration periods.**

The proposal for a 3 year registration is supported as it gives certainty to the operator.

## **6. To introduce a charge for the registration of all registerable exemptions.**

The proposal to introduce a charge for the registration of all registerable exemptions is supported. It is acknowledged that exemptions will in the future only be provided for low risk activities and as such the charges should be proportionate and minimal for good operators and particularly SMEs. The management of the exemptions that are provided should not be subsidised by the charges for Permits but be self financing and sustainable. In this respect the proposed review of charges (Para 3.6.13) is also welcomed. However for those former notifiable exemptions which have been subject to abuse (e.g. Para 9 and 19 exemptions) the new charges should be sufficient to fund full and adequate monitoring with site visits at least once a year through the 3 year registration period to ensure compliance. The proposed level of charges is stated (3.7.3) to fund one visit every 50 years which presents an open invitation to those considering non compliance. Although it is proposed that the EA would adopt an intelligence based approach to compliance it should not have to rely upon observation and comment from the public but should be capable of carrying out regular inspections. Monitoring and enforcement of exemptions should be proportionate to risk and be properly funded.

## **7. Not to introduce a general record-keeping requirement for exempt operations.**

Although we are in favour of reducing unnecessary paperwork and administration and therefore in principle would support this approach we do not understand how this proposal complies with the requirements of the Duty of Care to maintain transfer notes for 3 years. Subject to clarification of this matter we welcome this suggestion.

## **8. Not to introduce a statutory appeals mechanism for the regulators' failure to register an exempt waste operation.**

It is acknowledged that past experiences of non-registration have been associated with activities that will no longer be exempt but subject to a Permit. It is also understood that it is the intention of the new system to provide greater clarity with the proposed simple low risk activities and that there would be very little if any call for an appeals procedure. This is welcomed. However as a matter of principle we still believe that an appeals mechanism should at least be available to operators when the registration authority does not register an exemption. With few calls on the system the cost of maintaining an appeals process should be modest. We believe that this matter should be revisited.

## **9. To introduce a three year transitional period from October 2009 to 1<sup>st</sup> October 2012.**

We support the proposal to prioritise the transitional arrangements over a 3 year period on the basis of environmental risk. As proposed it is important that operators also have sufficient time to consider their options under the new scheme and that the EA is sufficiently resourced and funded to prevent delays in the move from exemption to Permit.

**10. To provide an enhanced public register of exempt waste operations.**

We support the provision and maintenance of an accurate and regularly updated register of exempt waste operations as described. If a separate register has to be maintained by the Local Authority for Part B processes it should share the same structure as that maintained by the EA. We would also welcome having these registers online. If intelligence is the stated basis for monitoring exempt activities an updated and online register will assist this approach.

**11. To provide revised environmental permitting guidance on exempt waste operations.**

We fully agree that all new guidance emerging from government should be clear, concise, simple and easy to understand ensuring that operators are properly informed and that regulators deliver consistent decisions. This is essential if the proposal not to introduce a statutory appeals mechanism is to find support. However if the exemptions themselves adopt the same principles there may not be any need for new and separate guidance. That being said we do acknowledge (3.12.3) that information about the new system must be disseminated widely to ensure that ignorance of the new rules is not presented as a defence for non compliance.

**12. To include the principles for a regular review of exemptions in the environmental permitting guidance.**

The proposal to regularly review the performance of the existing exemptions together with the opportunity to introduce new exemptions under a strict timetable is fully supported. The suggestion that industry will only be consulted on proposed new exemptions when appropriate requires clarification as this appears to run contrary to the engagement with industry encouraged throughout the current process. We look forward to the proposed consultation on this in February 2009.

**13. To provide an additional transitional period for operators of registered exemptions who newly need an environmental permit to demonstrate technical competence in the environmental permitting guidance.**

This proposal introduces the prospect of a permitted waste operation being managed by an operator who is not technically competent to do so. It is assumed in this proposal that all the other requirements for holding a Permit have been met; financial competence, adequate management system and no past history of non compliance. Para 4.3.5 suggests that a Permit will be issued subject to eventual confirmation of technical competence. Clarification of this would be welcome as would a guarantee that the delays predicted for scheme providers to assess operator competence will not be unreasonably extended giving an unfair advantage. With regards to new entrants this proposal is unreasonable as current practice is to “buy in” the necessary technical expertise if a business decided to move in to waste management. The use of a permitted waste operation, without any technically competent person, being used as the training ground for an operator undermines the risk based approach being adopted in the new scheme.

**(b) Proposals for individual exemptions provided in the draft regulations.**

**Our comments are restricted to those exemptions relating to inert waste:**

Presently many of our members operate notifiable exemptions under Para 9 and 19 to carry out restoration of mineral workings in accordance with approved schemes to deliver an agreed afteruse be it agricultural land, a nature reserve, playing field or fishing lake. These activities involve only inert waste and the loss of these existing exemptions where they qualify will have significant implications for many of our members in quarry restoration activities. The ability to restore a site to a beneficial afteruse is key to securing planning permission for future mineral reserves. However we also acknowledge the abuse of these exemptions which has diverted inert restoration materials away from mineral workings to golf courses, landscape bunds and similar. We support the proposal to bring all inert waste activities under a single proportionate risk based regime and to address the abuse of the present system by creating a “level playing field” for all operators involved in inert waste activities. This should have benefits for the environment and for our members.

**Current Para 9 and Para 19 exemptions: Proposed U1, U3 and U11/U12**

The proposed U1 “Use of wastes in Construction work” proposes a reduction in the use of waste to a maximum of 500 tonnes over the 3 year period on a single site. The spreading of wastes on land for agricultural benefit (U11) or for soil improvement (U12) does not include inert wastes and removes the link to ecological improvement. The use of waste in the construction of tracks, path, bridleways or car parks under U3 restricts the end purpose and again limits the quantity to a maximum of 500 tonnes over the 3 year period. These proposed exemptions are wholly unsuitable for quarry restoration purposes. However they should prevent the abuse of the current Para 9 and 19 exemptions and help to create the level playing field which our members support.

The loss of the means to achieve restoration of mineral workings through the current exemptions requires early discussion on a Standard Permit as proposed at Para 4.1.5 of the document. It would have been helpful to our members if the proposed Standard Permits for 9 and 19 activities could have been considered in parallel with this consultation.

**Current Para 13 exemptions: Proposed T5**

We vigorously object to the assessment of current Para 13 activities as sufficiently high risk to merit a Permit and the reduction in the limits for the proposed T5 exemption from 500 tonnes per day to 500 tonnes per year. We consider the evidence in Annex C to be limited and unrepresentative and the outcome to fail to recognise the fundamental importance of the activity to the production of recycled aggregates. This activity is widespread and is not known by our members to be a source of nuisance or public concern. On the proportionate risk based approach adopted and which we are in principle supportive of, the approach taken on this activity is misjudged. The proposed exemption invites abuse as mobile plant associated with this operation will simply not be established by an operator for the limit of 500 tonnes and in the absence of inspection and enforcement will be used for significantly greater quantities. This will introduce an uneven playing field; will damage operators who hold a permit and may undermine the high level of recycling which is central to the

government's policies on aggregate supply. This activity should be reinstated as an exemption.

**Proposed U9**

Current exemption Para 15 has been used by members. For example where waste arising from excavations for foundations at a construction site is an aggregate (sand, gravel etc) and can be used directly without treatment as a construction material at another location (in lieu of similar materials sourced from a primary aggregate quarry). This maintenance of this exemption is supported.

**(b) Questions identified in the Impact Assessment**

It is considered unlikely that many of our members will be engaged in registering simple exemptions and so the level of consultancy costs involved is not known. We are unable to provide any evidence on this matter.

At the present time and in the absence of a draft Standard Permit for current Para 9 and 19 exemptions we are unable to provide evidence on the demand for and the availability of technically competent managers for newly permitted sites. We are assuming that our members who currently operate notifiable exemptions will wish to continue under a Permit. Many of these do not have technically competent persons available and will have to train or source suitable personnel.