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17th June 2009

Sent via email: BetterRegulation@doeni.gov.uk

Dear Ms Murphy,

QPANI Response to NIEA Consultation: Revised Enforcement & Prosecution Policy 2009

The Quarry Products Association NI (QPANI) welcomes the opportunity to comment on the Consultation on Revised Enforcement & Prosecution Policy 2009.

The QPANI is the principal trade association for the quarrying and quarry products industry in Northern Ireland affiliated to the Minerals Products Association (MPA) in the UK. Members of the QPANI produce over 90% of the Northern Ireland's primary aggregates, as well as the major proportion of other construction materials such as asphalt, ready mixed concrete, recycled and secondary aggregates, lime and silica sand. The quarrying industry and its related activities are regulated under the provisions of both European Directives and National Regulations for the protection of the natural and built environment.

Introduction and Scope (Section 1)

Question 1- Do you have any comments on the scope of the revised policy?

The revised policy deals with enforcement activity across the Agency and demonstrates the Agency's more balanced approach to regulation and enforcement supported by the Better Regulation Programme that the QPANI duly encourages.

However, more information is required on how the revised policy is going to be applied by the Agency and is not ignored. This initial consultation did not address the workings of the new Environmental Crime Unit, this would have benefited readers. QPANI anticipate that this information along with how the revised policy will be implemented will be dealt with in the further consultation paper in Autumn 2009.



The peregrine falcon symbol appears in recognition of the outstanding work being carried out by many QPANI companies to protect this important bird of prey



The trade association for all aggregates, asphalt ready-mixed concrete, mortar, silica sand and lime

Registered in Northern Ireland No. NI61329
Registered Office as above

Question 2 – Have we clearly explained the nature of our regulations and links with other agencies?

QPANI seek further clarity on how NIEA interacts with and coordinates investigations/enforcement with all law enforcement agencies. For example, transparency on NIEA inter-agency co-operation with Planning Service and HM Revenue Service is of significance, in view of unauthorised operations throughout all sectors that damage legitimate businesses viability as well as the local environment.

How the Agency will interact with Local Authorities post-Review of Public Administration (RPA) should also be considered.

Principles of Enforcement (Section 2)

Question 3 - Do you have any comments on these principles?

Enforcement should be effective at ensuring compliance; better at protecting the environment; and better at leveling the playing field for those who comply with the law.

QPANI welcome the stated principles and in particular the commitment to publish an Annual Enforcement Report, this will improve transparency and accountability. The details of what NIEA are proposing to include in an Annual Enforcement Report should be included in the Autumn 2009 consultation.

How NIEA will implement and adhere to the principles of enforcement is not referred to in this consultation paper, QPANI would seek clarity on this. The targeted approach on how NIEA will direct its focus in a rational manner to prioritise effort and resources is satisfactory. Risk-based frameworks are used in other parts of the UK an essential means of directing resources where they can have the maximum impact on outcomes, is a similar framework being developed for Northern Ireland?

Education and informing NIEA staff on how to use this revised policy will be evidently obligatory, given it is greatly focused primarily on guidance and advice by the Agency to ensure regulatory compliance. This will be a change in culture for the regulators who will now need to operate in greater transparency and accountability, and also a shift in culture for those NIEA regulate to understand what they can expect from NIEA in terms of such guidance and advice.

2.3 Transparent

QPANI welcome transparency about how NIEA operates, and sees this as an opportunity for the industry to gain a better understanding of the Agency's intentions. For example, the water quality inspection procedure, agreed methods and accredited standards used by Water Management Unit to enable companies to take exact duplicate samples and maintain confidence in the system.

Question 4 – Are there any other principles that should be included?

QPANI suggest you also consider including additional principles and/or embedding into the five principles to address:

- i. Change the behaviour of the offender
- ii. Deter future non-compliance

- iii. Eliminate any financial gain or benefit from a non-compliance
- iv. Aim to restore the harm caused by non-compliance, where appropriate

QPANI also support the ethos of sharing, recognition and rewarding compliant companies:

- **Sharing** - The principle of joined up government and sharing of information between agencies and regulators is vital for effective enforcement and protection of the environment. NIEA should consider setting up a case study / best practice section on its website where examples of best practice in various areas of environmental protection can be viewed and shared.
- **Recognition** - The principle of recognising and rewarding compliant companies should be at the cornerstone of the NIEA policy.
- **Rewarding** – It is essential that compliant companies are rewarded through a reduction in monitoring costs and a soft touch approach. This would also include rewarding “responsible companies” through the Northern Ireland Government procurement policy.

Supporting Compliance (Section 3)

Question 5 - Do you have any views on how NIEA’s compliance assistance could be improved?

Compliance assistance is key to protecting the environment, as stated before in response to question 3 *‘enforcement should be effective at ensuring compliance; better at protecting the environment; and better at leveling the playing field for those who comply with the law.’*

QPANI welcome NIEA recognition of the important role the Agency has in giving advice and guidance to companies on environmental compliance. To improve the services NIEA and NetRegs already offers, QPANI would endorse an innovative targeted approach to maximise reach to individuals and businesses. An action plan should be developed with each business sector in relation to the delivery of business advice services by NIEA and access to expert advisors, led by the Better Regulation Programme. As well as providing this straightforward, transparent and efficient service, NIEA should support business and enterprise with expert environmental advice. Scottish National Heritage manage a programme called Sharing Good Practice, with informative seminars and workshops planned for the year ahead, bringing together a variety of government departments, planners, industry, consultants and NGOs to ‘share good practice’. A similar format could be developed by NIEA.

Compliance assistance can be delivered effectively through co-operation and partnership with trade organisations such as QPANI and CBI. NIEA already partner with QPANI on a number of areas such as working groups, conferences, promoting best practice and more recently, training Natural Heritage staff on the workings of the industry. The quarrying industry values such effective partnerships.

Areas such as pollution prevention and understanding of the Environmental Liabilities Directive are two areas where resources need to be directed. The resources (staff) made available to the Pollution Prevention Team within Water

Management Unit need to be urgently improved as this is a key area for guidance and advice on the ground.

Good communication and early guidance when new regulations are introduced puts businesses in a better place to focus on and be more efficient in high-risk or complex areas of regulation.

How NIEA 'supports compliance' should be considered in the current economic climate, primarily to protect the environment but also to set the right conditions for sustainable economic growth. This is particularly important during these difficult times for the economy. Compliance should be promoted with a strong message to enable businesses and industry to realise the many economic benefits of good environmental practice. NIEA should look at innovative support measures that promote compliance for businesses and individuals seeking to invest in new or improved facilities, greener technologies, operations and premises at this difficult time. The streamlining and simplification of licensing and consent applications with a move to online applications facilitating payment as proposed by the Better Regulations Programme should ease the burden of the application process and also speed it up. This can work parallel with Planning Service's move to its online system and could demonstrate to clients and contractors at a project's planning stage the need to be thinking proactively about relevant regulations. For example when Waste Management Exemption Licences are required for some activities and what activities require planning permission.

Enforcement Powers (Section 4)

Question 6 - Do you have any views on the range of enforcement powers available to NIEA and its approach to secure compliance with the law?

NIEA need to have the legal support to effectively protect our environment. NIEA should consult with the Lord Chief Justice Office and the Law Society to ensure that judges and magistrates have the knowledge and competence to effectively deal with environmental breach cases.

The current range of enforcement tools at NIEAs disposal should be sufficient to effectively protect our environment.

An additional tool that NIEA can use is the financial incentive of reducing compliance costs for compliant companies. Charging policy should be linked to environmental risks and benefits with appropriate incentives developed for good performance. While "cost recovery" charging has the appearance of fairness it can lead to agencies not worrying about their own efficiencies.

Within the aggregates sector the current incentive for companies to be compliant is the risk of losing the 80% rebate on the aggregates levy. Maybe this should be an example of how financial and tax incentives can be used to ensure compliance.

Question 7 - Would you welcome access to a wider range of enforcement tools, such as fixed penalties or voluntary undertakings?

Yes

Factors Determining Prosecution (Section 5)

Question 8 - Do you have any comments on the factors determining whether prosecution should be pursued?

One other factor that should be taken into account is the previous compliance record of the offender and what resources and financial investment the company has made in improving their environmental performance and what management systems they have in place.

Court Action (Section 6)

Question 9 - Do you have any comment on NIEA's use of financial penalties and involvement with the Serious Organised Crime Agency?

As stated earlier financial incentives and penalties can improve compliance performance. QPANI want to see a widening of the gap, in financial terms, of compliance costs between compliant and non compliant companies.

Working in Partnership (Section 7)

Question 10 - Do you have any comments/views on NIEA's working arrangements with other enforcement agencies?

It is vitally important that to reduce the regulatory burden on business joined up thinking and regulation takes place between various agencies. We would recommend that as part of the Better Regulation Programme a cross Departmental database is developed detailing the environmental performance of every business in Northern Ireland. This would be an open and transparent way of informing public bodies, private sector business and the general public of the environmental performance of companies and organisations they deal with. It would also act as a significant incentive to be environmentally compliant.

Question 11 - Are there any other enforcement agencies you think NIEA should be liaising with?

Health and Safety Executive (NI)

As a regulator of the quarry products sector they visit sites regularly. Many breaches of health and safety also have environmental repercussions.

Local Authority Building Control Officers

These officers are on construction sites regularly and with some awareness training could be the eyes and ears of NIEA in areas such as compliance with site waste management plans, water discharges and other environmental issues that they may come across.

DOENI (Aggregate Levy Compliance Team)

The Aggregate Levy Credit Scheme (ALCS) is a key driver for environmental standards improvement and is strongly audited by Government approved third parties and such audits are an excellent means of establishing compliance and indeed non compliance and would avoid a lot of duplication of inspection etc.

HMRC

If not already in place NIEA should have a strong liaison with HMRC as it is likely that in many cases of pollution there is likely to be some level of tax evasion which has the affect of creating an unlevel playing field and threatens legitimate operators.

Conclusion

QPANI commends NIEA on the production of the revised Enforcement Policy and look forward to working with the various agencies within the Department to develop guidance and raise awareness of environmental compliance for the quarry products industry. We would also be willing to meet with you and discuss this Consultation further if required.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gordon Best', is positioned above the typed name.

Gordon Best
QPANI Regional Director