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21st May 2009

Dear Sir / Madam

The Quarry Products Association NI (QPANI) welcomes the opportunity to comment on the Consultation on Draft Regulations and Guidance Implementing Directive 2004/35/EC on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage.

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 environment and human health. Some of our members operations would be covered by the Environmental Liability Directives for Annex III activities, whilst others would not.

The QPANI are keen to see a proportionate and risk based approach to the transposition of the ELD requirements. This should recognise and maintain current legislative requirements, whilst remaining flexible enough to take on the Better Regulation principles.



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

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Registered Office as above

Policy Issues

Areas of Special Scientific Interest (item 2; page 7)

QPANI support the decision to extend the scope of species and habitats protected under the Regulations to include all those for which Areas of Special Scientific Interest (ASSIs) have been declared under Article 28(1) of the Environment (Northern Ireland) Order 2002.

Approach to ASSIs (item 3; page 8)

QPANI agree with the decision to apply a test of damage for all species and habitats on ASSIs based on site integrity rather than conservation status.

Non-Annex 3 activities (item 4; page 8)

QPANI concur with the Department to implement the strict/fault based distinction in the ELD. Strict liability should apply for activities falling within the scope of Annex III that cause significant adverse effects to biodiversity and fault based liability should apply for all other activities that cause such damage. Although one can see the simplicity of applying strict liability to all biodiversity damage, no matter what the activity causing it, the greater scope for providing for compensatory measures goes beyond what is currently required. Therefore applying the distinction will ensure proportionate transposition of the directive requirements.

Defences (item 5; page 9)

QPANI supports the application of “state of knowledge” and “permit” defence.

Exceptions (item; page 10)

QPANI support the adoption of the 30 year time limit for liability in line with the ELD. We support the five year time limit for recovering the competent authority's costs established through the Directive. This will ensure coherence of approach across Europe.

Apportionment of liability (item 7; page 10)

QPA have no comment to offer on this issue.

Water damage (item 8; page 10)

QPA supports the Department's approach to water damage thresholds based on the quality standards being developed for the implementation of the Water Framework Directive (WFD). While criteria and standard are still being developed, the Department must issue interim guidance on the assessment of damage prior to the introduction of new WFD standards.

Additional guidance will also be required to define and assess whether there has been a ‘significantly adverse effect’. The status of River Basin Management Plan objectives and whether the water body has been modified by human activity should be taken into account. This guidance must clearly take account of how the affects of any change in water quality elements will change over time, the area affected and the affect on the use of that water as a resource.

Regulations

Part 1 - Introductory Provisions

Regulation 5: Exceptions

QPANI support the application of the exemptions in Regulation 5, particularly in relation to Article 5(g) diffuse pollution where individual operators cannot be associated with a particular incident.

Under Article 5(b) (*'an exceptional natural phenomenon, provided the operator took all reasonable precautions to protect against damage being caused by such an event'*) further guidance will be required to further define 'all reasonable precautions'. A clear definition must be established to ensure certainty for business.

QPANI have no views on the application of an exception for the CFP compliant fishing activities.

Regulation 8: Enforcing Authorities (page 17)

QPANI feel that the enforcing authority for land damage for the purposes of the ELD should be the same as for contaminated land regime. This will provide consistency of regulation.

QPANI have no views to make on the enforcement role in the marine environment.

Regulation 9: Prevention of environmental damage (page 18)

QPANI supports the application of the Regulation placing a duty on operators of activities to take all necessary steps to deal with imminent threats of environment damage. This is in line with and demonstrates best practice and a precautionary approach. However, QPANI and the MPA are cautious in relation to imminent threat of damage. MPA has echoed the concern expressed by the CBI in the DEFRA Consultation that such provisions could lead to recurring malicious targeting of businesses which, even if disproved, could prove costly to business operations and reputation.

Regulation 18: Appeals against remediation notices (page 22)

QPANI agree with the Department's proposal as to who appeals should be handled by.

Schedule 2 - Activities Causing Damage

QPANI acknowledges the amendment to Annex 3 to include reference to the management of extractive waste (mining waste) and have replied to the recent consultation on the Mining Waste Directive.

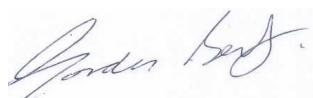
Additional Comments

QPANI calls for the Department to work with the quarrying industry and all operators proactively, through tailored advice and guidance to heighten awareness of the Regulations and their vicinity to protected species and natural habitats, ASSIs and Natura 2000 sites. Educating and giving assistance to operators to put in place appropriate prevention measures to reduce risks to the environment so that such damage does not occur in the first place. Government should also engage with businesses directly (through workshops/seminars) to raise greater awareness of the financial implications of the Regulations.

This is central to the effectiveness of Better Regulation theme “support compliance” through engagement and support to giving clear guidance which the QPANI actively supports. QPANI considers the draft non-statutory guidance produced by the Department a constructive document that should be widely distributed and communicated to businesses and other operators whose activities may cause imminent threats of environmental damage or actual environmental damage.

QPANI welcomes the opportunity to comment on Draft Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 and trust that you find the above response useful and informative. We would also be willing to meet with you and discuss this Consultation further if required.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gordon Best'.

Gordon Best
QPANI Regional Director