

**Mineral Products Association Ltd**

Gillingham House  
38 - 44 Gillingham Street  
London SW1V 1HU  
Tel 020 7963 8000  
Fax 020 7963 8001  
info@mineralproducts.org  
www.mineralproducts.org

Date: 24<sup>th</sup> August 2012

Sent via email to: [SERR@defra.gsi.gov.uk](mailto:SERR@defra.gsi.gov.uk)

Dear Dr Davies,

**MPA response to the Smarter Environmental Regulation Review**

Thank you for inviting the Minerals Products Association to contribute to the Smarter Environmental Regulation Review.

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of The British Precast Concrete Federation (BPCF) and the British Association of Reinforcement (BAR), it has a growing membership of 450 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production and 95% of asphalt and ready-mixed concrete production and 70% of precast concrete production. Each year the industry supplies £9 billion of materials and services to the £120 billion construction and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors.

It is evident to us that as the Planning System, species licensing and Permitting Programme have become more disconnected that the level of burden on industry has increased. This is especially the case with the Planning System and the Environment Agency's Environmental Permitting Programme. The environmental effects of a development are fully taken into account and either mitigation or controls put in place to limit pollution through the planning permission for the development. The planning process is an integral part of environmental regulation, not an entirely different mechanism that only makes one-off decisions on whether a particular land use is acceptable on a particular site. We consider that this Review should have a much stronger CLG involvement.

Recently there have been a number of initiatives to reduce the burden on business to which MPA have submitted responses. This includes both the Red Tape Challenge and the more specific Penfold Review. Whilst MPA appreciates the efforts of Government to

reduce the burden of regulation on business by initiating such work programmes there must be obvious outcomes and results presented back to those that contributed.

The quarrying sector has also had the advantage of being involved in the SERR as a case study sector. Through this process it is hoped that the wide range of environmental regulations that the sector has to work with during the planning, operational and post-operational stages of a site is acknowledged and considered. Our response to the Review picks up on the impact and duplication of environmental regulation and where we consider improvements could be made. The response reviews some of the main parts of our Members' operations that operate under distinctly different regulations. A section on general improvements to be considered is also included.

## General

### Guidance

It is not always clear to the operator where guidance sits, if it is an interpretation of the law, or if it is legally binding itself. It would provide greater clarity, if all government issued guidance documents provided this information at the beginning of the document.

Difficulties also arise where guidance on a certain topic (such as flooding) is covered in a variety of guidance notes, either by the same Governmental body, or different ones. Contradictory guidance can also be provided by regulators to industry depending on the governmental body approached.

To ensure guidance is interpreted correctly the same format and written style should be used by the various regulators.

Guidance should be in place at least two months before operators are required to comply with regulations, or change the way in which they are working. Previously we have experienced situations where operators need to apply for permits, but not all Government Guidance is available. A particular situation such as this arose during the implementation of the Mining Waste Directive.

All interested parties should be consulted when guidance is being prepared or when changes are made. It is often the case that industry holds the greatest knowledge and expertise in their operations and so it would seem wise to consult them at the earliest opportunity. Wherever possible guidance should be worked up with industry before formal consultation. The formal consultation process should then be less onerous to both operator and regulator.

### Consultation

The set 12 week consultation period should remain for all Government issued consultations on regulations, guidance and other documents. With such things as time constraints on experts' availability to respond and holidays it is often difficult to bring a response together in a short time, especially when compiling views across a sector.

Wherever possible informal consultation should take place before formal consultation with interested parties. In this way the formal consultation will require less input from industry and would therefore be less work to the regulator.

## Websites

The Environment Agency website is still difficult to navigate and to find particular pages. Common, easy access pages should be created that hold a library of Regulatory Position Statements (RPS) and other EA issued documents. It would also be helpful if permit application decisions were more accessible.

A common location to find all consultations would be beneficial, as well as upcoming changes to regulations. This could be industry or sector specific and also host other documents of interest to the industry.

## Transparent permit applications

Similar to the planning process it would be beneficial to operators to see where their permit application had got to on the EA website. This could include the name of permitting officer dealing with the application and if he/she had been required to seek expert help from within the EA. Although this point particularly relates to waste disposal and recovery operations it could be expanded to include other permit areas.

## Cost of pre-application discussions

The cost of applying for licences is increasing- both the EA and Planning Authorities have the opportunity to charge for pre-application discussions at some point during the application process. The EA system is much more desirable than the planning system with charges only occurring when a certain number of hours of pre-application discussion have been completed. We also understand that it is the intention of Natural England to do the same. We consider that the application charge should include some pre-application discussions and this should be varied depending on the complexity of the application.

## Monitoring requirements and inspections

Our members are supply data on a variety of emissions and other information- including protected species and habitat- the data reported will depend in the operations on the site. Data will be reported in most situations to Natural England, the EA, HMRC and the Planning Department. We would consider that it may be advantageous to have a central body that would collate all the required data.

Sites that operate under a planning permission must be subject to regular and statutory monitoring visits to ensure compliance. Enforcement powers are available to planning authorities to deal with non-compliance. It is questionable why more than one regulator is required to inspect a site.

## Cement and Lime

The main environmental regulatory obligations that have the greatest impact in terms of cost in this sector are EU Emission Trading System and EPR/IED.

Cement and lime producers receive environmental regulatory information through MPA and companies also have bilateral contact with both regulators and government departments.

Considerable resource is allocated to finding and reacting to regulatory information and updates. Many cement and lime companies have dedicated environmental managers at head office as well as environmental technicians on production sites. In addition MPA has dedicated technical staff who provide support and carry out work on behalf of members.

Regulatory compliance is part of being in business for cement and lime manufacturers and, along with health and safety, environmental compliance attracts the highest level of attention in the sector. Decisions regarding environmental protection and regulatory compliance are made at company board level and best practice is discussed and shared at trade association board level.

Compliance with environmental regulation is ensured through regular inspections by regulators, internal audits and the use of external verifiers to check company performance against voluntary initiatives such as Environmental Management Systems and compliance with mandatory schemes such as EU ETS and CCA.

There is significant duplication in the information businesses provide to government, particularly in the area of climate change and energy regulation. The cement and lime sector is affected by three different schemes targeting energy efficiency and carbon emissions (EU ETS, CCA and CRC).

Duplication is evident within the minerals sector with companies having some activities regulated by the Environment Agency and others regulated by Local Authorities.

Government should look at sector approaches to reduce cumulative burden of environmental legislation. For the relatively simple operation of cement and lime production numerous permits are required covering EPR/IED, EU ETS, CCA, water abstraction, discharge consents, waste carriers license, mining waste, landfill and mobile plant. This results in all aspects of the supply chain from extraction through processing, packaging, delivery and waste being covered by some form of environmental legislation. This burden could be reduced through a reduction in the number of different permits required and regulators providing one invoice that sets out the charges for regulating all activities.

Government also needs to encourage regulators to take a pragmatic approach to regulation. For example, there is a real environmental benefit to allowing cement manufacturers to use more alternative raw materials to produce cement but there seems to be a reluctance from the regulator to progress a risk based assessment approach to using these materials. Such utilisation of waste in a heavily regulated industry will bring environmental gain.

Finally, systems for reporting data, such as ETSWAP (the web based monitoring system for EU ETS), are designed to make life easier for the regulator but are quite time consuming and frustrating for operators to use. Simple improvements could be made to these systems to help reduce the time operators spend inputting data to them.

### **Quarrying**

Quarrying is a complex operation and one that requires detailed thought and consideration, not only during the operational stage, but also pre and post operation. The

application for a planning permission on a site can take many years to be granted, due to the complexities of extraction. Often operators will have to navigate the Habitats Directive and most will require an Environmental Impact Assessment as well. On top of this various other assessments will have to take place, including for hydrogeology. Once planning permission is granted various permits will be required before operation commences.

A site would most often require at least a discharge permit, potentially a Mining Waste Directive permit and soon a permit to abstract and dewater a site. As the operation of the site continues the areas where these activities are ongoing will change- for example dewatering may be more extensive the further a quarry is dug. These requirements are set out in the planning application from the outset, but can not be pre-empted in a Standard Rules Permit.

After extraction, or if the site is to have ongoing restoration work, further permits will be required- often for the deposit of materials to restore the site. The site will be restored in conjunction with the planning permission for the site- often to nature as a reserve or biodiverse habitat. Depending on the nature of the restoration activity a disposal or recovery permit will be required. If a disposal permit is required, extra requirements for monitoring post closure will have to be undertaken by the operator.

It should also be considered that planning applications normally require an environment assessment that addresses the interface with environmental, heritage, and other regimes. Unless impacts are satisfactorily addressed at the planning stage, planning permission will not be granted. There should therefore be a presumption in favour of granting environmental permits. The planning permission will have controls in place to ensure a development does not cause unacceptable pollution. This should be considered and taken into account when and if an Environmental Permit is required.

Additional to the planning and environmental monitoring requirements the protection of endangered species will also have to be considered. Often Natural England will have to be contacted to remove and mitigate against endangered species on site. It should be noted that MPA have made representation to the recent review of the implementation of the Habitats and Wild Bird Directives. If required, or if it would be helpful, the submitted response can also be circulated to this Review team.

As already mentioned the quarrying sector has had the benefit of being used as a case study for the Review. Our members have been involved in various telephone interviews and workshops and most of the points raised will probably have been recorded through this process. However, below are a few key ideas that our members believe to be fundamental when considering what could improve the regulatory regime.

#### Great Crested Newts (GCNs)

The majority of quarries are home to, or have been home to the protected species- Great Crested Newts. A huge amount of money and time is spent employing ecology consultants and liaising with Natural England to ensure that the species is removed from sites and the correct mitigation techniques are employed. However, the guidance for mitigation is outdated and it is difficult to understand if the practice of moving GCNs away to a new

habitat is beneficial to the species or not. We would consider that further work is needed to see if GCNs can thrive in a working quarry and therefore not require such stringent controls.

### Integration of planning and permitting

We consider that planning permission should be the primary development approval. The EA are consulted on all planning applications that require an EIA. At this time any concerns over the permitting of a site should be raised by the EA and this will prevent uncertainty for operators when applying for a permit. It is also our experience that the advice provided by the EA during the planning application stage will differ to that during discussions over permitting. The problem seems to arise because the EA staff consulted during the planning stages of a site will be different to those consulted during permitting.

One example of where integration would work well is the change over from exempt to licensed dewatering operations. Currently the dewatering of quarries is exempt from licensing requirements. However, this is soon to change with the introduction of new licences. Dewatering is an essential operation for most quarries- without pumping water out of the extraction area it is difficult, if not impossible, and certainly more dangerous to extract the aggregate. Currently it is proposed that the EA will issue dewatering licences that last a maximum of 24 years (depending on CAMS cycle). However, many hard rock sites will require an dewatering licence in excess of 20years. Even though the planning permission agrees to the length of the operation a site would have to close if a permit to dewater was not granted or renewed. This kind of scenario also leads to issues with finance- if an operator is not 100% sure that they will be able to obtain a licence on renewal they are likely to invest elsewhere.

Also, where an Environmental Permit is granted there will be the standard set of conditions including, amongst others, for noise and odour. As already described the planning permission for the site will already have conditions to prevent unacceptable levels of noise and odour- there is no reason for conditions to be placed in the Environmental Permit as well. The planning conditions attached to a mineral permission apply throughout the life of that permission, with the provision that they must be reviewed every fifteen years. Enforcement powers are available to planning authorities to deal with non-compliance, including the issue of stop notices. The standard conditions in the Environmental Permits are questionable- why are they required when already regulated by the Planning Authorities?

As suggested at the Quarrying Stakeholder Workshop on the 1<sup>st</sup> August MPA would welcome a separate session on how planning and permitting requirements can be integrated better.

### Waste- restoring sites

Sites often require restoration materials in the form of inert waste to restore sites to ensure that they are in accordance with the planning permission for the site. Depending on the circumstances and restoration profile a disposal or recovery permit will be required. The way in which the permits are granted and the decision as to whether a site is recovery or disposal is unclear to most operators. Work is ongoing between MPA, Defra and the EA but it remains a troublesome area for operators. The way in which recovery

operations are classified remains an tricky process to navigate. Two similar operations can be classified in different ways- one as a recovery and one as a disposal operation with only vague reasoning provided by the EA.

### Zero Waste

MPA agrees with the principle of zero waste to landfill for most wastes. However, there are situations such as quarry restoration where landfill is not seen as the least worst option for that waste. Unfortunately this is not reflected in any of the Zero Waste documentation provided by Government and so waste is diverted away from quarry restoration to other waste activities. The need for inert waste to restore quarries must be reflected through the various Defra and EA documents. If site operators are unable to obtain inert waste and restore their sites, they would not be working within their planning permission and so subject to enforcement action.

### Conclusion

The current planning and permitting system leaves a lot to be desired. Both require operators to go through a complex regulatory system so that their “license to operate” can be granted. The regulative areas of the Planning Authority and Environment Agency must be clearly defined and understood by both Governmental Bodies and industry to reduce the level of complexity.

I hope you find our comments useful and informative - please let me know if I can be of further assistance.

Yours sincerely,

**Nicola Owen**  
Environment and Waste Policy Executive  
Mineral Products Association