

## Transposing the Mining Waste Directive (2006/21/EC) In Northern Ireland – Analysis of Consultation Responses

1. The consultation period ran from 16<sup>th</sup> February 2009 to 11<sup>th</sup> May 2009. The consultation paper was circulated to a wide range of consultees and advertised in the local press, on the Department's website plus the N.I. departments' consultation register. The consultation paper set out the Department's proposals for transposing the requirements of the Directive into Northern Ireland planning legislation. The paper set out a number of specific questions to guide responses although respondents were advised that they could comment on any aspect of the proposals even if a question had not been included.
2. Eleven responses were received although five of these had no comments to make on the consultation document. The respondents consisted of 2 district councils, 4 government departments and 5 other organisations as set out in the table below.

<b>Respondent type</b>	<b>Respondents</b>	<b>Total</b>
<b>District Council</b>	Southern Waste Management Partnership (SWaMP2008) (which included 8 member Councils)	2
	Limavady Borough Council	
<b>Government Department/ Non Departmental Public Body</b>	Corporate Services Division, (OFMDFM)	4
	Planning Appeals Commission	
	Department of Enterprise, Trade and Investment	
	Geological Survey of NI	
<b>Other</b>	Northern Ireland Judicial Appointments Commission	5
	Council for Nature Conservation and the Countryside	
	Derryhale Residents Association	
	Royal Town Planning Institute (Northern Ireland Branch)	
	Quarry Products Association for Northern Ireland.	

3. Questions asked in the Consultation Paper.

**3.1 Question 1: Do you agree that Northern Ireland should take advantage of all derogations in the Mining Waste Directive (MWD)?**

6 respondents agreed with this and 5 respondents made no comment.

Quarry Products Association for Northern Ireland (QPANI) insisted that this was “absolutely essential” as “virtually all of the requirements of the MWD are already covered by existing legislation and regulations”

The Council for Nature Conservation and the Countryside stated that it was clearly sensible to minimise the burden of new legislation on quarry operators provided it doesn't mean that lax practices develop as a result.

The Derryhale Residents Association stated that they understood the requirement to transpose the EC Directive 2006/21/EC into NI Legislation and that in this transposition advantage should be taken of any derogations beneficial to NI.

**Department's Response**

The Department will seek to minimise the impact on industry by utilising all available derogations available to it in the directive while satisfying itself that the provisions of Article 4 “General Requirements” are met.

**3.2 Question 2: Do you agree with the proposal to extend the meaning of development in the 1991 Order by amending the definition of “mining operations” to include “the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources”?**

6 respondents agreed with this and 5 respondents made no comment.

The Derryhale Residents Association highlighted the possible confusion of the definition of waste.

**Department's Response**

In order to transpose the requirements of the directive through the planning system it is necessary to bring the management of waste from the onshore extractive industries within the definition of development as defined in the Planning (Northern Ireland) Order 1991.

**3.3 Question 3: Do you agree that a waste management plan is an appropriate method through which an operator should demonstrate compliance with the requirements set out in Articles 4, 5 and 10?**

6 respondents agreed with this and 5 respondents made no comment.

QPANI proposed that the review of waste management plans be carried out within the Aggregates Levy Credit Scheme.

#### **Department's Response**

Existing requirements on the industry, such as those of the Aggregates Levy Credit Scheme, will be amended wherever possible to reflect the format and requirements of the waste management plan as required by these Regulations. The Department will seek to minimise the burden placed upon operators and continue to work closely with the industry.

### **3.4 Question 4: Do you agree that the planning application process is a suitable mechanism through which to consider the appropriateness of the waste management plan?**

6 respondents agreed with this and 5 respondents made no comment.

QPANI agreed as using the existing regulatory system will help to reduce the burden on business and the regulator. Compliance with the Directive can be monitored and driven through the setting of planning conditions relating to the MWD.

The Derryhale Residents Association stated that they would agree that coordination of waste management plans, through a single agency, is essential.

#### **Department's Response**

The Department will ensure that the appropriateness of the WMP is assessed through the planning process.

### **3.5 Question 5: Do you agree with the Department's proposal to modify the current consultation arrangements with NIEA and HSENI to ensure compliance with the MWD?**

6 respondents agreed with this and 5 respondents made no comment.

QPANI agreed as the appropriate authorities who need to be consulted are already members of the Better Regulation group therefore it should be relatively simple to put an effective communication process in place to ensure compliance with the MWD.

The Council for Nature Conservation and the Countryside agreed but they raised a concern that there is no formal input by qualified geologists, although NIEA may take such advice. The geological expertise is in another department and it might be sensible to ensure that the GSNI is a statutory consultee for all such plans.

### **Department's Response**

The Department will review and, where necessary, amend consultation arrangements to meet the requirements of the Directive.

### **3.6 Question 6: Do you agree that ROMPs is the most appropriate mechanism for bringing planning permissions into line with waste management plans?**

6 respondents agreed with this and 5 respondents made no comment.

### **Department's Response**

The timetable for ROMPs may not now fit with that of the MWD. A separate administrative exercise will be undertaken to ensure compliance with the Directive. The Department has agreed with the industry that where there is a current application for a site, a Waste Management Plan (WMP) will be sought for the application. Where a planning application is close to determination the Department will request a WMP by way of a negative planning condition so as not to cause any delay in the processing of the planning application. Where an extraction site does not have a current planning application, Planning Service will be writing to operators requesting submission of a WMP.

### **3.7 Question 7: Do you agree that planning permission should be withheld for new operations and enforced for existing operations where a suitable financial guarantee is not put in place?**

6 respondents agreed with this and 5 respondents made no comment.

QPANI believed this should only apply to Category A waste facilities.

### **Department's Response**

Having taken advantage of available derogations under the Directive, where the Department deems a financial guarantee as necessary it will apply the proper elements of the planning process in relation to the granting of permission and the use of enforcement powers.

### **3.8 Question 8: Do you agree that the principles of Best Available Techniques (BAT) should be demonstrated through waste management plans as an element of a planning application or by some other means, and if so what?**

6 respondents agreed with this and 5 respondents made no comment.

QPANI believed that there should be a general requirement for mining waste to be subject to the principles of Best Available Techniques Not Exceeding Excessive Costs and this should be demonstrated through the Waste Management Plans.

### **Department's Response**

The (2004) BAT document produced by the European Commission covers the management of waste rock and tailings from mining activities under the auspices of 96/61/EC concerning the Integrated Pollution Prevention and Control Directive. Operators are required to take all necessary measures to prevent or reduce as far as possible any negative effects, actual or potential, on the Environment or human health. The Department will continue working with the industry to address the requirements of the Directive.

The definition in article 2 and article 4 of this directive refers to BAT with cross references to 96/61/EC.

### **3.9 Question 9: Do you agree that the proposed requirements as an element of the planning application process are adequate in addressing the requirements of Article 6?**

4 respondents agreed with this and 7 respondents made no comment.

### **Department's Response**

The Department notes the responses on this issue and intends to conclude discussions on the best way forward.

### **3.10 Question 10: Do you agree that the proposals to satisfy the requirements of the MWD in relation to inspections are consistent with Better Regulation principles?**

5 respondents agreed with this, 1 disagreed and 5 respondents made no comment.

While the Council for Nature Conservation and the Countryside agreed they felt that this relied on a level of subjectivity. They agreed with using a risk-based model for guidance but felt that guaranteeing lower costs if a certain principle is met could cause disharmony with the industry.

The Derryhale Residents Association did not agree with the proposals having concern that resources within the existing Planning Department may be inadequate to ensure proper site inspection and supervision of compliance.

### **Department's Response**

The Department intends to progress on the basis of a risk-based model of inspection consistent with Better Regulation principles and which will meet the requirements of the Directive.

### **3.11 Question 11: Do you agree that placing a general requirement on operators is an appropriate means of securing the competency requirements of Article 11?**

6 respondents agreed with this and 5 respondents made no comment.

### **Department's Response**

The Department intends to progress on the basis of placing a general requirement on operators to secure the competency requirements of the Directive.

#### **3.12 Question 12: Should the proposed Regulations introduce specific fees for the consideration of waste management plans and inspections?**

4 respondents agreed with this, 2 disagreed and 5 respondents made no comment.

QPANI did not agree with this. They believed that as compliance and monitoring can be carried out through existing regulation, including the Aggregates Levy Credit Scheme, this should not incur any additional monitoring costs for the Regulator. They felt there could be a system of charging for those who do not comply or fail to meet the general requirements. This would act as an additional compliance incentive.

The Council for Nature Conservation and the Countryside disagreed with this and stated that there was a positive attempt throughout the document to try to show operators that the cost to them of this new transposition will be made as small as possible. Accordingly, although there will obviously be extra work to the departments, it would be more satisfactory if the fees should be covered by The Planning (Fees) Regulations (NI) 2005.

The Derryhale Residents Association suggested that fees should be used to set up and maintain an active inspectorate.

### **Department's Response**

Differing views were expressed by respondees and the Department is currently considering the most appropriate way to move forward.

#### **4. Other General Comments/Issues**

4.1 QPANI made the following comments.

4.1.1 They argued that silt contained in lagoons should also be categorised as "non waste by products".

### **Department's Response**

The Department is not of the opinion that lagoon silt could be categorised as a 'non waste by product' of extraction. This may vary on a site by site basis. These will still require to be accounted for in the WMPs.

- 4.1.2 They are looking forward to developing, with NIEA support, a waste management plan template that can be used by the industry to ensure compliance.

**Department's Response**

The Department welcomes QPANI's involvement in developing the waste management plan template.

- 4.2 The Council for Nature Conservation and the Countryside (CNCC) provided further comments as follows:

- 4.2.1 They noted that offshore extraction and pumped groundwater are excluded.

**Department's Response**

Offshore extraction and pumped groundwater is outside the scope of the MWD and therefore outside the scope of the consultation.

- 4.2.2 CNCC also noted that deposits from old, in some cases ancient, mining do not seem to be covered.

**Department's Response**

This is outside the scope of the MWD as legislation is not normally retrospective and therefore outside the scope of the consultation.

- 4.2.3 They note that it is important that any mineral extraction legislation is 'future proofed'.

**Department's Response**

While the Department intends to take advantage of available derogations under the Directive it intends that all other requirements of the Directive will be adequately addressed via the proposed legislation.

- 4.2.4 They questioned whether lignite is included as peat or coal?

**Department's Response**

Lignite is neither peat nor is it coal. Its extraction would now, giving the change to the definition in the 1991 Order, be termed 'development' and would therefore be considered under the normal planning application process.

- 4.2.5 They also questioned whether oil/gas exploration on land should be mentioned.

**Department's Response**

Oil and gas exploration benefits from Permitted Development rights under the Planning (General Development) Order (NI) 1993, Schedule 1 Part 16. Where waste is generated the Department will seek assurances from the 'prior notification' that such waste will meet the general requirements of article 4 of the MWD (see Part 16. A2).

- 4.2.6 The term inert is misleading in the context of mining and quarrying operations and their impact on the environment.

**Department's Response**

The Department will work with the industry to ensure that the guidance which is available is clearly understood.

- 4.3 While the Planning Appeals Commission (PAC) had no comments on the consultation paper itself the Chief Commissioner requested that if the regulations involve further appeal functions for the PAC and/or Water Appeals Commission (WAC) that they and the Commission's sponsor Department, the Office of the First and Deputy First Minister (OFMDFM), would wish to be consulted.

**Departments Response**

The Department will ensure that PAC or WAC will be consulted at an early stage for any new functions that may have an impact for them.