

Response to Defra/Environment Agency Consultation – ‘Environmental Permitting Programme.’ May 2006

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non-ferrous metal recycling companies throughout the UK. We represent some 300 businesses, from multi-national companies to small family-owned enterprises. BMRA members are a £3.5 billion industry, processing over 13 million tonnes of metal every year; and exporting worldwide.

Our industry produces vital secondary raw material for industry. Using secondary raw materials saves natural resources – for example, 42% steel and 39% aluminium is made from recycled metal, saving substantial primary sources such as iron ore and bauxite. Producing metals from secondary raw materials also results in substantial energy savings and reduces CO₂ emissions.

This response contains the industry’s response to the joint Defra/Environment Agency consultation document on the Environmental Permitting Programme, published in February 2006. It is based on consultation with a range of companies across our industry, which included a special meeting for BMRA member companies held in March 2006 and meetings of the BMRA Legislative Policy Group and METRE. The latter included a presentation given by Dr Heard from the EPP Team. BMRA has been involved in the EPP consultation process from its inception and welcomes the opportunity to provide comments and our industry’s perspective throughout the process.

BMRA’s response has been organised to follow the consultation questionnaire.

1. To what extent do consultees agree that the written consultation criteria have been adhered to?

BMRA has been encouraged by Government’s extensive pre-consultation involvement of stakeholders and believes this to have been a positive experience. Future proposals would benefit from this approach. However, the printed consultation does not provide the necessary details for industry to fully embrace and commit to the proposals outlined. This lack of clear indication as to the real implications of the proposals makes our responses to the remaining questions somewhat general. Therefore, we would welcome further consultation/working groups to understand and comment on in more depth the proposals ahead of the second phase of consultation on the draft regulations.

3. Do consultees agree with the Vision for a better Permitting and Compliance system? If so why and if not why not?

BMRA supports the broad principles of the Vision for a better Permitting and Compliance system and any move from Government to reduce burden on industry is to be welcomed. We offer the following comments:

Simplification should not mean ‘one size fits all’

We are concerned that ‘simplification’ should not mean ‘one size fits all’. ‘Simplified’ systems can result in placing undue responsibilities on those who complete them. The metals recycling industry is discussing with the Environment Agency the problems that have arisen in relation to new Hazardous Waste Regulations paperwork. This concern relates to the administrative and cost burden, and the responsibility placed on the commercial metals recycling business to ‘police’ its suppliers.

For example, the needs of the recovery and recycling operations are different from those of waste disposal. This is especially true for commercial firms in the metals recycling sector whose interests pre-date and span beyond the introduction of modern waste legislation. The differing interests of such companies compared to the wider waste management sector had been acknowledged previously by Government in Waste Management Paper 4a.

Therefore it is clear that different industries need the opportunity to develop customised systems and paperwork with the regulators and enforcement agencies. This would help business meet its legal requirements whilst minimising the disruptive impact of additional reporting requirements.

Risk-based and consistent enforcement

We support risk-based enforcement. Consistency across the country is equally important. We are aware of many instances where our members receive conflicting advice or enforcement action from the relevant agencies. The Environment Agency has designated our industry as 'low risk' (metals recycling is rated as a Band A activity – the lowest risk banding in EP OPRA) so companies operating in our sector should expect an appropriate lower level of site inspection and enforcement. We also believe that many more activities in our industry could more effectively be dealt with through exemptions or simpler 'fixed' licences, saving regulators' time and effort.

Better and earlier guidance

Better and earlier guidance is needed before new regulation is implemented. Industry needs to understand the changes it may need to make, both operationally and economically. We were particularly disappointed with the lack of clear and timely guidance regarding the implementation and application of the Hazardous Waste Regulations in July 2005. Many of our members were confused. This problem was further compounded when companies were unable to register as hazardous waste producers due to the Environment Agency's electronic registration system being overloaded with applicants.

Incentives for compliance

Any new system needs to introduce clear incentives for industry to embrace environmental ideals. The EPP framework must encourage and reward those companies that invest in technology, equipment, facilities and processes.

Illegal operators still a major disincentive

It is equally important that the EPP framework tackles illegal activity. This continues to be a considerable problem for legitimate business in the metals recycling sector. Illegal operators fail to comply with regulations and prescribed treatment processes. This can act as a major disincentive to legitimate businesses making those investments described previously.

Extension of common system to other areas

We agree that other permitting and compliance systems should be considered for inclusion within a common system.

5. Do consultees agree that a new Permitting and Compliance system should contain the proposed features? If not, why not? What other features do they consider are important, and why?

We agree that a new Permitting and Compliance system aimed at delivering better regulation should contain the proposed framework features. However, the following are also needed:

(a) Joined-up thinking

In order for any resulting system to be delivered effectively there needs to be greater joined-up thinking between government departments, in particular Defra and the Environment Agency. Business is too often required to accept a lack of clarity because government bodies cannot act in unison. The result on business is considerable confusion, frustration and financial burden, which could be avoided.

- Many BMRA members experienced first-hand the problems this can create when local planning authorities failed to process consent applications for site modifications required to satisfy the requirements of the End of Life Vehicle Regulations. Without proper planning consent the Environment Agency was unable to determine Authorised Treatment Facility status to applicant sites, which has resulted in a number of BMRA member companies being forced to cease part of the activities due to factors beyond their control whilst matters were resolved.
- This problem has been further exacerbated by the lack of robustness of the DVLA Certificate of Destruction system which continues to prevent Defra/Environment Agency to provide a clear definition of when a vehicle becomes waste.

(b) Consistent risk-based enforcement

Whilst we recognise that the Environment Agency is already committed to a risk-based approach to enforcement, BMRA receives reports from members that this is not always applied consistently at local level.

(c) Extension of EPP to the devolved administrations

We believe that the uniform approach of the EPP should be extended to Scotland and Northern Ireland. In particular this would provide significant benefit to companies with operations throughout the United Kingdom.

6. How important do you consider each of the proposed benefits as outcomes of the Programme? What other benefits do you also consider to be important, and why?

BMRA considers that each of the benefits outlined in the Consultation is important and should be realised as an outcome of the Programme.

(a) Benefits and costs must be balanced

The metals recycling industry has been exposed to a raft of new regulations, which have increased administration and placed a significant additional financial burden on commercial companies. These additional costs to business (such as hazardous waste consignment notes, cost of depollution of end-of-life vehicles etc.) are in effect, an additional tax that cumulatively threatens the profitability (and in some cases viability) of many metal recyclers. Industry needs greater transparency from the regulators on how the licence fees and other charges are used to provide environmental benefit. Business also needs assurance that the regulatory and enforcement agencies are taking every effort to ensure that these

costs are kept as low as possible and that the licence fees, in all their forms, will be lowered to reflect the reduced cost of EPP.

(b) Enforcement must concentrate on non-compliance and illegal activity

We support risk-based enforcement the new Permitting and Compliance system proposes. We believe that the Environment Agency, having identified those activities and compliant operators that pose a low risk to the environment and human health (using EP OPRA profiling), should provide an appropriate lower level of site inspection and enforcement. This would free-up additional time resource for the Environment Agency to enforce the regulations and police non-compliant and illegal sites.

Illegal activity is a major problem for legitimate business in the metals recycling sector. We are also concerned that current systems inadvertently encourage illegal activity. For example:

- Illegal operators are not subject to compliance costs; therefore their operating costs are lower. This attracts supply to the illegal route.
- Regulation controlled by different departments does not always come together effectively. Thus there is currently no clear definition of when a vehicle becomes 'end of life' because there is not yet a robust DVLA certificate of destruction system, with financial penalties on the last owner for non-compliance. Because of this illegal operators are able to enter the ELV market.
- Over-scrutiny of licensed facilities takes regulators time and effort away from pursuing illegal operators.
- When illegal operators are caught, the penalties are often too low to deter future breaches of the law.

This continuation of illegal activity is particularly problematic for an industry such as ours which depends on market viability for its survival and profitability.

(c) Planning applications must be approved more quickly

We would also favour faster processing and approval of planning applications for low-risk activities. This would obviously require improved liaison between the Environment Agency and planning authorities to ensure that businesses can expand their operations/services with minimal disruption. This would also benefit planning authorities by allowing them more time to consider contentious or high-risk applications.

(d) Industry must be involved in the design and format of documentation

It is absolutely essential that industry is involved with the design and format of forms. We support Government's proposal to encourage industry and regulators, where practicable, to use electronic means to submit information. However, any resultant system must be thoroughly 'road-tested' before it is implemented. Last summer BMRA members, together with thousands of other companies producing or handling hazardous wastes, were unable to register with the Environment Agency due to the electronic registration system suffering software failures. In addition to ensuring that electronic systems are reliable and robust, better and earlier guidance on how to use them is also needed.

7. Do consultees agree that applicants who fail to provide additional information which regulators reasonably require to make a determination should have their applications deemed withdrawn without a right of appeal? If not, why not, and what alternative approach would be better and why?

We believe that a right of appeal should be retained. This would allow applicants to challenge decisions based on misleading or inaccurate information. We seek clarity on what types of “additional information” the regulators may seek from an operator, with operators able to query those requests if they believe the information to be irrelevant to the permitting process.

The consultation document does not specify what timescale would be considered “unreasonable” for an operator to provide information. BMRA members are often required to provide information to regulators at very short notice under the existing waste management licensing system. Therefore, we believe that under any new system, operators must be given adequate time to produce requested information.

8. Do consultees agree with the proposals for streamlining applications? If not, why not? How would consultees suggest that these or greater efficiencies should be delivered?

We agree that the proposals for streamlining would be beneficial to determining when an application is deemed to be refused. However, it is essential that any streamlining of the current application process be thoroughly tested before implementation to prevent future occurrences of inadvertent deemed refusal.

9. Do consultees agree with the Government’s proposed approach to who and what must be permitted under EPP? If not, why not and what alternative approach might deliver a simpler Permitting and Compliance system?

BMRA supports the proposal to restrict the availability of permits to those persons in control of an activity, rather than the site on which the activity is carried out.

This arrangement would allow greater flexibility for companies to operate waste facilities as part of a commercial agreement / transaction and/or lease agreement with the licence holder and/or landowner, to ascertain commercial viability of the operation / potential for investment and scope for alterations to current facilities to accommodate new regulatory requirements or improvements in technology.

The requirement to have the appropriate planning consent should also ensure that any landowner is aware of what operations can take place on his land.

10. Do consultees support risk based regulation for the types of activities covered by EPP? If not, why not and what alternative approach could help simplify the environmental Permitting and Compliance system?

The UK metals recycling sector operates in an international market where competitive edge is essential to the prosperity of companies. Given the low risk status, we do not believe there is a need for Government to impose heavy, burdensome regulations on the industry, nor is there benefit to introducing additional regulations; the effects of which often stunts commercial development and makes competing globally considerably more difficult. Therefore, we would welcome risk-based regulation proposed by the EPP although it must be accompanied by risk-based adoption in practice.

Given that the metals recycling sector is low risk, compliant companies operating in the sector must receive an appropriate lower level of site inspection and enforcement. The effect of lighter regulation of the compliant metal recyclers should provide the Environment Agency additional time resource to take appropriate

enforcement and prosecution action against the illegal operators who continue to undermine the commercial development of the sector. We need commitment from the Environment Agency that more vigorous action will be taken to tackle this issue.

We believe that many more activities in our industry could be more effectively dealt with through greater use of exemptions or 'standard permits'.

A need to improve public perception

Many applications for planning consent for recycling and recovery operations are delayed due in part to poor public perception of the recycling industry. In order to improve the general public's awareness of the benefits of the waste and recycling industries, it is essential that terms such as "waste" permits are renamed "environmental" permits.

11. Do consultees agree with the Government's proposals to simplify Permitting and Compliance through a single site-based permit? If not, why not and what alternative approaches to sitebased multi-activity regulation would lead to greater streamlining?

Many metals recycling facilities conduct several activities at the same site. Depending upon the types of activity conducted, the operator of a licensed site may also be carrying on an exempt activity at the site. In these instances, the licence conditions cover the exempt activity insofar as necessary to ensure that the licensing objectives are met; but no further.

We would welcome proposals to simplify Permitting and Compliance through consolidation of permits into a single site-based permit provided that:

- (a) the associated costs (i.e. subsistence fees) are collectively lower than a single 'bespoke' permit and;
- (b) the effect of the single site-based permit must not extend additional regulatory requirements to those exempt activities.

12. Do consultees agree with the proposals for simplified exemptions rules and with the proposed exemption criteria? If not why not and what alternative approaches could lead to greater reductions in the administrative burden?

BMRA supports the proposals for simplified exemption rules and welcomes the forthcoming review of exemptions. Given that many metals recycling operators meet the conditions for exemption specified in the Waste Framework Directive it is imperative that industry is consulted on any moves to replace them with Standard Rules Permits. Given the success that parts of the metals recycling industry have operated under the conditions of exemptions to Waste Management Licensing, we would favour increasing the number and types of activities that could be exempt (provided that further exemptions do not provide a 'smoke screen' for illegal operators). We look forward to direct dialogue throughout the review.

13. Do consultees agree that Standard Rules Permits which cannot be appealed are a fair price to pay for reduced administrative costs? If not, why not? What alternative approaches to standard permits could lead to greater reductions in the administrative burden? Further, what scope or pitfalls do consultees see for reducing statutory requirements for consultation on individual "bespoke" permit applications?

BMRA supports the proposals for Standard Rules Permits and has already offered to assist Government to develop a standard rules permit for metals recycling.

We believe it is important that applicants should have the opportunity to appeal a decision not to grant a standard rules permit, if the operator believes he qualifies for a permit.

Given the raft of regulations that impacts the metals recycling sector, variations to a Standard Rules Permit must be allowed to take consideration of new laws, or amendments to existing regulations. Therefore, if a permit requires updating to accommodate regulatory changes, it is important that the holder does not have to re-apply for that permit.

14. Do consultees agree with the Government's proposals to reform Operator Competence? If not, why not, and what alternatives would lead to greater reductions in the administrative burden?

We welcome Government's decision not to specify particular qualifications to determine competency. In our view the waste management sector's technical competence training requirements differ to those of the metals recycling sector which needs the ability to develop its own COTC. It is important that Government provides clarity about the common criteria and standards that should be achieved by companies operating under the EPP framework to enable industry to develop. These standards need to be agreed by the regulators with industry.

15. Do consultees agree with the Government's proposals to streamline permit variation? If not, why not and what alternative approaches might lead to greater simplification?

We would welcome a streamlined approach to cover permit variations which reduces the administrative burden (and therefore costs) to both parties.

16. Do consultees agree that permits covered by EPP should be capable of being transferred in full or partially? If not, why not?

It is essential that permits covered by EPP are capable of being transferred in full or partially. Many metal recycling facilities are family-run businesses where the owner passes on his company to/between his children. The ability to transfer permits in this manner (i.e. without the need to surrender the original permit and the application for new permits) maintains commercial stability and minimises disruption to the company business.

As the structure of the metals recycling industry changes, with smaller companies merging or being acquired by larger players, it is important that the transfer of a permit to another competent person should be allowed. It is also important that transfer on death of the permit holder, in full to another competent person, should be permitted.

17. Do consultees agree with the Government's proposals to streamline monitoring and review of permitted activities? If not, why not and what alternative approaches could lead to greater reductions in the administrative burden?

The consultation does not make the distinction between Standard Rules Permits and other permits. If an operator holds a Standard Rules Permit, there it is difficult to envisage the need to monitor/review permits, except to ensure that any new regulations are complied with.

18. Do consultees agree with (a) the removal of the due diligence defence and (b) the extension of the emergency defence to PPC activities? If not why not, and how could statutory defences be limited so the aims of the regimes they deliver are not undermined?

It is essential that both the due diligence and emergency defence are carried forward by the EPP. We are concerned that the proposed removal of the due diligence defence would in effect impose strict liability on operators (i.e. directors of companies). The extension of the emergency defence to PPC activities is welcomed.

19. Do consultees agree with the proposals on enforcement, suspension, revocation and remediation powers? If not why not, and how should statutory notices ensure that the objectives of the system are delivered? Going further still it might be possible to streamline notice powers perhaps providing for a single notice to carry out the above tasks? Do consultees think that this would help reduce the complexity of the system? If not, why not and how else might this be achieved?

We agree with the proposals on enforcement, suspension, revocation and remediation powers although are concerned that streamlining notice powers could cause confusion for operators. In particular, confusion could arise regarding which action would be expected of the operator to remedy any breach of permit conditions.

20. Do consultees agree that regulators should continue be empowered to seek High Court orders where the use of other enforcement powers appear ineffective? If not why not?

We agree that the current use of High Court orders should be continued.

21. Do consultees agree with the Government's proposals for accommodating framework issues? If not, why not and what alternatives could lead to greater simplification?

BMRA awaits the joint Defra/ODPM consultation on the planning review before commenting on proposals for accommodating framework issues. The outcome of both this (EPP) consultation and the forthcoming planning review consultation will be crucial for the second phase of EPP consultation on the draft Regulations.

22. Do consultees agree with this proposed model for Guidance and other underpinning material? If not, why not and what alternative approaches would lead to greater simplification? What role is there for industry-developed Guidance (or codes of practice)?

We are concerned that standardising guidance for waste management and PPC could lead to a 'one size fits all' approach being adopted. There is a need for Government to identify the commercially-viable recycling industries and to consider them separate from waste (disposal). This would also require separate legal and technical guidance for recyclers to cover all aspects of the industry. WMP 4a, although increasingly overtaken either by new EU or UK legislation, or by new guidance, has stood the test of time and believe that it offers a basis for Government to establish any new guidance.

23. Do consultees agree that creating a single public register for waste and PPC and considering opportunities to streamline access to information rules and Guidance is a sensible approach to adopt? If not, why not? What alternative approaches could lead to greater simplification?

BMRA does not have any objections to holding waste and PPC rules and guidance at a central public register.

It is essential that commercial confidentiality issues are addressed and the opportunity to publish rules and guidance for the release of information onto public registers is welcomed. We would request further details on how information of operators/processes would remain confidential.

24. Do consultees agree that a risk-based approach to public involvement in environmental Permitting should be adopted? If not, why not? What alternative approaches could lead to greater simplification?

We support the risk-based approach to public involvement in environmental permitting and would suggest that the level of involvement for bespoke permits should be limited to advertising in newspapers/on the Internet.

25. Do consultees agree with the proposals for cessation of permits? If not, why not? What alternative approaches would protect the environment and reduce complexity?

We agree with the proposals for the cessation of permits.

26. Do consultees agree with the proposals for appeals against decisions of regulators? If not, why not? What alternative approaches might give flexibility to those involved in the appeals process?

The proposal for appeals against decisions of regulators is acceptable, although it must be ensured that appeals are settled in a reasonable timeframe to minimise cost/disruption to business operations.

27. Do consultees agree with the Government's proposals for a simple transition to an EPP system? If not, why not? What alternative proposals might lead to more effective transitional arrangements?

We agree that the proposals should allow a simple transition from the existing WML/PPC system to an EPP system. However, in order to facilitate this transition it is essential that businesses are provided with a clear timeline for the introduction of the new system, together with clear and concise guidance of the benefits of EPP and what the changes to licensing (e.g. standard rules permits) mean to industry issued well ahead of the changeover. This will help ensure that industry is prepared for the changes and has made any changes it feels necessary to ensure compliance. It is also vitally important that any new systems and documentation is extensively 'road-tested' to prevent a repetition of the problems thousands of companies faced when the Special Waste Regulations were repealed by the introduction of the Hazardous Waste Regulations in 2005.

28. Do consultees agree with the proposed geographic scope of these proposals? If not, why not and what alternative approaches could lead to greater simplification?

As mentioned at question 5, we believe that the EPP should be adopted by the devolved administrations. This would help achieve greater simplification of the licensing regime throughout the United Kingdom – in particular for those companies with operations in Scotland and/or Northern Ireland.

29. Do consultees favour EPP covering Part A(2) and/or Part B activities – local authority regulated activities?

BMRA does not have any comment to make on this proposal.

**30. Do consultees see any future need to change who regulates which activity?
If so, why?**

The Environment Agency has established itself to regulate waste management activities and we do not consider it necessary to change this arrangement. Furthermore, it would be beneficial to industry that only one body is concerned with its regulation.

15 May 2006
BMRA