



## British Metals Recycling Association

### **Response to DEFRA consultation on the Options for implementing the Environmental Liability Directive in England, Wales and Northern Ireland, published December 2006**

The British Metals Recycling Association (BMRA) is the trade association for ferrous and non-ferrous recycling companies throughout the UK and represents some 300 businesses, from multi-national companies to small family-owned enterprises. This £3.5 billion industry processes over 13 million tonnes of metal annually into secondary raw material, which is vital for metals manufacturing.

The UK metals recycling industry is well-established and operates in an international market of traded raw materials. Most metals recycling activities are considered low risk [using EP OPRA profiling – A19, A20] and are typically regulated under waste management licensing or registered exemption. The industry is a substantial contributor to the delivery of existing strategies on recycling and the sustainable use of resources.

BMRA supports the broad principle of the Environmental Liability Directive (hereafter ELD), namely the “polluter pays principle”, and welcomes Government’s approach to its interpretation. We also welcome the opportunity to comment on the proposals.

#### **1. Proposals lack detail necessary for full response**

Despite the consultation and supporting document’s considerable length, there are a number of areas which lack sufficient detail for the full implications to be understood (discussed below). Also, it should be noted that during the period this consultation has been open there have been several other Government consultations that impact directly on our sector, such as Waste Framework Directive and Environmental Permitting proposals, Duty of Care and Exemption reviews. It is thus extremely difficult to give each a comprehensive and thorough assessment and understand how one set of proposals could affect other closely-related areas.

#### **2. Part B: Scope**

It is noted that the ELD will introduce strict and fault-based liability. Since strict liability already applies to environmental damage caused by the occupational activities listed in Annex III operations, it is unclear what the real implications to such operations will be.

We would oppose any measures to introduce a regime whereby strict liability applies to *any* occupational activity (i.e. activities outside the scope of Annex III) which causes environmental damage.

### **3. Article 8: defences**

We agree with the Government that the defences listed in Article 8.3 (i.e. “third party” and “compliance with compulsory order” defences) are justifiable and support the proposal to implement them. We also support the Government proposal to implement Article 8.4 defences (i.e. “permit” and “state of scientific and technical knowledge” defences).

### **4. Article 14: financial security**

It is noted that Government does not propose to require operators to hold financial security in order to meet any liabilities that may arise under the ELD. However we also note the discussions with the financial security industry to fulfil Article 14.1 provisions. We would welcome further information these developments and urge that industry be fully consulted if additional requirements are to be imposed.

### **5. Interim arrangements**

It is noted that the ELD is required to be implemented by 30 April 2007. However, it is understood that the UK will be late in transposing Directive requirements into UK legislation. The consultation does not make clear how incidents that cause qualifying damage that occur after 30 April 2007 but before UK implementation, will be dealt with. We would welcome details on how the UK intends to apply the ELD during this interim period.

### **6. Role of guidance**

Given the scope of the ELD, it is essential that clear, concise and easy-to-understand guidance be produced for industry. There are many areas, as noted above, that require further clarification which could be covered in appropriate guidance. It is essential that operators are made aware of the Regulations and how they could be affected by them. Crucially, any guidance must be published in good time to allow industry to understand the key issues well in advance of implementation.

If there is any aspect of this response on which further information is required, please contact Howard Bluck by email [Howard.Bluck@recyclemetals.org](mailto:Howard.Bluck@recyclemetals.org) or write to:

British Metals Recycling Association  
16 High Street  
Brampton  
Cambridgeshire  
PE28 4TU

(01480) 455249

February 2007