

**Comments on:**

**Consultation on Transposition of EU Directive (2009/29/EC) revising EU Directive (2003/87/EC) and relating to Greenhouse Gas Emissions Data and National Implementation Measures**

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**The Mineral Products Association**

Mineral Products Association (MPA), is the trade association for the aggregates, asphalt, cement, concrete, lime, mortar and silica sand industries. MPA members supply around £5bn of essential material to the UK economy; by far the largest single supplier of material to the construction sector.

**Specific Consultation Questions**

**Q1) Is the definition of 'emissions data' in Regulation 2, referring to Regulation 3(2), sufficiently clear?**

Yes on the whole, although the definition should recognize that only partial installation data may be available for the relevant period therefore the definition should be amend as such:

*"emissions data" means a record of emissions during the relevant period which are attributable to a Phase 3 activity, or, in relation to an installation which carried out a Phase 3 activity for only part of the relevant period, a record of emissions relating to that period, **or, in relation to an installation whereby only partial emission records are available an estimate for the relevant period.***

Furthermore, under the new definition of combustion additional activities may be captured that are within an *existing* EU ETS regulated installation already participating in Phase I and II. It is not clear whether these additional activities will be separately permitted in Phase III or if they will automatically be captured within the existing Directive Annex I activity boundary and permit and if so how would they be allocated? An example is a cement clinker plant that had defined "associated activities" that were not reportable under the Phase I and II rules but where these activities now fall into the scope of Phase III.

**Q2) Do you have any comments on any of the other definitions contained in Regulation 2?**

No.

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**Q3) Do you have any comments on which installations are to report historical emissions data under this Regulation?**

Yes, there will be many new installations and activities on existing installations in the mineral products sectors that will be captured by the new regulation. It is therefore vital, particularly for the new activities, that a pragmatic and sensible approach is taken to the data collection. It should therefore be allowed to use available records, in full or in part, to derive the emissions data for the relevant period.

The issue for existing installations with activities that will be caught under the new scope of the Directive is how these new emissions will be included in the allocation methodology, existing EU ETS permits and carbon leakage assessment.

In the asphalt sector many new installations will fall under the requirements to provide data under the transposition regulation, however, they may later be excluded under the small emitter rules. It would therefore make sense to design the data collection for the new small emitter activities as simply as possible.

**Q4) If you are an operator with an installation covered by the EU ETS in Phase III, are you clear whether you will be required to submit data? If you are not clear, please substantiate your response.**

The Mineral Products Association has a varied membership and thus the membership exposure to EU ETS will also be varied, from experts to new starters. The transition regulations and their supporting data collection guidance should recognise that many organisations bought in under the new EU ETS scope will be completely new to EU ETS. The guidance should recognise that new activities will be captured and provide a basic overview of the requirements of EU ETS. The operators of the new activities will not have had exposure to the Monitoring, Reporting and Verification (MRV) requirements and it is therefore vital that Government develops pragmatic and workable regulations and guidance, given the short timeframes available to collect, verify and submit data. The MPA will be working with our members to raise awareness of the new EU ETS requirements but would ask that Government simplify the data collection and submission requirements as much as possible for example by allowing group submissions and group verifications at the corporate level for those with large numbers of installations.

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**Q5) If you are an operator with an installation new to the EU ETS in Phase III, are you confident of submitting data prior to the final deadline of 30 April 2010?**

No, the timescale is too short for new installations to comply with the complexities of the full Phase II MRV requirements. Reference to the MRV in the draft regulations implies that these installations will need to demonstrate accuracy, uncertainty, calibrations etc. The reality is that new installations may only have summary purchase records for fuels with very little if any supporting documents, especially to the level of detail required by the M&R Decision. The new installations have never had a statutory requirement to collect emissions data to the extent and degree of accuracy required by these Regulations and in many cases this historical data, or part of it, will not be available. Consequently, the new installation may only be able to use its available data multiplied by standard default DECC fuel emission factors published for 2008 EU ETS use. Where energy use data is not available Government may have to make provision for converting purchased volume data into emissions. The Regulations need to recognise these limitations and allow both regulator and verifier to use a 'light touch' pragmatic approach in assessing the historical data.

Furthermore, the availability of verifiers will be an issue. Phase II installations often carry out interim verification checks during the latter half of the year and then full verification in the first quarter of each year. Verifiers will be occupied meeting these demands and may not be available for additional work. Unless the verifications can be conducted with a 'light touch' allowing verifier discretion it is highly likely that operators will not be able to book verifiers due to time demands if full MRV requirements are demanded.

DECC should ensure that the rules for verification of emissions data and activity data are available to allow new Phase III installations to have both sets of data verified simultaneously. Not to do so would add significant unbudgeted cost to these operations, many of which are very low emitters of CO<sub>2</sub>.

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**Q6) Do you have any comments on the draft Regulations allowing the operator to submit a record of emissions for only part of the relevant period if an installation has only carried out a Phase III activity for part of the period?**

We agree that emissions records should be submitted where activity has taken place in just part of the relevant period. Using the same logic the regulations should be amended to allow operators that operated their installations over the whole period but where historical records are incomplete to submit part or estimated data where this has been agreed with the verifier.

**Q7) Do you have any comments on the set of details to be submitted along with the emissions data as set out in 3(3)?**

Yes, regulation 3(3)(c) should be amended as follows:

*"a statement from an independent verifier that the emissions data, **or data sample**, have been verified in accordance with paragraph (4); and"*

This will allow the use of partial data where incomplete records exist.

Regulation 3 should also require the identification of activities by NACE code for the emissions data. This will help improve the EU ETS database whereby emissions can be identified against specific activities. However, it should be recognized that some new EU ETS activities do not have an obvious four digit NACE code e.g. asphalt manufacture.

**Q8) In your view, is the amount of £500 proposed as a fee appropriate?**

No, £500 is an excessive fee for merely processing data which will already have been verified by an independent verifier. In addition, the fee **must not be per installation** but should allow for a single operator submission covering all of the installations in its group. This will minimise costs to operators both in regulator and verifier fees in a time of economic difficulty and it will also align with the Hampton principles. Operators will not have budgeted for these new requirements and therefore these costs will directly impact the bottom line.

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**Q9) Do you have any comments on the proposal to notify to the European Commission a lower amount of emissions according to the emission reduction potential of installations with activities new to Phase III that emit greenhouse gases other than carbon dioxide?**

Yes we would like to comment on how and who will decide the emissions reduction potential of the new installations? A reduction in the emissions notified to the Commission should not be necessary where effective benchmarks are used. As such Government should engage early with sectors to develop sector benchmarks for the new activities.

**Q10) Do you have any suggestions as to how the definition of 'activity data' might be refined for the purposes of these draft Regulations?**

It is imperative that Government engages early with new sectors concerning the development of benchmarks. The activity data will be vital to the effectiveness and appropriateness of the benchmarks. For example, a proportion of the installations in the asphalt sector will be brought into the EU ETS for the first time in Phase III but no work has so far been carried out by the European Commission on benchmark for this sector.

**Q11) Are the draft Regulations clear on which installations activity data must be submitted for?**

No, the regulations are not clear. It is not explicit in the draft regulation which installations will be provided with free allocations, as such operators may be uncertain concerning their requirement to submit data. The regulations should be clearer for operators to identify their requirements particularly given the penalties for non-submission.

**Q12) Is the deadline of 31 March 2010 for activity data to be received by the regulator from installations appropriate, and, if you are an operator that must submit this data, are you confident of submitting it by this date? Please substantiate your response.**

No, many of the installations and operators obligated by the draft regulations have had no previous statutory requirement to collect and retain data in the detail required by the EUETS. Records will inevitably be incomplete and the Regulations must address this situation if this deadline is to be met. Furthermore, as outlined in the response to Question 5, verifiers may not be

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available to carry out the necessary work within their busy period as they deal with existing interim and final EU ETS verifications for Phase II.

**Q13) Do you have any comments on the general requirement that activity data be independently verified?**

The availability of independent verifiers is a further issue which will make achieving the 31 December 2009 deadline requested by DECC or the official deadline of 31<sup>st</sup> March 2010 unlikely or very difficult indeed. There is a need for clear operator and verifier guidance whereby a 'light touch' approach is explicit. This approach will be the only way to have any chance of meeting these deadlines.

**Q14) Do you have any proposals or comments to make in relation to the development of verification standards for activity data?**

Yes, complying with verification standards for future data should not be an issue as installations will have time to set up adequate procedures. However, for the submission of historical data this may not be possible and the verification must recognise this limitation.

**Q15) Does the proposed fee of £300 for submitting activity data appear appropriate?**

No, £300 is excessive. In practice, installations will have their emissions and activity data verified at the same time. One submission would be made in this case making processing by the regulator simpler and therefore should attract a single and proportionate fee. Furthermore, for installations that are already operating under the EU ETS may already have verified opinions that already contain activity data (production) for the years required. Operators should be able to refer to these activity data and the opinion statement references. This will avoid operators having to pay verifier costs for an opinion that already exists and should also avoid any regulator fee.

For new Phase III installations the draft proposal results in a fee for submission of emissions data and a separate fee for submission of activity data. Aside from the excessive size of the proposed fees, operators should be given the option to submit both data sets simultaneously for a single reduced fee in accordance with the Hampton principles.

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**Q16) Do you have any comments on the draft regulations allowing for the regulator to calculate the activity data of an installation whose operator has failed to submit the data on time or has submitted unverified data?**

No.

**Q17) Do you have any queries on the possible uses of the information-gathering powers granted to the regulator under regulation 5?**

Yes, the data should be automatically kept confidential as it will contain production data that is commercially sensitive (i.e. output per installation etc). Furthermore operators should not be expected to bear unnecessary costs arising from inappropriate timing and timelines in the regulations, for example, the separate verification of emissions and activity data for new Phase III installations. Operators must also be protected from any significant costs associated with repeated demands for information

**Q18) Do you have any comments on the deadlines for data submission set out in draft regulation 5?**

No.

**Q19) Do you have any comments on the introduction of a civil, rather than criminal, penalties regime for the gathering of data?**

Yes, the civil penalties regime is more appropriate than a criminal one for this situation.

**Q20) Do you have any comments on the structure of the proposed penalties regime?**

Yes, given the concerns expressed above regarding the difficulty in meeting the deadlines, a pragmatic approach to the reporting and verification of historical emissions and activity data is required to ensure that installations have a realistic chance of compliance.

**Q21) Does the penalty amount for failure to submit emissions data and proof of verification by the deadline appear to be appropriate to you?**

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No, the penalties are excessively punitive. Operators only have a few months to comply with this potentially onerous data collection, reporting and verification deadline. Many of the operators will be new to EU ETS and it is unrealistic to expect full compliance, as such enforcement should be treated in this context.

**Q22) Does the penalty amount for failure to submit activity data and proof of verification by the deadline appear to be appropriate to you?**

No, the penalties are excessively punitive as outlined in the answer to Q21. In addition, the reporting and verification requirements for activity data are particularly vague at this time and the final transposition regulations are not expected to enter into force until 31 December 2009 at the earliest.

**Q23) Does the penalty amount for failing to provide information specified in a notice sent under regulation 5 appear to be appropriate to you?**

Given the comments and reservations expressed above in the answers to Q21 and Q22, the appropriateness or otherwise will depend on the information requested and the deadline because Regulation 5 is particularly vague.

**Q24) Do you have any comments on the timeframe for paying penalties stated in Regulation 6(3)?**

A one month from notification will be too short for the financial and administrative systems in many larger companies. Two months would be more realistic.

**Q25) Do you have any comments regarding the proposed appeals process set out in Regulation 7?**

No.

**Q26) Do those operators that are likely to fall under Northern Irish regulation have any comments in relation to the appeals procedure in Northern Ireland?**

No.

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**Q27) Do you have any other comments on the appeals process?**

No.

**Q28) Do you have any comments regarding Notices as set out in Regulation 8?**

No.

**Q29) Do you have any comments on the assumptions made in the 'Costs' section of the Impact Assessment? Please provide evidence to support your comments.**

Yes, the internal administration cost estimates are very low. Developing a clear understanding of the regulations and guidance will require many hours of reading and training. Data collation, checking and preparation for verification is a painstaking and time consuming task which takes place over a period of days not hours. A more realistic estimate for each installation would be £2000 in total for emissions and activity data, assuming the verifier is permitted to take a pragmatic, light touch approach.

The list of organisations in the annex of the consultation document is seriously deficient, on this basis we can only assume that Government does not know how many new organisations and installations will be captured by the new proposals. In this regard the associated impact assessment is potentially incorrect, consequently the impact assessment should identify the potential uncertainty associated with the £3.1m cost estimate.

**Q30) Do you have any comments on the scope for synchronising future and existing data requests in order to minimise the burden on those who are asked to submit data?**

In order to minimise the burden on operators a realistic and manageable option would be for trade associations to compile, within agreed guidelines, a master database of verified data for their sectors. They will then be in a position to respond to all data requests promptly. Furthermore with reference to Q8 and Q15, the suggested synchronisation of historic emissions and activity data within one document, including multi-site submissions with a realistic fee provides Government with an opportunity to minimize burden and implement the Hampton principles.

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**Q31) In your view, is the attached list accurate? Do you believe there are any installations that we have omitted that should be included, or ones that are included that should have been left out?**

The list of new installations is incomplete; MPA will make every effort to notify potentially obligated operators of their requirements.

**Q32) Please provide any additional comments on the draft regulations that have not been covered by the questions above.**

No further comments