

CIBI

THE VOICE OF BUSINESS

Institute of Ecology and Environmental Management

ELD: Helping Towards 2010

16th April 2008

ELD: The View from Industry

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Introduction

What is the CBI?

The Confederation of British Industry (CBI) is the UK's leading business organisation, speaking for some 240,000 businesses that together employ around a third of the private sector workforce.

Why are we interested in ELD?

Activities we represent include: **Annex III operations**, financial institutions, environmental technology and consultancy firms, lawyers, contractors, SMEs

Summary Timing

- Directive adopted 21st April 2004
- For implementation by 30th April 2007
- UK first consultation Dec 2006 – Feb 2007
- UK second consultation closes 27th May 2008
- Likely UK implementation Dec 2008

Reports

- Commission to report on effectiveness and conditions of insurance and financial security for Annex III by 30th April 2010
- Member States to report on experience gained by 30th April 2013

Directive wording

- Widespread use of “may”
- Member States have flexibility
- CBI wants this flexibility used in the UK for best implementation

Proposals - Scope

- The ELD allows Member States to extend liability for habitats and species to nationally designated sites
- Regulations extend to SSSIs as well as EU listed species and habitats
- This results in “site integrity” test of damage (more certain for operators?)

Proposals – Strict liability

- Annex III Activities have strict liability
- IPPC, waste management, water discharges, dangerous substances, GMOs etc.
- **No** extension to strict liability

Proposals - Defences

- Permit defence
- State of the art defence
- Third party defence
- Not apply to emergency measures (only remediation)
- No defence against negligence

Proposals – Multi-party

- No enforcement authority apportionment of liability before enforcement (speed)
- Operators to claim contribution in civil proceedings later (costly?)

Proposals – Financial security

- **No** proposals for special financial measures
- Avoid escrow, accounts etc.
- Insurance may cover
- Not much time before Commission review (2010)

Proposals - Remediation

- Directive states
 - “...for the prevention and remedying of environmental damage at a reasonable cost to society”
- Both primary and complementary remediation in proposals.
- In addition compensatory remediation (for interim losses)
- Remediation options must be evaluated using best available methods

Proposals – Overlap with other legislation

- All other environmental legislation to still apply
- Test against ELD first then others
- Concern overlap with Marine Bill, Water Framework Directive etc
- Good to use some of same definitions as WFD
- Concern review of Annex III directives e.g. IPPC

Effectiveness of ELD

- Directive states
 - “To induce operators to adopt measures and develop practices to minimise the risks of environmental damage”
- Success is for the Directive not to be used!!