

# Environmental Better Regulation Bill

*Comments by*

**Northern Ireland Environment Link**

**24 July 2013**

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 62 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are made on behalf of Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Prof Sue Christie, Director  
Northern Ireland Environment Link  
89 Loopland Drive  
Belfast, BT6 9DW  
P: 028 9045 5770  
E: [Sue@nienvironmentlink.org](mailto:Sue@nienvironmentlink.org)  
W: [www.nienvironmentlink.org](http://www.nienvironmentlink.org)

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NIEL welcomes the opportunity to comment on the Department's proposals for an Environmental Better Regulation Bill (Integrated Environmental Permitting & Powers of Entry and Associated Powers).

By way of introduction, NIEL welcomes the overall aim of the proposals to simplify and streamline the regulation system. We also encourage the aspiration of changing the mind-set of operators to regulation – that it can be as much about enabling and encouraging behaviour change as about penalising bad practice. Such an approach can demonstrate the value to businesses of environmentally responsible activities, and greatly increase trust between the Department and operators. As long as this is accompanied by a strong monitoring and enforcement system which ensures that those who transgress the law suffer sure and significant penalties, the approach has great likelihood of improving environmental performance while delivering improved business objectives.

We would emphasise that the ultimate result of good environmental regulation is good environmental outcomes – regulation is a means to this end, and (though it is stated in the consultation) this should have a higher profile and be emphasised earlier in the document.

### ***Integrated Environmental Permitting***

#### **Q1 What are your views on the introduction of an integrated environmental permitting regime in Northern Ireland? (Please give reasons for your answer).**

NIEL welcomes the introduction of an integrated environmental permitting regime in Northern Ireland, as a way of simplifying and improving the current complex and fragmented system of regulation. This will result in stronger drivers for business to prioritise integrated action to deliver a range of environmental and business benefits, decrease costs and duplication for government monitoring and enforcement, and ensure a clearer understanding of roles and responsibilities throughout. Having an integrated, clear and simplified permitting regime will be even more important as some functions are transferred to the new local authorities.

#### **Q2 What particular issues do you think the Department should take into account when developing its approach to integrated environmental permitting?**

Flexibility and building trust between the Department and operators is crucial for progress in this area – it is important to recognise the efforts of those who go beyond compliance toward setting an example for best practice to the rest of the community (the visionary). Minimising bureaucracy for both business and government through unified permitting and monitoring, accompanied by the 'risk based' approach and full and clear guidance, will ensure clarity and make compliance easier, cheaper and less onerous than non-compliance for all honest businesses. It will hopefully also make the detection and prosecution of illegal activities easier.

**Q3 What do you think are the problems with the current procedures which could be addressed by a new integrated permitting regime?**

The current procedures can falter in producing good environment outcomes because they are inflexible, burdensome, expensive, and often with a low level of enforcement. NIEL appreciates that the new proposals will tackle these issues, allowing the department to act swiftly and powerfully to enforce where it is really needed. Bringing about an increased recognition of the 'new role' of government as helper to ensure compliance for business and environmental benefits must be accompanied by the sure knowledge that wilful non-compliance will be dealt with swiftly, surely and punitively which make it advantageous to behave responsibly and extremely costly not to. In the past environmental regulations have too often been ignored due to lack of understanding of either the intent or the consequences, and to businesses believing that environmental compliance can be dispensed with due to low enforcement and penalties. This new approach must be, and be seen to be, of high economic significance to all businesses.

**Q4 What are your views on the principle of the common permitting hierarchy and do you have any suggestions for how NIEA should adopt this approach?**

In theory, NIEL supports the proposed common permitting hierarchy. In practice, this is a new approach and it must be supported by information and open communication to help operators understand where the thresholds lie (and hence at what level their activity sits within the hierarchy) and what they need to do to comply (or go beyond compliance).

**Q5 What are your views on NIEA adopting the flexibility of having rules and thresholds set in guidance rather than legislation?**

This is likely to be necessary because such a change may require flexibility. Guidance allows changes in response to technology, consumer demands, environmental issues and in other ways to more rapidly respond than if they were enshrined in legislation.

**Q6 What do you think should be considered in the risk assessment exercise that will be used to determine the thresholds and the positioning of activities in the permitting hierarchy?**

As stated above, better regulation is a means to better environmental outcomes – therefore determination of the thresholds and position of activities within the hierarchy should be based on an understanding of the environmental outcomes of such activities and the likelihood of environmental damage being caused. Cumulative impacts should also be monitored/identified in some way so that frequent lower-level activities are treated with the seriousness that they deserve. The cumulative environmental impacts of many low-level activities from separate businesses can be difficult to regulate but must be considered through some sort of 'environmental outcome' based approach to overcome 'precedence' arguments.

**Q7 What are your views on the proposal to streamline compliance conditions into a single, easy to understand environmental permit document?**

NIEL strongly agrees with this proposal as an important improvement to the regulation system – this will make the process more efficient, less burdensome on the Department and operators, and build a positive relationship between parties.

**Q8 What would the benefits be if NIEA introduced corporate permits? Can you see any disadvantages?**

As above, corporate permits in which businesses with multiple sites could operate with a single permit would increase efficiency and foster a positive relationship between the Department and operators. The issues around companies with sites in more than one jurisdiction (GB, RoI) need to be considered and unified. There are also potential differences across new Council boundaries with regard to some permitted operations and these issues need to be decided at a NI level.

**Q9 What are your views on the introduction of accredited permits?**

NIEL welcomes the introduction of accredited permits. The concept of businesses being publicly recognised as good environmental performers would provide excellent incentive toward environmentally responsible behaviour, and would further build trust and ensure positive environmental outcomes. However, it is important that some independent assessment system be in operation.

**Q10 What are your views on introducing business prosperity commitments?**

NIEL fully supports the introduction of business prosperity commitments as a way of encouraging businesses to go beyond compliance and see the benefits for them of environmental responsible activities. This, as with other measures above, changes the mind-set of operators from regulation being seen as restrictive to being enabling. This would need to be accompanied by appropriate guidance on best practice.

### ***Powers of Entry & Associated Powers***

**Q11 What are your views on the Department's proposals to introduce enabling powers to allow future legislative changes to rationalise the existing complex powers of entry and associated powers (inspection and investigation regime)?**

NIEL welcomes these proposals in removing unnecessary/inappropriate powers, introducing safeguards for individuals and businesses, and enabling the potential to streamline existing powers of entry and associated powers.

**Q12 What are your views on the proposal to require the Department to prepare guidance on the exercise of powers of entry and associated powers?**

Guidance relating to the exercise of power of entry and associated power is essential in providing clarity of expectation (on both sides, Department and operator) and consistency of approach.

**Q13 Do you have any views on the need to ensure that appropriate legislative safeguards are in place to apply to powers of entry and associated powers?**

This is essential to avoid problems and to overcome objections.

**Q14 Do you agree that, in relation to environmental protection, the proposals relating to powers of entry and associated powers should not result in any weakening of the law? Please give reasons for your views**

NIEL agrees that changes to powers of entry and associated powers should absolutely not result in any weakening of the law – the law must remain strong to encourage compliance, and enforcement (where needed) should be swift and strong. While we welcome that many of the proposals build trust between the Department and businesses, we again emphasise that good environmental outcomes should be the result of good regulation. Where these are not being achieved, the Department should act quickly and decisively.