

Our Reference: mc262/je

27 September 2002

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Water Framework Directive Programme Executive  
Environment Agency  
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Dear Sir

**Environment Agency Consultation On The Technical Requirements Of  
The Water Framework Directive**

Thank you for the opportunity to comment on the implementation process of the Water Framework Directive. Please accept these comments as the formal response from the Port of London Authority (PLA). The PLA is the navigation authority for the tidal Thames from the tidal limit at Teddington extending out into the North Sea to a line between Clacton and Margate. The PLA also has conservancy responsibilities under the Port of London Act 1968 and is a competent authority under other relevant environmental legislation including the Harbours Act 1964 and the Conservation Regulations 1994.

The role of the PLA on the Thames estuary is threefold and comprises developer, regulator and consultee. The PLA has a statutory requirement to maintain navigable channels and protect the safety of navigation. The PLA is empowered to dredge to meet this requirement and also licences third party dredging and river works.

The PLA considers that the Water Framework Directive has potentially significant implications for the ports industry and is concerned that to date formal involvement and representation of this industry has been limited. The PLA supports the partnership approach proposed for the implementation process and recommends that representation be sought from the UK Major Ports Group (UKMPG) and Central Dredging Association (CEDA).

The PLA has the following specific comments on the consultation document:

Section Reference	Comment
2.2.2 Table 2.1	The PLA is the only consenting authority in the Thames estuary for dredging – is the PLA a competent authority under the Directive?
2.3 Environmental Objectives	It is not clear how temporary deterioration to a water body’s status (e.g. through dredging) will be considered. Presumably a short term decrease in quality will be acceptable if medium term objectives are not compromised? This is an important consideration for the ports industry.
2.3.3 Classification schemes for heavily modified water bodies	It is essential that the ports industry is involved in the development of suitable classification schemes for HMWB.
4.2, Table 4.1	The definitions (slight, moderate) of the change from the natural condition are vague and imprecise. It is important that these phrases are transposed into unambiguous criteria that can be applied in decision-making. If this is not done there is the danger that decisions will be made locally based on subjective judgements.
4.2.2 Role of reference conditions	<p>There are very few examples of estuaries in England and Wales with “no or very minor alterations”. Alteration has been occurring on many estuaries for hundreds of years. Reference conditions that do not take this into account will be unachievable.</p> <p>Additional concerns about reference conditions in both how they are produced and how they are implemented for an individual water body. Detailed consultation and liaison is required to ensure the implementation is workable. It is important to keep in mind the aim of the Directive of sustainable use rather than a return to pristine conditions.</p> <p>Does the reference to taking into account modern landscape imply an acceptance of flood/coastal defence structures? Reference conditions need to recognise the ‘use’ of water bodies.</p>
GP3	The “transparent basis for prescribing status objectives for individual water bodies” will be essential. More (or as ) important will be the need for consistency both within countries and between them.
Q2	In addition to modifications (see 4.2.2 above) defining high status examples of water bodies needs to take account of use. If ‘unused’ examples are set as reference conditions it may be almost impossible for a ‘used’ water body to comply. The possible implications of restricting or preventing use should be considered.
4.2.5 Guiding principles for the good status class boundaries	<p>The criteria for good ecological status will need to be clear and values/levels will need discussion with stakeholders.</p> <p>Is there sufficient information available to allow an identification of water bodies at risk of not achieving good ecological status? There are many activities on an individual water body and it is often not possible to attribute cause to effect. This could lead to an over-precautionary classification of water bodies at risk and inaccuracies in the</p>

	<p>identification of the cause of the pressure.</p> <p>A Europe wide intercalibration exercise will find it difficult to achieve agreement on the definition of good ecological status. This is a key issue for implementation and for the eventual effectiveness of the Directive.</p>
4.2.6 Fish quality elements & GP6	The CFP does not necessarily consider the impact of fishing gear on water column organisms, benthos and non-target fish species. It is possible that fishing may contribute significantly to a coastal water body not achieving its status.
4.2.8 Specific pollutants and high status	It should be noted that natural background levels of potential contaminants vary greatly in England and Wales due to geology (e.g. ore deposits and lithology). Regional geology should be considered when setting reference values for a water body.
Issue IS1	Agreed. Criteria for synthetic substances should be based on effects levels rather than aiming for very low levels.
Specific Pollutants and good ecological status	How does the biological effects (e.g. bioassay) approach fit into the Directive. Other regulatory controls e.g. OSPAR have been moving in this direction. The UK has preferred a 'weight of evidence' approach for assessing dredged material quality as opposed to pass/fail criteria.
4.4.1 Uncertainty in estimates of quality element	Who would be liable for any restoration costs? How would the cause of any 'damage' be identified. Who pays for the monitoring programmes?
Q4	Representation of key stakeholders (e.g. UKMPG, CEDA) on high level working groups, direct liaison with industry on water bodies and consultation via existing groups e.g. estuary management groups.
5.1.3 Identification of heavily modified water bodies	Who will determine (and how) what is a 'significant' effect?  Is a change in suspended solid concentration (SSC) a "physical alteration"? If not, how will modified SSC be treated?
5.1.3 Identification of heavily modified water bodies	Clear criteria are essential. However the process of defining these criteria also needs to be clear and inclusive. As does the process of "widening the experience to estuarine and coastal areas" (reference to riverine case studies).
Q5	Appropriate reference conditions for AWBs and HWMBs need to be set according to where it can be reasonably demonstrated that the area will return to the original use (e.g. plans/proposals exist).
5.2.4 Biological reference conditions	How would maximum ecological potential take account of ongoing essential activities e.g. dredging for ports?
7.1.1 Role in river basin planning	Who will determine (and how) whether achieving GEP would be "technically unfeasible or disproportionately expensive"?
7.1.2 Risks to environmental objectives	It is essential that the risk assessment is done adequately if port operations are not to be unreasonably constrained. How can the ports industry assist in this process?
Q7	Information needs to be made available in outline or draft and as soon as possible so that the implications can be determined and the process influenced.
7.3.2 Identifying	Dredging is included in table 7.4 as a pressure hence there needs to be a

significant pressures	recognition of the economic importance and necessity of dredging for safety of navigation.
7.4.2 Improvements and effects on activity	As mentioned previously, there are many pressures on an estuary and it is generally difficult to attribute cause and effect.  Who would be in a position to take a decision of the effects on an activity? Who would fund any improvements identified as necessary?
Table 7.4	Reference is made to 'spoil' from dredging works. This is an unnecessary negative spin on the use or movement of 'dredged material'.  Not all impacts of dredging are noted, especially with respect to increased SSC.
8 Monitoring	It should be noted that existing data has been collected for many different purposes and at varying scales and quality. Thus data may not be comparable without manipulation. There is a possibility that decisions on at risk water bodies may be made on inaccurate or incomplete data. If data does not exist for a water body, will decisions assume that impacts are or are not occurring?
GP12 & 13	Clarity of the process, inclusivity and consistency will be important.
Table 9.3	Harbour Authorities will hold information on the tidal regime and morphology in addition to other environmental data.

It is clear that there are many uncertainties at this stage in how the Directive will be interpreted both in the UK and Europe. Consultation and involvement with stakeholders is essential at all levels and we reaffirm the need to involve representatives of the ports industry.

Yours faithfully

M Costaras  
River Engineer