

**ANNEX B: Summary of responses to the consultation on the risk assessment method for A2 installations regulated under Local Authority Integrated Pollution Prevention and Control (LA-IPPC) which closed on 16 February 2005.**

Responses were received from the following organizations none of which asked for their comments to be treated in confidence.

- *Cementitious Slag Makers Association (CSMA)*
- *Doncaster MBC*
- *Delegates attending the Emission Monitoring and Air Quality Management (EMAQ) Seminar<sup>1</sup>*
- *Film Coating Industry Group (FCIG)*
- *Leeds CC*
- *Midland Joint Advisory Council for Environmental Protection (MJAC)*
- *Portsmouth CC (part of Hampshire & Isle of Wight Pollution Group)*
- *Scottish Environment Protection Agency (SEPA)*
- *The Society of Motor Manufacturers and Traders (SMMT)*
- *West of England Pollution Group (WEPG)*

Responses have been summarized into four sections: policy, risk rating methodology, technical terms and practical issues

Defra commentary on the responses is in **Times New Roman** font.

**1. The policy of introducing risk assessment for A2 installations**

- (i) The Film Coating industry agrees in principle with the use of risk assessment to regulate sites under LA-IPPC (FCIG).
- (ii) There should be no difference in the way in which A1 and A2 installations are regulated, assessed and charged. The Environment Agency (EA) risk rating system should apply to Part A2's as well as A1's. Introducing a separate scheme for A2's will further distance local authority (LA) regulation from EA regulation. It would also be unnecessarily bureaucratic and complex (MJAC).
- (iii) The consultation document makes the case that the part B process of risk assessment for the A2 system was widely researched and trialled and therefore it would make sense to make the A2 system as similar as possible. This comment is valid but the A2 system will need to take

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<sup>1</sup> Annotated delegate comments made at the Chartered Institute of Environmental Health seminar titled 'Emission Monitoring and Air Quality Management' (EMAQ) which discussed DEFRA's Risk Methodology for LAPC/LAPPC Processes, held in October 2004).

account of the inherent additional environmental risk that leads to an installation being classified as A2 (Portsmouth CC).

- (iv) Overall the proposed scheme seems to take account of the relevant elements, produces comparative results with SEPA's current assessment scheme, and bears merit in its simplicity for determination of inherent risk (SEPA).

Risk-assessment for Local Authority-Integrated Pollution Prevention and Control is central to the move towards risk-based regulation, delivering both effective and proportionate regulation. This is in line with one of the key recommendations of the Hampton Review published as part of the Chancellor's Budget statement. There is certainly a case for adopting the A1 risk approach for A2 installations. But on balance, having considered all the responses, the Government believes the advantage lies with adopting a system based on that already in place for Part B's because it is one with which local authority inspectors are already familiar.

## **2. Risk rating methodology**

### 2.(a) Component 1: Inherent Environmental Impact Potential of Activity

- (i) The issue of several process facilities, (of the same type), being situated closely together was cited. Many EHO's were concerned that their combined impact is not addressed by the new guidance. However, they were unclear which component should be modified to take this effect into account. As the methodology assesses each facility separately this could significantly under state the inherent environmental impact of the combination of facilities. Many EHO's wanted this to be addressed by allowing them to increase the score for Component 1 by one category (an additional 10 points to be scored). Alternatively, others wanted this addressed by a further increase in the distance factor for receptors shown under *Component 3: Sensitivity and Proximity of Receptors* (EMAQ).

It is possible that there will be combined/synergistic impacts in these circumstances which might have implications for environmental impact potential. But equally other site-specific considerations could have positive or negative effects on impact potential, including the sensitivity of the neighbouring environment. Also, when looking at the risk methodology in the round, the overall intention is to reflect regulatory resource needs, and co-located installations may offer savings in terms of regulatory effort (e.g. in terms of travel time). Defra will bear this issue in mind when the methodology is first reviewed during the course of 2005/6 and subsequently.

2.(b) Risk Rating of LA-IPPC Activities by Advisory Panel on Risk Ranking (APRR)<sup>2</sup> (Table A1.10: cited in Appendix)

- (i) We are not aware of any A2 process involving lime. Also query the classification of 'slag grinding' as a '2' (medium) which formerly came under Part B as a low risk activity and was then reclassified by the Government to take account of the requirements of the Climate Change Levy Regulations. Because of this and a minimal environmental risk from dust and noise, it should be classified as a '1' (low) (CSMA).

We accept the CSMA's arguments (subject to future review) and have revised the classification for 'slag grinding' so that it will have a '1' (low) risk rating.

- (ii) Referring to non-ferrous installations (covered by (SG4(03))) what consideration was given to allocating a score for the effects of metal fume from the melting of virgin metals. ex. copper and/or zinc at brass foundries? (Doncaster MBC).

The APRR classified processes in accordance with the guidance note for each sector. This did not allow for the level of detail referred to above to be considered. The methodology does not purport to reflect all possible site considerations, but to provide a methodology which can be consistently applied and which addresses the key parameters which affect regulatory effort. A more finely-tuned approach would be able to focus on detailed site-specific issues, but at the expense of implementation consistency. The level of each of the risk ratings will be reviewed during the course of the year and subsequently to assess performance.

- (iii) We are concerned that the present proposals contain an inherent risk category of '3' (high) which is wholly inappropriate for film coating. This may be due to grouping together all solvent using processes or from the limited experience of the APRR group who determined the categories. We are also interested to learn the scientific basis for this conclusion since it is not obvious from the APRR note (28/9/04) what basis was used for quantifying the environmental impact (effect) of the pollution (FCIG).

Following consultation with the APRR, we have partially accepted the comments from FCIG and SMMT. The risk rating for *SG6(03) – Surface treatment using organic solvents* has been lowered from '3' (high) down to a '2' (medium) except in relation to installations using carcinogenic, mutagenic or reproductive toxins (CMRs) which we consider have a high inherent environmental impact potential should remain.

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<sup>2</sup> The APRR was comprised of a limited number of local authority inspectors and a representative from the Environment Agency Local Authority Unit and a Defra Official. It met to agree and decide the risk ratings on 28 September 2004 and its findings were subsequently published to stakeholders.

- (iv) Question the '1' (low) risk rating given to glass manufacture. The risk of emissions is mainly to air but these could potentially be very polluting. They include: oxides of nitrogen, oxides of sulphur, chlorides, fluorides, particulate matter, heavy metals and organotin. The industry is likely to take some time, because of rebuild constraints, before all these emissions are brought under proper control. Therefore we suggest that the categorisation for glass manufacture be reconsidered (Leeds CC).

The rating has been kept at '1' (low), but will be reviewed during 2005/6 and subsequently, taking account of these comments from Leeds and seeking feedback from other glass sector regulators and from the industry..

- (v) PG 6/20<sup>3</sup> and 6/23<sup>4</sup> processes are both '2' (medium), so why the proposal to move some installations to '3' (high) just because the regime has changed? The process and pollution potential remains the same. What is the justification for the presence of "abatement" raising the risk rating from '2' (medium) to '3' (high)? Surely the presence of abatement reduces the environmental risk rather than increasing it. Also, query the '3' (high) risk status attributed to phosphate pre-treatment, the legislative basis for Section 4 and whether this is relevant to vehicle manufacturers (SMMT).

See comments above at 2.(b) (iii).

### 2.(c) Component 2: Progress with upgrading

- (i) If we apply the definition of BAT can you exceed BAT? If we take the authorisation conditions as BAT, it will prove difficult to judge the claimed (D) status of 'BAT exceedance'. Most EHOs therefore felt that category (D) should be deleted (EMAQ).

Permits based upon BAT (Best Available Techniques) seek to balance the costs to the operator against the benefits to the environment and EMAQ rightly says that regulators cannot ask for BAT to be exceeded, except insofar as the addition of permit conditions to ensure local environmental standards are not breached could be said to be exceeding BAT. However, operators can go further than required by the guidance. As the risk guidance states, scoring for classification (D) *Emissions control exceeds BAT*, covers such instances where BAT is exceeded either through the voluntary adoption of 'beyond-BAT-techniques' or where Sector Guidance Note requirements are met over a year before the due date. We consider that operator which exceed BAT in this way should receive a 'positive reward' to reflect their environmental performance.

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<sup>3</sup> Part B process guidance for 'Paint application in vehicle manufacturing'.

<sup>4</sup> Part B process guidance for 'Coating of metal and plastic'.

- (ii) The consultation proposes to add a new criterion 'E' to penalise operators who have not submitted an improvement programme within 6 months of permit being issued (in accordance with the SG note recommended timetable). However, if the timetable is different in the permit or this requirement is not in the permit at all, it is for a good reason. The permit should take precedence over the guidance and the risk rating should not suffer as a result. Suggest criterion 'E' should only penalise those operators who failed to submit an improvement programme within the timescale required by the permit conditions (SMMT).

Agree. An amendment has been made.

#### 2.(d) Component 3: Sensitivity and Proximity of Receptors

- (i) Additional guidance would enable EHOs to deal fully with scenarios which include when several processes of the same type are situated side by side and are close to receptors, and/or if the latter includes isolated residences (categorised as '2' medium risk) as compared to residential areas (categorised as '3' high risk) (EMAQ).

See comments above at 2 (a) (i).

- (ii) Concerned about Component 3 in relation to mature sites whereby operators may have little control over historical external building and boundary shape; but the overall score may be greatly affected by this factor and not being mitigated in any way by how well the site may be managed or where the potential emission point may be in relation to the boundary. Scores should be reduced with the possibility for increasing based on historical and current performance (FCIG).

It is necessary to reflect the current sensitivity and proximity of receptors even if some of those receptors came about after the construction of the installation.

- (iii) Proximity distances for combustion plant are proposed to be multiplied by a factor of 4, which appears to be contrary to the risk level assigned for combustion processes under component 1. What is the justification for this? The risk is not significant for these processes, so the risk level it is assigned should reflect the environmental impact of the installation. (SMMT).

Accept the inconsistency - The only A2 activity for which distances must be multiplied is incineration. The footnote has been amended accordingly.

- (iv) Many EHOs were concerned about how Mobile Plant should be assessed with respect to their impact on nearby receptors. In many cases these processes were being used 'out of area', so that the Responsible Authority

had no powers to assess or control their use in these situations. Most EHOs wanted this situation addressed (EMAQ).

Guidance on mobile plant is contained on page 5 of the Part B risk methodology as amended in 2004. It is unlikely that there will be many Mobile Plants regulated as A2 installations but if there are any, the Part B guidance should be applied.

#### 2.(e) Component 4: Other Targets

- (i) There may be instances of unusual topography around a process, where an allowance for 'peculiar poor dispersion characteristics' of emissions should be required. For example, an existing process sited within 'punch bowl like' topography could frequently give rise to elevated ground level concentrations at nearby receptors. In such an instance, guidance should allow for a score of up to 10 against this Component (EMAQ).

This component forms part of the risk assessment in order to take account of instances of local pollution problems such as the one highlighted by the respondent. We therefore consider that it would not be necessary to amend the guidance to allow for additional scoring. Table A1.4 has been amended to take account of the multi-media environmental considerations which A2 installations involve.

#### 2.(f) Component 5: Compliance Assessment

- (i) It is unclear whether Table A1.5 should allow for 'double counting' or whether the categories are mutually exclusive for a **particular** incident. In our case study there was a justified complaint about a particular incident in which 'dark' smoke was observed. This was recorded and found to be in breach of an authorisation condition but no formal action was taken. Most scored this as 10 points against Category C, as there was a breach that did not lead to formal action. However, several also scored an additional 5 points against Category B, because the complaint about the incident was justified. Clearly the guidance needs some clarification and this type of confusion could help to explain why the distribution of OPA scores is skewed towards low scores (EMAQ).

Accepted. Where the same instance results in (B) an incident leading to a justified complaint and (C) is a breach of a permit not leading to a formal action, then the correct way to score is to record it only the once under (C). A footnote to the guidance has been amended accordingly.

- (ii) Query the reference to when complaints are made but no action is taken and suggest BAT may not be being applied properly or the permit may be inadequate (SEPA).

As this comment implies, this could arise from cases where the permit does not adequately reflect all environmental impacts and does not fully reflect BAT, and the local authority response in such cases may be to amend the permit conditions.

- (iii) The compliance assessment scoring system should be brought down so that operators have a greater incentive to secure environmental improvement (SMMT).

Feedback so far on use of the Part B methodology is that it has already proved a valuable tool for engaging operators in improving compliance. An added incentive will be provided in linking the risk method to charging levels. The scores will be kept under regular review.

#### 2.(g) Determining the Level of Regulatory Effort

- (i) SEPA have found that allowing inspectors flexibility to depart from the standard frequency for inspections can prove beneficial in terms of operator compliance. For example, where a site has been subject to falling performance, but is not yet at the stage of non-compliance, increased frequency at the discretion of the inspector can help to improve performance (SEPA).
- (ii) The proposed A2 risk assessment system may not translate to more complicated A2's and some flexibility in inspection frequency and additional regulatory effort may be needed because of higher environmental risks (SEPA).<sup>5</sup>
- (iii) The estimates of the number of hours required are very subjective and we would like to see them reviewed in coming years when actual regulatory effort can be ascertained. It must not be forgotten that additional fees are payable if there are substantial variations etc, which would require more regulator effort (SMMT).
- (iv) Making a comparison to how equivalent installations are regulated in Scotland, the complexity and inherent risk of an A2 activity may warrant further regulatory effort. SEPA's scheme should acknowledge this with more detailed Pollution Hazard Appraisal (PHA) element of assessment<sup>6</sup> (SEPA).

SEPA comments on flexibility are noted, but these have to be balanced with the potential for significant variability among 400 local authority regulators if discretion was allowed. And with the linkage to charging, any such discretion

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<sup>5</sup> In Scotland, SEPA regulate all Part A and Part B installations without making a distinction between Part A1 and Part A2 as is the case in England and Wales.

<sup>6</sup> The SEPA scheme is comprised of a Pollution Hazard Appraisal and Operator Performance Assessment.

would need to be subject to clear rules, which in turn might not prove a perfect fit in every case. On balance we believe that the current framework, which was trialled and has been broadly successful in its initial period of operation, should continue to be used. Agree SMMT's comment about the need to keep regulator effort under careful and regular review.

## 2.(h) Multi-media application of risk assessment

- (i) Risk Assessment needs to take account of the inherent additional risk of any installation classified as A2. We suggest the same format should be used but that an adjustment is made to the scoring system, for example by doubling the points accrued for each point (Portsmouth).

Do not see the need to amend the scores. The important aspect is what the scores mean relative to one another under the A2 regime, i.e. in relation to inspection levels, and (in) future charges.

- (ii) The proposed model in its present form is less of a precise tool than that used for Part B processes because it does not enable different pollutants and their effect upon different media to be considered, nor the issue of Energy Efficiency to be considered separately when deciding on a risk score which would then determine inspection frequency and the degree of and focus of enforcement activity (West of England Pollution Group).

In recognising the need to keep the method under review, we accept that translation of the Part B method to A2 may need refining in the light of experience.

- (iii) Experience shows that operators may have a mixed performance, for example where installations may have good track records on compliance with emissions to Air but not in controlling noise. It is suggested that such performance would benefit from a risk assessment which would score by environmental media. The A2-system should be expanded so that scores can be given for each type of environmental media, enabling regulators and operators to focus their efforts. This would make the A2-system more complex but the benefits to be gained would outweigh such disadvantages (West of England).

We are not convinced that this added level of fine-tuning would necessarily provide benefits which are commensurate to the additional assessment needed, but will bear in mind the suggestion when the method is reviewed.

## 2.(i) Using risk assessment as the basis for charging

- (i) There is also a fear among a few operators (and LAs) that scores will be used to proportion the charges! (EMAQ).

- (ii) If either the A2 risk assessment system or the existing LA OPRA system are linked to charges this could be the basis for a great number of appeals to be made. Many of the proposed systems of scoring are based on subjective analysis and, in spite of detailed guidance, where a subjective assessment is made disagreement will arise. The EA charging scheme is more robust, in that it uses defined calculations of emitted pollutants to produce an overall rating modified only slightly by subjective elements. The EA scheme has been accepted for many years and has the benefit of having been applied, and complied with by industry. The proposed new LA OPRA scheme is almost completely subjective in nature and the potential for abuse, or disagreement, or error, can easily arise (MJAC).
- (iii) Given the proposal to make the annual subsistence fee relate to the regulatory effort, which is defined by the risk assessment score, it is felt that further guidance on scoring would be needed. The method is too open to interpretation and it is anticipated that operators would object to some judgments where there are cost implications (Portsmouth CC).

Defra has already indicated its intention to move towards risk-based charging for LAPPC and LA-IPPC and discussed this with the Industrial Pollution Liaison Committee and the Industry Forum; although this will be the subject of a separate consultation exercise when the above issues can be more fully examined. It is intended that an initial review of the operation of the A2 method will feed in to the charging consultation.

### **3. Technical terms**

#### **3.(a) The use of definitions**

- (i) Definitions of what constitutes a 'breach' and an 'incident' need to be given. The words are applied in criteria B&C of component 5 and it is difficult to distinguish between these (EMAQ).

A breach of an authorization or permit is a contravention of the authorization or permit or of any conditions contained therein. An incident leading to caution, formal notice or prosecution could be anything that occurs at an installation, which results in any of these forms of enforcement action.

- (ii) In SEPA's experience it is useful to have a clear definition of an "Incident", otherwise Inspectors may find it difficult to quantify an individual site where there is a regular or consistent justified complaint (SEPA).

See 3 (a) (i).

- (iii) Most EHOs could not see why an Enforcement Notice or Prosecution is scored lower than a Prohibition or Suspension Notice (EMAQ).

Prohibition and suspension will close down part or all of an installation, whereas enforcement or prosecution do not presuppose such closure.

- 3.(b) Suggested amendments to the proposed guidance text
  - (i) Referring to the 'Risk ratings' Table (A1.10), 'Cement and lime' should instead read '*grinding cement clinker*', and 'slag grinding' should read '*grinding metallurgical slag*'. Also, referring to the note to the table, which states: 'no sector guidance note produced', the relevant guidance has already been published by the Environment Agency under EA S3.01 ('Guidance for the Cement and Lime Sector'). A second note should therefore be added to the table to reflect this (CSMA).

Agree – the text of the guidance has been amended accordingly.

- (iii) In footnote 4 on page 8 of the proposed Guidance, some EHOs felt the note was unclear and suggested the replacement of the words 'justified complaint and one' with 'justified complaint and another'. Also, many EHOs did not see the point of the shorthand notation, e.g. 5-B2, D1 and wanted it deleted from the Guidance Note (EMAQ).

Agree – the footnote (formerly under *Component 5: Compliance Assessment*) has been deleted.

- (iv) Referring to *SG4 (03) - Non-Ferrous processes* in the 'Risk ratings' Table (A1.10) it should read "discharges" rather than "emissions" to water (MJAC).

We do not agree because the term 'emissions' is used in the legislation to include water discharges.

- (v) The reference to *SG7 (04) - Ceramics*, it is confusing with the information in the Category box. What would be the difference in rating for a heavy clay installation with kilns rated greater than 2 MW and one with kilns rated at less than 2MW? There would be no difference, so the only reason to differentiate is for kilns producing tableware with kilns rated less than 2MW (MJAC).

This reflects the distinction made in the BAT guidance (SG7).

- (vi) Referring to *SG6(03) – Surface treatment using organic solvents* in the 'Risk ratings' Table (A1.10), should "using abatement" be more specific i.e. solvent or oven or booth abatement? (SMMT).

We do not believe that this level of clarification is needed, but will review in the light of experience.

#### **4. Practical issues**

##### 4.(a) Issues relating to the practical application of A2-risk assessment

- (i) The proposed A2-risk system could not be run in parallel with the existing A2-scheme because there would be no recognition of the fact that A2 processes are more potentially polluting. This would mean the A2-risk system could only be run as a separate system which could cause grounds for confusion, especially if and when the risk assessment scores are made publicly available (Portsmouth CC).

The intention is to replace the existing scheme and replace it with the A2-risk system, so it will not be run in parallel.

##### 4.(b) Relationship between Inspector and Operator

- (i) Some LAs undertake the scoring as a joint exercise with the operator. Our view is that the operator will have far more information at his fingertips, which he could use selectively, thereby effectively introducing bias towards a lower result for initial risk scoring, if done jointly. Our view is that the guidance should therefore specifically advise against this practice. This feed-back leads us to conclude that some of the LA record files may lack appropriate details to undertake risk scoring. Our advice in such instances has been to undertake the Initial Desk Based Scoring exercise, without involving the operator, and score 'higher' where doubts may exist about the choice between any two categories. The onus will then be on the operator to provide the necessary evidence, during the discussion step and then in a written form (EMAQ).
- (ii) One LA said that they have shown the scoring, associated with all of the processes, to many of the operators. We feel this should be discouraged (EMAQ).

The guidance encourages inspectors to openly share information with operators and this has been endorsed by feedback from several local authorities who have found it a valuable tool for focusing operation attention on the process operation and potential for improvements. We consider that this practice should continue to be encouraged and if local authorities are concerned that operators have more information than they do, they can use their powers to require any further appropriate information they wish to have. Similarly, it is important for transparency that operators are aware of their scores and have the opportunity to have them explained, and it will be increasingly important when the linkage is made to charges.

#### 4.(b) Capacity of local authorities and training of pollution inspectors

- (i) The methodology is helpful because it helps to allocate higher risk processes to more senior/experienced officers within LAs. This also allows appropriate training and development elements to be added to career developments of more junior officers. It helps to devise an inspection programme for the LA as a whole. It provides an easy reference for process inspection and for accounting improvements (EMAQ).
- (ii) Referring to Part B risk assessment, there is a problem of consistency with scoring (a) between officers within the same LAs, as well as (b) between LAs. Some LAs have found rather differing scores with like processes in neighbouring LAs (EMAQ).
- (iii) Some EHOs did not like the idea of 'negative' scoring (EMAQ).
- (iv) Issuing several/all PG Notes at the same time has had implications on time resources for local authorities – i.e. updating permits, scoring of risk assessment etc (EMAQ).
- (v) There is a tendency to score low in the OPA (Operator Performance Assessment) part of risk scoring. This may stem from:
  - EHOs' unfamiliarity with process operation and management issues;
  - Operators engage from a position of full knowledge of their process and operation, that EHOs find difficult to challenge;
  - EHOs seem to regard that if a company is run by only 2-3 people then written procedures and records (for example for checking control equipment is working) is unimportant (EMAQ).
- (vi) EHOs are already stretched, as they do not have sufficient manpower. They are dealing with contaminated land, air quality, planning applications and PPC regulatory duties – many of these duties are high profile and take up considerable amount of time. In addition, there is to be another regulatory duties on the horizon related to the EC Ambient Noise Directive (EMAQ).
- (vii) Most EHOs felt that the range of times offered for the categories **underestimated** the actual time required for regulatory effort. This was particularly the case for the first round of assessments but might be expected to fall back within range as they became more familiar with the process (EMAQ).
- (viii) Two EHO's from the same authority did not like the approach of the new Risk Guidance Note and wanted it heavily modified. They felt the pro-forma would push EHOs to think in a blinkered way, and would generally promote lower scores (EMAQ).

Noted – we welcome the constructive contributions from local authority officers attending this seminar organized by EMAQ – the Chartered Institute of Environmental Health programme. All the above comments (i)-(viii) will be taken into account when the method is next reviewed in the light of practical experience, but we will not at this stage make any changes to the method in the light of these comments.

#### 4.(c) How risk assessment relates to the LA-IPPC regime

- (i) Is the assessment to be undertaken for the 12 months coinciding with the financial year? (EMAQ).

A2 risk assessment is being introduced for the financial year 2005/6. We expect assessments to be reviewed annually and, as appropriate (in accordance with the guidance in the methodology) more frequently.

- (ii) Will the scores be placed on Public Register? (EMAQ). Will all the component scores be on the register, including *Component 5: Compliance Assessment?* (SMMT).

There is no requirement as yet for this information to be placed on the Public Register but Defra supports sharing the information with the operator.

- (iii) DEFRA should review the distribution of risk categories among LAs as well as individual component scores for each process. The information could be requested as part of Annual Review returns. This will help to identify variations in risk ranking, as well as point to possible causes, with respect to processes and regions (EMAQ).

This is a useful suggestion for monitoring the operation of the methodology.

- (iv) Some EHOs felt that there should be Best Value Performance Indicators (BVPI) around PPC duties. Only this will ensure that the LA as a whole provides appropriate attention and resources to the regulatory tasks (EMAQ).

A BVPI is being introduced on 1<sup>st</sup> April 2005.

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