



Environmental Quality Directorate  
Waste and Pollution Prevention  
Scottish Government  
Victoria Quay  
EDINBURGH  
EH 6 6QQ

08 August 2008

Dear Sir

**Re: NGO Coalition response to the Scottish Government's 2<sup>nd</sup> consultation on the Environmental Liability Directive**

Please find attached a joint NGO coalition response to the above consultation on behalf of the following organisations:

**Client Earth**  
**Eppac limited**  
**Friends of the Earth Scotland**  
**GeneWatch UK**  
**GM Freeze**  
**Munlochy GM Vigil**  
**RSPB Scotland**  
**Scottish Wildlife Trusts**

A number of these organisations are also submitting separate responses on more specialised issues that are more particularly relevant to their specific organisations.

Yours faithfully

*James Thornton* (ClientEarth) *Sandy Luk* (eppac) (FOE Scotland) *Becky Price* (GeneWatch UK) *Pete Riley* (GM Freeze) *Anthony Jackson* (Munlochy GM Vigil) *Lloyd Austin* (RSPB Scotland) *Jonathan Hughes* (Scottish Wildlife Trusts)

## Summary of key comments

The environmental organisations listed above:

### Support:

- a. the inclusion of the **right to notify action in the case of imminent threats**, although in conformity with the provisions of the Environmental Liability Directive and the Aarhus Convention<sup>1</sup> the rights of standing of environmental organisations need to be clarified;
- b. the introduction of **flexibility in relation to joint liability**, including the possibility of joint and several liability and the potential for Directors' to be criminally liable if they commit offences under the Environmental Damage Regulations;
- c. the **exclusion of damage caused by genetically modified organisms** ('GMOs') from the operation of the permit and state of the art defences;
- d. the **extension of the long-stop limitation** period from 30 to 75 years in relation to GMO damage;

### Disagree with:

- e. the **exclusion of SSSIs and Ramsar sites**, as well as Biodiversity Action Plan ('BAP') habitats and species from the scope of the draft Regulations;
- f. the approach taken towards the **definition of the threshold for damage** to protected species and habitats;
- g. the approach taken towards the **definition of water damage** and restrictions on the size of water bodies concerned;
- h. the complete **lack of regulations in relation to marine damage**, in particular in relation to marine SACs and to the Common Fisheries Policy.

### Have concerns

- i. in relation to the way **powers and duties** of the competent authority and the operator have been set out in the draft Regulations.

### Contacts:

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<sup>1</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters 1998

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