

12 August 2016
Our ref: FOW/HY/AW/5533/01

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Dear Sirs

Environmental Permit Number EPR/PB3038RM and Environmental Permit Number EPR/DB3007MX – Hythe End Farm, Hythe End Road, Wraysbury

Please find enclosed one electronic copy on CD of an application to consolidate Environmental Permit Number EPR/PB3038RM and Environmental Permit Number EPR/DB3007MX and vary the consolidated Environmental Permit for the site at Hythe End Farm, Hythe End Road, Wraysbury that is operated by Fowles Crushed Concrete Limited (Fowles).

This application is a resubmission of the application that was returned by the Environment Agency as allegedly 'not duly made' under cover of a letter dated 13 July 2016. The letter specifies the two reasons that the previous application was considered by the EA as allegedly not duly made, namely:

- *The fee paid is not sufficient*
- *The fire prevention plan has a lot of detail missing, note this is required as removing the limit of and or increasing the site storage limit increases the risk of fire as the site accepts combustible wastes*

This application addresses the reasons given by the Environment Agency as to why the previous application allegedly was not duly made.

Application fee

In respect of the application fee the purported "not duly made" notification dated 23 June 2016 states that:

*"As neither of the permits are modern permits, this therefore requires a normal variation charge for each permit as stated in our charging scheme...the consolidation of the permits will then be done as an administrative only variation. **Therefore, a further payment of £7,400 is required**"*

Payment in the sum of £17,360 (seventeen thousand three hundred and sixty pounds) in respect of the application fee was made to the Environment Agency, as demanded by it, by electronic transfer on 9 August 2016 using the reference number PSCAPPFOWLE816. The application fee has been calculated as a normal variation for each permit based on a charge multiplier of £140 and the Opra score of 62 in respect of both permits as specified in the Opra profiles provided for each current site by the Environment Agency on 21 December 2015. The payment of the application fee demanded by the Environment Agency as appears from its letters dated 23 June and 13 July 2016 is made under protest and without prejudice to the representations that we have made as to what is the correct fee and the related concerns that we have raised in respect of the appropriateness of the application fee to the nature of the application that is to be determined by the Environment Agency and on which we comment below.



The guidance on the relevant application fee for a consolidation application involving two Environmental Permits provided in the Environment Agency's "Environmental Permitting Charging Scheme & Guidance" (Version 3 – December 2015) is not clear. In interpreting the guidance consideration should be given to the nature of the Environmental Permits that are being consolidated and therefore the actual work that will be necessary to complete this process. This application seeks to consolidate two Environmental Permits that result from partial transfers of a single original Waste Management Licence. The consolidated Environmental Permit that is sought for the site will authorise a waste operation as a single waste facility. This is significantly different from the consolidation of two different types of regulated facility such as a waste operation and an installation which would require separate conditions for each facility to be included within the single Environmental Permit.

It is unnecessary for the Environment Agency to translate both current Environmental Permits into the modern permit template in order to provide a single consolidated permit, which is the approach that is specified in the purported "not duly made" notification dated 23 June 2016, because only a single set of conditions is necessary within the consolidated Environmental Permit. On this basis, we consider that a 'normal variation' in respect of Environmental Permit number EPR/PB3038RM and a 'minor technical variation' or an 'administrative variation' in respect of Environmental permit number EPR/DB3007MX is more appropriate to the work that is necessary. It is considered that two normal variations, which currently result in an application fee in excess of £17,000, is significantly disproportionate to the technical input that is needed by the Environment Agency to produce a single consolidated and varied Environmental Permit for the site. This view is supported by reference to the revised Opra profile for the consolidated Environmental Permit provided with the application which identifies that the application fee for a new bespoke Environmental Permit would be £10,140. It is considered that an approximately 71% increase in the application fee to consolidate two existing Environmental Permits to provide a single varied Environmental Permit compared with an application for a new bespoke Environmental Permit for the site clearly is significantly disproportionate to the work necessary in determining the application.

In this respect, we draw to your attention Section 6 – Payment of charges of the Charging Scheme which states in respect of Abatement of charges:

"The Environment Agency has the provision to waive or reduce any charge specified in the scheme it considers to be (significantly) disproportionate in a particular case, with regard to the actual costs and expenses incurred, or to be incurred by the Environment Agency."

Notwithstanding the comments above in respect of the type of variation that is necessary to consolidate the current Environmental Permits to produce a single varied Environmental Permit, we reiterate that we do not agree with the current Opra profiles issued by the Environment Agency in respect of the site. A copy of our review of the current Opra profiles provided to the Environment Agency on 4 July 2016, is provided with the application. We disagree strongly with the assessment that the facility authorised by Environmental Permit Number EPR/DB3007MX comprises an "A11 - Household, commercial and industrial waste transfer station" for the purposes of the Opra scheme because of the limited scope of the waste activities that are authorised currently by the permit.

Descriptions of different waste facilities for the purposes of the Opra scheme are presented in Appendix 1 to the Environment Agency guidance document "How to complete an Opra for waste facilities spreadsheet" dated April 2014 (the Opra spreadsheet guidance). The description in respect of "A11 - Household, commercial and industrial

waste transfer station" provided in Appendix 1 to the Opra spreadsheet guidance states that it is:

*"A transfer station which is permitted to accept predominantly non-hazardous waste but may also include the storage and manual sorting of hazardous WEEE, for transfer between modes of transport and/or bulking up. This may include some forms of treatment both manual and mechanical, such as manual and physical sorting, and compaction **provided that they are solely for the purpose of improving payloads.**" [Our emphasis]*

During the discussions that took place with the Environment Agency further to the issue of the purported "not duly made" notification on 23 June 2016, it was explained why the waste facility authorised by Environmental Permit Number EPR/DB3007MX was not consistent with the above description. In these discussions, reference was made to the activities that are authorised in respect of a household, commercial and industrial waste transfer station within the standard rules issued by the Environment Agency, such as standard rules SR2015 No6_75kte (version 1.0), which include a number of recovery and disposal operations. The waste operations that are authorised by the standard rules are much broader than the limited recovery operations that are included in Table 1.1 of Notice of Transfer EPR/CP3590EX/T002 dated 16 May 2013 in respect of Environmental Permit EPR/CP3590EX, which was transferred to Fowles on 10 July 2015 and given the number EPR/DB3007MX. The waste operation specified in Table 1.1 of Environmental permit number EPR/DB3007MX is for the physical treatment of waste for the purposes of recovery only. On this basis the facility cannot be defined as a waste transfer station consistent with the description in Appendix 1 to the Opra spreadsheet guidance as the physical treatment is not "...solely for the purpose of improving payloads..." i.e. a waste bulking operation.

Based on the waste activities that are undertaken at the site under Environmental Permit Number EPR/DB3007MX and the descriptions of the waste facilities that are provided in Appendix 1 to the Opra spreadsheet guidance it is considered that the waste facility is defined more appropriately as complexity type A16 'Physical treatment of non-hazardous waste facility'. Based on the waste operation and activities that are authorised by Environmental Permit Number EPR/DB3007MX and the descriptions of the waste facilities that are provided in Appendix 1 to the Opra spreadsheet guidance, however, the waste facility could include also waste activities consistent with complexity type A15 'Material Recycling Facility'. The description in respect of "A15 - Material recycling facility" in Appendix 1 to the Opra spreadsheet guidance states that:

"Facilities permitted to accept inert and/or non-hazardous waste solely for the purposes of recycling by physical means. This will include hand sorting and mechanical separation of comingled dry recyclables, e.g. conveyors/air classifiers, eddy current separators or magnets. This doesn't include inert excavation waste."

The description in respect of "A16 - Non-hazardous waste physical treatment facility" in Appendix 1 to the Opra spreadsheet guidance states that:

"Facilities permitted to accept any type of controlled non-hazardous waste for the purpose of subjecting it to any physical process intended to change its properties, e.g. soil screening or Refuse Derived Fuels (RDF), crushing, baling, pelletising, etc."

Note – this category does not permit mixed loads of wastes for the purpose of removing recyclable materials and residual wastes sent to landfill."

Based on the descriptions in Appendix 1 to the Opra spreadsheet guidance and the waste operation and activities that are permitted under Environmental permit number EPR/DB3007MX it is considered that the facility is classified most appropriately as a combination of A15 and A16 both of which are complexity band A. In the Environment Agency guidance document entitled "Opra for EPR version 3.9. Annex B – Opra Scheme for Waste Facilities" dated April 2014 it is stated that:

"If you operate more than one type of waste treating, keeping and/or recovery operation, identify the complexity band for each type of waste operation from Table 1A and use the highest band."

Based on the guidance as the A15 and A16 waste operations are both complexity band A the relevant Opra complexity band for the facility would be band A.

On the assumption that the Environment Agency agrees with the revised Opra profiles in respect of each of the two Environmental Permits, the combined application fee in respect of the consolidation application progressed as two normal variations would be £9,660 (nine thousand six hundred and sixty pounds).

Fire prevention plan

A copy of the fire prevention plan dated July 2015 was submitted to the Environment Agency on 30 June 2016 in response to a request included in the Compliance Assessment Report (CAR) form dated 8 June 2016 issued by the Environment Agency in respect of Environmental Permit Number EPR/DB3007MX and on 7 July 2016 in response to the purported "not duly made" notification dated 23 June 2016. A copy of the fire prevention plan had been submitted to the Environment Agency previously on, at the latest, 6 November 2015. No adverse comment on the fire prevention plan was received from the Environment Agency from that date until the letter dated 13 July 2016. Neither the purported "not duly made" notification dated 23 June 2016 nor the letter dated 13 July 2016 specified the reasons why the Environment Agency more than 7 months later considered that the fire prevention plan was unsuitable.

The purported "not duly made" notification dated 23 June 2016 and the letter dated 13 July 2016 relate the need to submit a fire prevention plan with the application to a purported change to the permitted storage capacity of the facility. The consolidation and variation application does not seek to change the permitted storage capacity of the facility only to regularise the capacity commensurate with the permitted throughput of the facility. The issues in respect of waste storage at the site are addressed in the extant appeals to the Secretary of State in respect of the Enforcement Notices (Appeal references APP/EPR/15/456 & 457) and Revocation Notices (Appeal references APP/EPR/16/469 & 470) that have been issued by the Environment Agency in respect of the Environmental Permits for the site.

Notwithstanding the above comments the purported "not duly made" notification dated 23 June 2016 states that:

"...the following condition will also be added to the permit as an agency initiated variation:

3.5 Fire prevention

3.5.1 The operator shall take all appropriate measures to prevent fires on site and minimise the risk of pollution from them including, but not limited to, those specified in any approved fire prevention plan.

3.5.2 The operator shall:

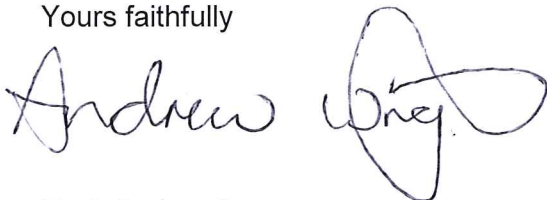
- (a) ***if notified by the Environment Agency that the activities are giving rise to a risk of fire, submit to the Environment Agency for approval within the period specified, a fire prevention plan which prevents fires and minimises the risk of pollution from fires;***
- (b) *implement the fire prevention plan, from the date of approval, unless otherwise agreed in writing by the Environment Agency.*
[Our emphasis]

There is no objection to that proposed condition. It is clear from the condition that the Environment Agency proposes to include in the consolidated and varied Environmental Permit that it would be necessary to submit to the Environment Agency for approval a fire prevention plan should the operator be notified by the Environment Agency that the activities are giving rise to a risk of fire. The provision of a fire prevention plan and implementation of this at the site will be a requirement under these circumstances once the consolidated and varied Environmental Permit is issued. It is considered therefore that it is unreasonable and, in the light of that proposed condition, also illogical and premature for the Environment Agency to require a fire prevention plan at all in the context of this application which precedes the consolidated and varied Environmental Permit which is to include that condition. It follows that it is even more inappropriate to notify the applicant that the application is allegedly "not duly made" based on perceived, but unspecified, deficiencies in a fire prevention plan that is not currently required as a condition of the Environmental Permit. It will only be required, if at all, upon notification under the terms of the above-mentioned condition to be included in the consolidated and varied Environmental Permit. Such notification is to be given by the Environment Agency, if it considers it necessary only once the consolidated and varied Environmental Permit is issued. In these circumstances the fire prevention plan will be reviewed for consistency with the latest guidance that was published by the Environment Agency on GOV.UK on 29 July 2016.

In addition to these concerns it is considered that it is wholly inappropriate to undertake a detailed technical assessment of the application documents at the stage of checking that the application is duly made.

We look forward to receiving in due course your written confirmation that the application has been received and is (as, undoubtedly it is) 'duly made' and acknowledgement of payment of the application fee. Please do not hesitate to contact us if you have any queries.

Yours faithfully



pp Mark Sudworth

Enclosures

Report reference FOW/HY/AW/5533/01 dated August 2016 (1 CD)

cc W Fowles, Fowles Crushed Concrete Limited
M Krantz, Gunnercooke LLP