



**Alternative Use Boston Projects  
Boston Alternative Energy Facility Order**

**Planning Inspectorate Reference: EN010095**

**Deadline 3 Representations by  
the Environment Agency  
Unique Reference Number: 20028344**

**5 December 2021**

Submitted on behalf of the  
Environment Agency by:  
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## 1. Scope of these representations

- 1.1. This letter includes a summary of oral statements made on behalf of the Environment Agency at the draft Development Consent Order Hearing on 23 November 2021 and the Environmental Matters Hearing on 24<sup>th</sup> November 2021. It also covers issues we have previously raised and were covered at the hearing.

## 2. Draft Development Consent Order (dDCO – REP1-002) Hearing

### *Agenda Item 4*

- 2.1. In relation to Part 2, Article 7(1)(c) we are satisfied that the amendments made are sufficient to protect flood defence infrastructure, subject to final confirmation of the details of Work no. 4. The limits of deviation in respect of Work no. 1A(iv) and Work no. 2(d) are noted.
- 2.2. In relation to Part 4, Article 22 we will continue to discuss ways to amend this section with the applicant to ensure flood management infrastructure remains unaffected.
- 2.3. In relation to Part 6, Article 41(1)(c) and 41(1)(d), we are still in discussions with the applicant to agree appropriate specific wording and content for both the side legal agreement and the Protective Provisions. To date no issues have arisen that give us cause to believe that an agreement cannot be made, although we cannot yet assure the inspector that this will be before the end of the examination period.

### *Agenda Item 5*

- 2.4. In relation to Schedule 8, part 4, we anticipate that we will be able to provide initial comments on the Protective Provisions within the next two weeks. However we are unable to confirm that these will be agreed until the side legal agreement is resolved.

### *Agenda Item 7*

- 2.5. We acknowledge that several of the issues raised in our Relevant and Written Representations (RR-013 and REP1-051) have been addressed by changes in the dDCO. Specifically, the following changes as noted in the Schedule of Changes (REP1-033) have addressed our comments:

<b>DCO Reference</b>	<b>Document Ref, Paragraph Number and topic</b>	<b>REP1-033 Change Number and outline of change</b>
Schedule 2, Requirement 3	RR-013 3.16 – requirement to consult the Environment Agency (EA).	24 – requirement to consult EA included
Schedule 2, Requirement 9	RR-013 5.2 and 5.4 – measures to manage the	31 – measures included

	risk of landfill gas intrusion.	
Schedule 2, Requirement 10	RR-013 5.3 and 7.2 – requirement to consult the EA.	32 – requirement to consult EA included

2.6. The following issues may be addressed pending further information and amendments to the dDCO.

<b>DCO Reference</b>	<b>Document Ref, Paragraph Number and topic</b>	<b>REP1-033 Change Number and outline of change</b>
Schedule 2, Requirement 8	RR-013 3.18 - request to confirm strategy is to manage surface and foul water	30-33 - Some changes, made. Further information to be provided at Deadline 3.
Schedule 2, Requirement 9	REP1-051 4.11 and 4.12 – request for intrusive investigations into potential contaminants in material to be dredged/disturbed.	Matter to be included in Deemed Marine Licence. Issue still subject to satisfactory wording.
Schedule 2, Requirement 10	REP1-051 4.13 - Scheme of monitoring and an action plan to manage contaminants.	Matter to be included in Deemed Management Licence. Issue still subject to satisfactory wording.
Schedule 2, Requirement 14	REP1-051 4.7 – requirement to consult the EA	38 – Matter to be included in Deemed Management Licence. Issue still subject to satisfactory wording.

2.7. The following issues have not yet been addressed by the dDCO and no proposals have been put forward by the applicant to address them.

<b>DCO Reference</b>	<b>Document Ref, Paragraph Number and topic</b>	<b>REP1-033 Change Number and outline of change</b>
Schedule 2, Requirement 5 (2) and Requirement 8 (1)	RR-013 3.17 – request to remove ‘substantially’	Amendment not made

Schedule 2, Requirement 5	REP1-051 4.6 – request for monitoring of impacts on saltmarsh and mudflats beyond the immediate development.	No response
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2.8. We note that at the hearing the applicant understood that our request in RR-013 paragraph 3.17 relating to requirements 5 and 8 was for the word ‘substantially’ to be *included* rather than removed. We would like to clarify that we wish it to be removed.

*Agenda Item 9*

2.9. In principle we accept the proposal for the issues raised in our Written Representation REP1-051 paragraphs 4.7 and 4.11-13 to be covered in the updated DML, subject to the proposed amendments to be submitted at Deadline 3 being acceptable.

*Agenda Item 10*

2.10. We acknowledge that amendment 70 in REP1-033, Schedule of Changes, addresses our comment made in our Relevant Representation RR-013 paragraph 3.20.

**3. Environmental Matters Hearing**

*Agenda Item 2c – Environmental Permit Issues*

3.1. In our Relevant Representation RR-013 we made broad comments regarding: the alignment of the Environmental Permit (EP) process with the DCO submission; air quality; visual impact; noise; and odour. We accept that the further detail submitted may be suitable for the DCO process, but further assessments of the evidence will be required before we can confirm that they are suitable for the EP process.

3.2. We note that the design of the plant has not yet been finalised. The Environment Agency, when it determines any EP, may decide that some aspects (such as the lightweight aggregates facility) may not be viable in their current form. Until we have seen the details of that process we cannot predetermine any permit application.

3.3. If processes are required to change this could have impacts on planning matters being considered by the ExA. For example, changes to the two stacks on both the main plant and the lightweight aggregate plant may be necessary. At this stage we are unable to confirm what changes (if any) will be required to secure a permit.

3.4. We also note that the proposal is particularly large and complex plant in a constrained site, and these factors will be considered through the EP.

- 3.5. We are broadly satisfied with the type of evidence provided by the applicant in regard to air quality, visual impact and odour. Given the scale, complex nature of the plant and the use of novel technologies, we will require further information and assessment in regard to noise impacts through the EP which could require further changes to be made to the design of the facility.
- 3.6. In addition to our concerns over the noise impacts, we have concerns regarding the lightweight aggregate plant. We need to understand more about the product that will be created and whether it can be deemed to be a non-waste product. We are also considering whether the combining of two different waste streams of bottom ash and air pollution control residues as currently proposed will be legally permissible. Should this be possible, we shall also be considering whether the energy efficiency of the plant is acceptable.
- 3.7. In summary, at this stage we are unable to predetermine any permit application, should one be made, but we have identified that the lightweight aggregate plant process and noise pollution are issues that will require careful consideration.

*Agenda Item 2c – Flood Risk Legal Agreement and Protective Provisions*

- 3.8. We are still in discussions with the applicant to agree appropriate specific wording and content for both the side legal agreement and the Protective Provisions. To date no issues have arisen that give us cause to believe that an agreement cannot be made, although we cannot yet assure the inspector that this will be before the end of the examination period.

*Agenda Item 2d – Management of Operational Waste through an EP*

- 3.9. We can confirm that operational waste will be managed through an EP. However at this time we are unable to confirm whether waste can be managed in the lightweight aggregate plant in the way currently proposed.

*Agenda Item 2e – Water Framework Directive (WFD) and Marine Ecology Impacts*

- 3.10. Our concerns regarding the impacts of the scheme on WFD indicators come principally from the removal of saltmarsh and the potential disturbance of contaminants held in sediments through this removal and other dredging activities. This is not directly related to the disposal of surface water.
- 3.11. We understand that the management and monitoring of contamination released from works in the Haven will be considered in the amended DML to be submitted at Deadline 3.

*Agenda Item 3b – Impact of Air Pollution on Saltmarsh Habitats*

3.12. We suggest diffusion tube monitoring at sensitive receptors would be appropriate in this case to evaluate the accuracy of the air dispersion model and to enable any action to be taken should issues arise.

*Agenda Item 5f – Geomorphological Assessment*

3.13. We understand from the applicant that the Expert Geomorphological Assessment (EGA) requested in our Relevant Representation RR-013 paragraph 4.3 is integrated into the text of APP-054, Environmental Statement Chapter 16 – Estuarine Processes. In principle we have no objection to this and do not require a separate EGA to be submitted in relation to the assessments already carried out.

3.14. However, our concerns remain regarding the localised impacts of the combined effects of changes to the geomorphological system in the Haven, as set out in our Deadline 2 response REP2-038. We would welcome further evidence from the applicants to demonstrate what the impacts will be and whether further action is needed to protect saltmarsh and/or mudflats in the area.