

Date: 4th February 2023

Mr Kean, Chairman of the Examining Authority
The Planning Inspectorate
Sunnica Energy Farm EN010106

Dear Mr Kean

Letter from HSE(NI) regarding requirements for HSC and COMAH in BESS Applications under the “loss of control” provisions in the COMAH Regulations 2015

A letter dated 31st January has been passed to me concerning advice given to a Local Planning Authority in Northern Ireland regarding a recent Planning Application for a BESS. This letter post-dates Deadline 6 by one day so obviously would have been impossible to submit by Deadline 6.

The letter further exemplifies the approach taken by HSE(NI) in regard to BESS and the application of the COMAH Regulations 2015 and the Planning (Hazardous Substances) Regulations 2015. Whilst the Northern Irish Regulations are made under different Statutory Instruments, they are materially identical to those in force in England.

In particular the letter exemplifies the following points:

1. The advice refers to a hazard assessment on a single BESS container commissioned by HSE(NI) (Examination Library Annex EF28 REP2-129p). HSE(NI) refer to the potential to cause partial demolition of a house 45 m away and a Hydrogen Fluoride (HF) plume causing serious injury 45 m away. Recall this is a single cabin accident assessment.
2. HSE(NI) confirm once more that “loss of control” scenarios must be considered in determining requirements for HSC or COMAH notification. Explicitly the letter says: “A facility that does not come under COMAH for regular operations must still consider loss of control scenarios”.
3. HSE(NI) advises the LPA to require details of the technical assessment determining that Hazardous Substances were below prescribed thresholds for HSC in the Application in question.
4. HSE(NI) refer once more to the paper by Larsson *et al* (2017) (Annex EF15 REP2-129d) as the authoritative source for “worst case” aggregate emissions of HF. The plume dispersal models resulting in EF28 REP2-129p are at variance with the Applicant’s Appendix 16D Air Quality Assessment in this Examination, as noted in my submissions REP3A-046, REP4-089 and Deadline 5 submissions. [Note the figure of “469 tonnes of POF₃” in the HSE(NI) letter must be a typographic error for 0.469 tonnes, which would be consistent with the figures in Larsson].
5. HSE(NI) confirm the relevance of the “Aggregation Rule” to incorporate other substances in each of the Health, Physical and Environmental hazard categories to determine whether the thresholds for COMAH notification and HSC have been exceeded.

The Aggregation Rule is found in Schedule 1 Part 3 Note 4 of the COMAH Regs 2015 and in Schedule 1 Part 4 Note 5 of the P(HS)Regs 2015. This is the approach taken in my Annex EF16 REP2-129e and in my WR REP2-129. A “loss of control” assessment is incomplete unless all dangerous or hazardous substances reasonably foreseeably generated have been taken into account and the Rule applied to each of the three hazard categories.

6. Whilst I disagree with the statement “[The CLP Regulation classifies batteries as articles](#)” for reasons given in my REP4-089 and the paper in Annex EF40 REP4-092, HSE(NI) explicitly recognises that this is irrelevant to the application of the “loss of control” provisions in the COMAH Regulations 2015.

I submit that this letter from HSE(NI) is highly relevant to the question of whether BESS are subject to COMAH notification based on the “loss of control” provisions. The practice of HSE(NI) is clearly that they *are* potentially subject to COMAH, and that a failure analysis identifying multiple dangerous substances with application of the Aggregation Rule is required to determine a valid quantity threshold.

This letter from HSE(NI) refers directly to the COMAH Regulations and liability for COMAH notification, unlike my previous letter of 1st February enclosing my Annex EF47 from the DLUHC, which referred exclusively to the Planning (Hazardous Substances) Regulations 2015 and the loss of control provisions in Part 3.

Because of the high relevance, and the obvious fact that the letter post-dates Deadline 6, I respectfully request this be entered into the Examination Library as Annex EF48 to my submissions.

Yours sincerely



Edmund Fordham PhD CPhys CEng FInstP Eurlng

Enc: copy of letter from HSE(NI) for entry as Annex EF48