



NORTH LINCOLNSHIRE GREEN ENERGY PARK

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North Lincolnshire Green Energy Park

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Acronyms and Abbreviations

Name	Description
APFP	Applications: Prescribed Forms and Procedures
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
EA	Environment Agency
EIA	Environmental impact assessment
EPA	Environmental Protection Act 1990
ERF	Energy Recovery Facility
ES	Environmental Statement
MWe	megawatts electrical power
NLC	North Lincolnshire Council
NLGEP	North Lincolnshire Green Energy Park
PA 2008	Planning Act 2008

EXECUTIVE SUMMARY

1.1.1.1 This Statutory Nuisance Statement has been prepared in accordance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2014 (the APFP Regulations) as amended. These regulations require an applicant for a Development Consent Order (DCO) to provide a statement as to whether the application engages Section 79(1) (Statutory nuisances and inspections therefor) of the Environmental Protection Act 1990 (EPA 1990). It accompanies the application for a DCO (the Application) by North Lincolnshire Green Energy Park Limited (the Applicant) for the North Lincolnshire Green Energy Park (NLGEP) Order (the Project), which involves the construction, operation, and maintenance of an Energy Recovery Facility (ERF) with a maximum gross output of capacity of up to up to 95 megawatts electrical power (MW), together with associated development.

1.1.1.2 This statement explains that, whilst it is not expected that the construction or operation of the Project would engage Section 79(1) of the EPA 1990 by causing statutory nuisances, the draft DCO (**Document Reference 2.1**) that accompanies the Application contains a provision at Article 42 to provide a defence to proceedings for statutory nuisance, should they be initiated against the Applicant (or its successors) as undertakers under the DCO requirements.

1.1.1.3 As outlined in the EPA 1990, and according to guidance provided by DEFRA, potential statutory nuisances may include one or more of the following:

- noise;
- artificial light;
- odours;
- insects;
- smoke;
- dust;
- premises;
- fumes or gases;
- accumulations or deposits; and
- keeping of animals in such a place or manner as to be prejudicial to health or nuisance.

1.1.1.4 Without appropriate mitigation and controls, with the exception of 'keeping of animals', all of the above could potentially result from the construction, operation, maintenance and finally decommissioning of the Project. The Environmental Statement (ES) (**Document Reference 6.0**) has assessed the potential significant effects from a number of elements as specified by

Section 79(1) of the EPA 1990 and concluded that the Application will not give rise to any significant adverse effects.

- 1.1.1.5 Any potential statutory nuisances would be controlled through the mitigation outlined in the ES and secured through the requirements outlined in Schedule 2 of the draft DCO. The Project will operate under an Environmental Permit (as stipulated by the Environmental Permitting (England and Wales) Regulations 2016), in addition to having to obtain other consents and licences as set out in the Consents and Licences Document (**Document Reference 5.8**). Compliance with the other regulatory requirements will further control the risk of statutory nuisance arising from the Project.

1. INTRODUCTION

1.1 Overview

1.1.1.1 This Statutory Nuisance Statement has been prepared in support of the Application for a DCO that has been made to the Planning Inspectorate under Section 37 of the Planning Act 2008 (the 2008 Act).

1.1.1.2 The Applicant seeks a DCO for the construction, operation, and maintenance of an ERF with a maximum gross output of capacity of up to up to 95 MW, together with associated development.

1.1.1.3 The DCO, if granted, will be known as the 'North Lincolnshire Green Energy Park Order'.

1.2 The Project

1.2.1.1 The North Lincolnshire Green Energy Park (NLGEP) ('the Project'), located at Flixborough, North Lincolnshire, is a Nationally Significant Infrastructure Project (NSIP) with an Energy Recovery Facility (ERF) capable of converting up to 760,000 tonnes of non-recyclable waste into 95 MW of electricity at its heart and a carbon capture, utilisation and storage (CCUS) facility which will treat a proportion of the excess gasses released from the ERF to remove and store carbon dioxide (CO₂) prior to emission into the atmosphere.

1.2.1.2 The NSIP incorporates a switchyard, to ensure that the power created can be exported to the national grid or to local businesses, and a water treatment facility, to take water from the mains supply or recycled process water to remove impurities and make it suitable for use in the boilers, the CCUS facility, concrete block manufacture, hydrogen production and the maintenance of the water levels in the wetland area.

1.2.1.3 The Project will include the following Associated Development to support the operation of the NSIP:

- a bottom ash and flue gas residue handling and treatment facility (RHTF)
- a concrete block manufacturing facility (CBMF)
- a plastic recycling facility (PRF)
- a hydrogen production and storage facility
- an electric vehicle (EV) and hydrogen (H₂) refuelling station
- battery storage
- a hydrogen and natural gas above ground installations (AGI)
- a new access road and parking
- a gatehouse and visitor centre with elevated walkway
- railway reinstatement works including, sidings at Dragonby, reinstatement and safety improvements to the 6km private railway spur, and the construction of a new railhead with sidings south of Flixborough Wharf

- a northern and southern district heating and private wire network (DHPWN)
- habitat creation, landscaping and ecological mitigation, including green infrastructure and 65 acre wetland area
- new public rights of way and cycle ways including footbridges
- Sustainable Drainage Systems (SuDS) and flood defence; and
- utility constructions and diversions.

1.2.1.4 The Project will also include development in connection with the above works such as security gates, fencing, boundary treatment, lighting, hard and soft landscaping, surface and foul water treatment and drainage systems and CCTV.

1.2.1.5 The Project also includes temporary facilities required during the course of construction, including site establishment and preparation works, temporary construction laydown areas, contractor facilities, materials and plant storage, generators, concrete batching facilities, vehicle and cycle parking facilities, offices, staff welfare facilities, security fencing and gates, external lighting, roadways and haul routes, wheel wash facilities, and signage.

1.2.1.6 The overarching aim of the Project is to support the UK's transition to a low carbon economy as outlined in the Sixth Carbon Budget (December 2020), the national Ten Point Plan for a Green Industrial Revolution (November 2020) and the North Lincolnshire prospectus for a Green Future. It will do this by enabling circular resource strategies and low-carbon infrastructure to be deployed as an integral part of the design (for example by reprocessing ash, wastewater and carbon dioxide to manufacture concrete blocks and capturing and utilising waste-heat to supply local homes and businesses with heat via a district heating network).

1.2.1.7 The Project site is located on land within an industrial complex located near Scunthorpe, North Lincolnshire, as outlined in the ES Chapter 3 The Project and Alternatives (**Document Reference 6.2.3**).

1.2.1.8 The Application also includes ancillary facilities and development associated with the ERF pursuant to section 115 of the 2008 Act as outlined in the Explanatory Memorandum (**Document Reference 2.2**).

1.2.1.9 The DCO will include requirements regarding the approved plans, detailed design, construction methodology/management and other operational controls to ensure that the Project does not give rise to any adverse effects or statutory nuisances. These are set out in Schedule 2 to the DCO.

1.3 Statutory Nuisance Report

1.3.1.1 Regulation 5(2)(f) of APFP Regulations states that an application for a DCO should be accompanied by a written statement that sets out whether the proposal could cause a statutory nuisance, as defined in the EPA 1990. If

such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.

- 1.3.1.2 The Overarching National Policy Statement for Energy EN-1 states that Section 158 of the 2008 Act confers statutory authority for carrying out development or other matters authorised by a DCO. Such authority is conferred only for the purpose of providing a defence in any civil or criminal proceedings for nuisance. This would include a defence for proceedings for nuisance under Part III of the EPA 1990 (statutory nuisance) but only to the extent that the nuisance is the inevitable consequence of what has been authorised. The defence does not extinguish the local authority's duties under Part III of the EPA 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied to its existence, likely occurrence, or recurrence. The defence is not intended to extend to proceedings where the matter is 'prejudicial to health' and not a nuisance.
- 1.3.1.3 EN-1 goes on to state that it is very important that at the application stage, the Secretary of State (SoS) considers sources of nuisance under Section 79(1) of the EPA 1990 and how these may be mitigated or limited, so that appropriate 'requirements' can be included in any DCO that is granted.
- 1.3.1.4 Whilst it is not expected that the construction, operation, maintenance and decommissioning of the Project would cause a statutory nuisance, Article 42 of the draft DCO contains a provision that would provide a defence to proceedings for statutory nuisance should they be initiated against the applicant or any future operators.
- 1.3.1.5 This statement first describes the legislative context for the identification of matters which constitute a statutory nuisance and the methodology for the assessment of these. This is followed by a summary of the assessment of statutory nuisances, using information from the Environmental Statement (ES) (**Document Reference 6.0**), including any relevant mitigation measures and residual effects, whether embedded within the design of the Project or secured through requirements within the DCO.

2. IDENTIFICATION AND ASSESSMENT OF STATUTORY NUISANCE

2.1.1.1 Section 79(1) of the EPA 1990 identifies the matters which are considered to be a statutory nuisance as follows:

- any premises in such a state as to be prejudicial to health or a nuisance;
- smoke emitted from premises so as to be prejudicial to health or a nuisance;
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- any accumulation or deposit which is prejudicial to health or a nuisance;
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance; and
- artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and
- any other matter declared by any enactment to be a statutory nuisance.

2.2 Assessment of Significance

2.2.1.1 The ES provides an assessment of the potential effects on receptors as being not significant, and of minor, moderate or major significance (for some topics an effect assessed as being of minor significance is deemed to be not significant with the context of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)). Any impact of negligible magnitude is deemed not to have a significant effect for the purposes of the Environmental Impact Assessment (EIA).

2.2.1.2 The only matters addressed by the EPA 1990 which have been assessed as having the potential for significant effects for the Project are identified as air quality (construction dust and operational emissions), noise, visible plumes (for instance of water vapour from the stacks or coolers) and artificial lighting.

2.2.1.3 However, it is demonstrated in this document that the Project would have no significant air quality, noise¹ or artificial lighting nuisance effects following the

¹ While the ES reports noise effects that are of moderate significance at most, they are not above the Significant Observed Adverse Effect Level which is the point at which further mitigation would be required, and the noise does not exceed recognised standards for disturbance except during short term construction works.

implementation of the identified mitigation measures that the Project has committed to implementing.

2.2.1.4 It is expected that for other potential nuisance aspects, either these will not arise for this type of project and/or the mitigation committed to by the Project will ensure no statutory nuisance effects are likely to occur.

3. POTENTIAL BREACHES OF SECTION 79

3.1 Air Quality

- 3.1.1.1 As set out in Chapter 5 of the ES (**Document Reference 6.2.5**), with the proposed mitigation in place, residual air quality impacts from construction and operation of the Project are predicted to be not significant at sensitive human receptors.
- 3.1.1.2 In terms of the potential for dust to generate a nuisance during construction according to the criteria, Chapter 5 of the ES shows that the Project is close to existing industrial areas, and these facilities are sensitive to dust ingress and susceptible to damage due to ingress of dust. As a consequence, dust mitigation from IAQM (2014) for 'High Risk' sites will be adopted, which will in turn ensure that more distant residential areas benefit from the same mitigation.
- 3.1.1.3 Dispersion modelling for operation (including plant and transport sources) concludes effects are not significant for human health for all pollutants. The dispersion modelling identified that there are potentially significant impacts at nearby habitats, due to oxides of nitrogen and ammonia emissions and by association nitrogen deposition and acid deposition. These potential impacts are considered further in the Ecology chapter (**Document Reference 6.2.10**).
- 3.1.1.4 On the basis of the impact assessment, no further mitigation measures are required for operation over and above the base Project design, these being that the plant meets current BREF BAT emission limits and that the emissions of amines and Nitramines/nitrosamines do not result in a significant impact.
- 3.1.1.5 During operation, it is not considered that there will be any significant unmitigated issues associated with odour and dust. Controls are in place for the abatement of these, to the degree that the risk of off-site nuisance is considered to be negligible.
- 3.1.1.6 However, there remains a residual possibility that impacts capable of creating nuisances related to air quality could occur. These might arise:
- as a result of construction of the Project;
 - as a result of testing /commissioning activities and maintenance activities;
or
 - as a result of extraordinary or emergency emissions to air associated with the operation of the Project.

3.1.1.7 Such matters will be addressed through monitoring, inspection and, where it might be required, corrective actions. Monitoring commitments are outlined in Chapter 5 of the ES (**Document Reference 6.2.5**).

3.2 Noise

3.2.1 Construction Phase

3.2.1.1 As outlined in Chapter 7 of the ES (**Document Reference 6.2.7**) the residual effects of construction noise are predicted to be of moderate significance at most. In general, most impacts are on a small number of receptors, or over very short periods of time such as is likely for the night works to connect the reopened railway with the existing mainline railway, or the transitory works associated with the DHPWNs.

3.2.1.2 Significant effects are also likely if the work on the main construction areas needs to be undertaken during the evening at the same intensity as during the day. However, the current information suggests that work outside of core daytime hours would be discussed with North Lincolnshire Council (NLC) in drafting the Construction Environmental Management Plan (CEMP) to establish which works could be performed with a low likelihood of significant effects.

3.2.1.3 No significant effect is predicted on any road link which is used by construction traffic, or as a result of the use of the railway during the construction period.

3.2.2 Operational Phase

3.2.2.1 For the operational phase noise was modelled and assessed against BS 4142 and BS 8233 criteria.

3.2.2.2 The Project has the potential to result in daytime noise impacts at the closest residential receptors to the site. At worst, these include moderate noise impacts during the day at receptors close to Ingelnook in Amcotts during a loading or unloading event at the railhead. At all other receptors such as the northern part of Amcotts, Flixborough, Park Ings Farm, Neap house and Willowmead Close, the predicted effects are considered minor or not significant when the context of the noise is taken into account. Noise from the Project would not be the only form of industrial noise heard at the nearest properties, and this should lessen its perceived impact, as the new noise will sit within an industrial noise soundscape. The predicted noise levels are also either below or not noticeably above the target level for daytime external amenity space.

3.2.2.3 At night there will be no loading or unloading activities and the fixed plant will not result in more than minor noise impacts at any receptor. At worst, the

predicted noise levels are also range of external noise levels 40 – 45 dB, LAeq at night that provides a good standard for sleep within the building.

3.2.2.4 Mitigation measures which are embedded in the Project design include:

- Procuring low noise equipment (transformers, cooling tower fans, vehicles, and equipment etc); and
- The acoustic performance of enclosures has been based on the experience of the design team in terms of the lowest realistic noise levels that are likely to be achieved, and the assumptions regarding plant noise again reflect realistic noise levels from a modern well-designed plant. The external plant at the quay and the railhead have been based on typical noise levels for this type of plant including measurements at Flixborough and Immingham of plant which was operated, where appropriate, with at-source mitigation such as exhaust silencers and enclosed engine compartments.

3.2.2.5 There remains a residual possibility that impacts capable of creating a nuisance within the scope of Section 79 (1) of the EPA 1990 (sub-paragraphs (g) and (ga)) could occur. These might arise as a result of operation of the Project. Such matters will be addressed through monitoring, inspection and, where it might be required, corrective actions, especially during the commissioning stages of the Project. A Noise Management Plan will be developed and agreed with NLC and will be implemented before the development becomes operational. The purpose of the Plan will be to demonstrate noise from the operation of the Project is no higher than reported in the ES and where practicable to reduce noise levels below those that have been predicted.

3.3 Visible Plumes

3.3.1.1 The Project has the potential to result in the emission of visible plumes during operation. Normally, water vapour in the plume which is generated as a combustion product will be in vapour phase as the plume temperature decreases. However, when ambient temperature is low or relative humidity is high water may condense into droplets forming visible plumes. The potential for visible plumes has been assessed using dispersion modelling, based upon the water content of the plume. The results show that visible plumes will occur rarely, less than 1% of the year, and when they do will rarely exceed the confines of the Order Limits.

3.4 Lighting

3.4.1.1 As set out in Chapter 11 (Landscape and Visual Amenity) of the ES (**Document Reference 6.2.11**) there is potential for project lighting to have impacts on views from sensitive receptors during construction and operation. Taking account of the embedded mitigation within the lighting design, as described in the following paragraphs, it is predicted that these effects will not be significant. The Indicative Lighting Strategy (see Annex 4 to the ES)

(**Document Reference 6.3.4**) has been developed to minimise impacts on night-time views from the surrounding landscape.

- 3.4.1.2 Requirements included in Schedule 2 to the draft Order (**Document Reference 2.1**) secure the approval and implementation of lighting schemes for the construction and operational stages. Site lighting for all stages of development has been assessed as not having a significant adverse effect on local amenity or other receptors.

4. CONCLUSIONS

- 4.1.1.1 This Statement identifies the matters set out in Section 79(1) of the EPA 1990 in respect of statutory nuisance and considers whether the Project could cause a statutory nuisance.
- 4.1.1.2 The only matters addressed by the EPA 1990 which have been assessed in the EIA as having the potential for significant effects are air quality, noise, visible plumes, and lighting. However, it has been demonstrated in Section 4 of this document that the Project would have no significant air quality or lighting nuisance effects following the implementation of the identified embedded mitigation measures. The residual effects of construction noise are predicted to be of moderate significance at most.
- 4.1.1.3 The operation of the Project will be regulated by the Environment Agency (EA) through an Environmental Permit.
- 4.1.1.4 The draft DCO that accompanies the application contains a provision in Article 42 that would provide a defence to proceedings for statutory nuisance should they be initiated against the applicant or its successors as undertakers under the terms of the DCO.
- 4.1.1.5 However, it should be noted that, in any event, the provisions of Article 42 of the draft DCO do not provide an absolute defence. To benefit from the defence it is necessary to have in place and to successfully operate the appropriate mitigation and management systems as described in this Statement, in the draft DCO, and in the ES, which have been submitted as part of the Application.
- 4.1.1.6 Mitigation measures for the Project will be secured by the appropriate DCO requirements. As a result, it is not expected that the construction, operation or decommissioning of the Project would engage Section 79(1) and give rise to any statutory nuisance under the EPA 1990, following the implementation of appropriate mitigation.