



# **STATUTORY NUISANCE STATEMENT**

## **Drax Bioenergy with Carbon Capture and Storage**

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(f)

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**DOCUMENT OWNER:** M. Marsh

**AUTHOR:** M. Marsh

**APPROVER:** N. Ashworth

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## EXECUTIVE SUMMARY

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This Statutory Nuisance Statement has been written to comply with Regulation 5(2)(f) of the APFP Regulations, which states that the application for a DCO should be accompanied by a statement setting out whether the Proposed Scheme at Drax, North Yorkshire, could cause statutory nuisance pursuant to Section 79(1) of the Environmental Protection Act 1990 (EPA). If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects. An overview of the Proposed Scheme and the location of the Site is included in **Section 1.2**.

**Section 2** identifies the legislative framework pertinent to statutory nuisance, and those matters which are not considered within this Statement due to the nature of the Proposed Scheme.

**Section 3** outlines the likely significant landscape and visual effects identified within the Environmental Statement, submitted with the DCO Application, which may have a bearing on statutory nuisance. It also outlines the mitigation measures which have been identified to reduce the potential statutory nuisance impacts, as outlined in the Environmental Statement (ES).

**Section 4** outlines the likely negligible and minor effects which may arise from the Proposed Scheme which may give cause for nuisance and any mitigation measures which are proposed for the control of these.

It is concluded in **Section 5** that only visual amenity has been assessed within the ES as having the potential to lead to significant effects; however, following the implementation of the mitigation measures outlined in **Section 3**, no significant visual nuisance effects are anticipated. In addition, the operation of the Proposed Scheme is to be regulated by the Environment Agency through an Environmental Permit.

# 1. INTRODUCTION

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## 1.1. BACKGROUND

- 1.1.1. This Statutory Nuisance Statement has been prepared on behalf of Drax Power Limited (the 'Applicant'). It forms part of the application (the 'DCO Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy, under section 37 of The Planning Act 2008.
- 1.1.2. A DCO is required for the Proposed Scheme as it falls within the definition and thresholds for a Nationally Significant Infrastructure Project ('NSIP') under sections 14(1)(a) and 15(2) of The Planning Act 2008.
- 1.1.3. This Statutory Nuisance Statement provides an explanation of matters set out in Section 79(1) of the Environmental Protection Act ('EPA') 1990 in respect of statutory nuisances which may occur as result of the Proposed Scheme.
- 1.1.4. The requirement for such a statement is set out in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the 'APFP Regulations 2009') at regulation 5(2)(f), which states:

“the application must be accompanied by...a statement whether the proposal engages one or more of the matters set out in Section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so, how the applicant proposes to mitigate or limit them”.

## 1.2. THE PROPOSED SCHEME

- 1.2.1. The Proposed Scheme would involve the installation of post-combustion carbon capture technology to capture carbon dioxide from up to two existing 660 megawatt electrical ('MWe') biomass power generating units at the Drax Power Station (Unit 1 and Unit 2). The installation of this technology constitutes an extension to the biomass Units 1 and 2 and is referred to as post-combustion carbon capture as the carbon dioxide is captured from the flue gas produced during the combustion of biomass in Units 1 and 2. The Proposed Scheme is designed to remove approximately 95% of the carbon dioxide from the flue gas from these two Units.
- 1.2.2. The carbon dioxide captured will undergo processing and compression before being transported via a proposed new pipeline for storage under the southern North Sea. Transport and storage infrastructure will be consented through separate applications submitted by other parties (not the Applicant) (see further details on the transport and storage infrastructure below).
- 1.2.3. It is intended that core items of the existing infrastructure at the Drax Power Station are re-used by installing and integrating the Carbon Capture Plant onto existing infrastructure including existing power generating units (Units 1 and 2) for extraction of steam, re-using the cooling water systems, Main Stack and electrical connections.

1.2.4. The Proposed Scheme is made up of the following:

- a. Up to two Carbon Capture Plants (one associated with Unit 1 and one associated with Unit 2), each made up of:
  - i. Flue gas pre-treatment section (includes Flue Gas Booster Fans, Gas / Gas Heat Exchangers and Quench Columns);
  - ii. One Absorber Column;
  - iii. Solvent Regeneration System (to include up to two Regenerators); and
  - iv. Rich Solvent / Lean Solvent Heat Exchangers.
- b. Additional Common Plant infrastructure and modification works to the Drax Power Station that are required to support and integrate with one or both Carbon Capture Plants including:
  - i. Solvent Storage and Make-up System (comprising up to four banded solvent storage compounds);
  - ii. Carbon Capture Wastewater Treatment Plant;
  - iii. Carbon Dioxide Processing and Compression Plant;
  - iv. Modification to the existing water pre-treatment plant;
  - v. Modification, upgrade and extension of the existing cooling system and distribution of cooling water to the Proposed Scheme;
  - vi. Modifications to existing electrostatic precipitators;
  - vii. Modifications, upgrade and extension to existing power generating units, boilers and turbines for steam extraction and new steam processing infrastructure for distribution of process steam and electricity supply to the Proposed Scheme; and
  - viii. Integral electrical connections within the existing generating station and Carbon Capture Plant including upgrades to the existing electrical infrastructure and new electrical infrastructure for the secondary electrical supply to the Proposed Scheme.
- c. Infrastructure to transport compressed carbon dioxide from the Carbon Dioxide Processing and Compression Plant to storage and transport infrastructure operated by National Grid Carbon Limited;
- d. Minor vegetation and street furniture management and other works to facilitate access during construction;
- e. Additional supporting infrastructure and other works for the Proposed Scheme;
- f. Temporary construction laydown areas (Drax Power Station Site Construction Laydown Areas and the East Construction Laydown Area); and
- g. Habitat Provision Area.

1.2.5. A full description of the Proposed Scheme and the Site is provided in **Chapter 2 (Site and Project Description)** of the Environmental Statement ('ES') Volume 1 (document reference 6.1.2).

### 1.3. THE PURPOSE OF THIS DOCUMENT

- 1.3.1. The purpose of this document is to comply with Regulation 5(2)(f) of the APFP Regulations 2009, which states that any application for a DCO should be accompanied by a statement setting out whether the development proposal could cause a statutory nuisance pursuant to Section 79(1) of the EPA). If such a nuisance could occur, the statement must set out how the applicant proposes to mitigate or limit the effects.
- 1.3.2. Paragraph 4.14.1 of the Overarching National Policy Statement for Energy EN-1 (DECC, 2011) states that:
- “Section 158 of the Planning Act 2008 confers statutory authority for carrying out development consented to by, or doing anything else authorised by, a development consent order. 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 Environmental Protection Act 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 Environmental Protection Act 1990 to inspect its area and take reasonable steps to investigate complaints of statutory nuisance and to serve an abatement notice where satisfied of 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.”
- 1.3.3. Paragraph 4.14.2 states the importance of considering possible sources of nuisance under Section 79(1) of the EPA and how these may be mitigated or limited, so that appropriate ‘requirements’ can be included in any DCO that is granted.
- 1.3.4. The Government is currently reviewing and updating the Energy NPSs. It is doing this in order to reflect its policies and strategic approach for the energy system that is set out in the Energy White Paper (December 2020), and to ensure that the planning policy framework enables the delivery of the infrastructure required for the country’s transition to net zero carbon emissions. As part of the Energy NPS review process, the Government published a suite of Draft Energy NPSs for consultation on 6 September 2021. Section 4.14 of Draft Overarching National Policy Statement for Energy (EN-1) (Draft NPS EN-1) sets out the principles for common law nuisance and statutory nuisance which mirrors Section 4.14 of NPS EN-1.
- 1.3.5. Whilst it is not expected that the construction, operation or maintenance of the Proposed Scheme would cause a statutory nuisance, Article 37 of the **draft DCO** (document reference 3.1) which accompanies the DCO Application contains a provision that would provide a defence to proceedings in respect of statutory nuisance falling within Section 79(1) of the EPA, subject to certain criteria.

1.3.6. This Statement is structured as follows:

- a. Section 2** identifies the legislative framework pertinent to statutory nuisance, and those matters which are not considered within this Statement due to the nature of the Proposed Scheme;
- b. Section 3** outlines the likely significant effects identified within the Environmental Statement (which accompanies this DCO Application) which may have a bearing on statutory nuisance. It also outlines the mitigation measures which have been identified to reduce the potential statutory nuisance impacts, as outlined in the Environmental Statement (ES);
- c. Section 4** outlines the likely negligible and minor effects which may arise from the Proposed Scheme which may give cause for nuisance and any mitigation measures which are proposed for the control of these; and
- d. Section 5** provides a conclusion in relation to the potential for nuisance.

## 2. APPROACH TO THE ASSESSMENT OF STATUTORY NUISANCE

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### 2.1. LEGISLATIVE FRAMEWORK

2.1.1. Section 79(1) of the EPA identifies the statutory nuisances subject to specified caveats, as set out below:

- (a) any premises in such a state as to be prejudicial to health or a nuisance;
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (ga) 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
- (h) any other matter declared by any enactment to be a statutory nuisance.

### 2.2. ASSESSMENT OF SIGNIFICANCE

2.2.1. The **ES** (document reference 6.1) for the Proposed Scheme addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in Section 79(1) of the EPA. **Chapter 2 (Site and Project Description)** and **Chapter 3 (Consideration of Alternatives)** describe impact avoidance measures inherent to the proposed design and methods of operation, which address the potential statutory nuisances defined in paragraph 2.1.1 above. **Chapter 5 (Transport)** (document reference 6.1.5), **Chapter 6 (Air Quality)** (document reference 6.1.6), **Chapter 7 (Noise and Vibration)** (document reference 6.1.7), **Chapter 9 (Landscape and Visual Amenity)** (document reference 6.1.9), **Chapter 13 (Materials and Waste)** (document reference 6.1.13), **Chapter 16 (Population, Health and Socio-economics)** (document reference 6.1.16) and their associated appendices in **Volume 3 of the ES** (document reference 6.3) provide detailed assessments of these potential statutory nuisances and identify mitigation measures where necessary, with mitigation detailed in the **Register of Environmental Actions and**

**Commitments (REAC)** (document reference 6.5) which also details how the actions and commitments set out within it are secured.

- 2.2.2. The ES categorises the potential effects on receptors as neutral, slight, moderate, large or very large. Only moderate, large or very large effects are considered to be significant for the purposes of the EIA, unless otherwise detailed within the topic chapters.
- 2.2.3. The only matter addressed by the ES which has been assessed as likely to be significant for the Proposed Scheme and which may have a bearing on the EPA is visual amenity. However, it is demonstrated in **Section 3** of this document that the Proposed Scheme would have no significant visual amenity effects that would constitute nuisance effects following the implementation of the identified secondary mitigation measures.
- 2.2.4. Other potential nuisance aspects have been considered in **Section 4** of this Statement and through mitigation no statutory nuisance effects are considered likely to occur.
- 2.2.5. Matters which are considered to be statutory nuisance under Section 79(1) of the EPA are covered within Sections 3 or 4 or are excluded as outlined in **Table 2.1** below, depending on whether potentially significant effects were identified within the ES.

**Table 2.1 - EPA Section 79(1) Matters and Significance of Effects**

Matter	Section within Statement to be considered
(a) any premises in such a state as to be prejudicial to health or a nuisance	The landscape and visual assessment identified likely significant effects for visual receptors. This matter is therefore considered under <b>Section 3</b> of this Statement.
(b) smoke emitted from premises so as to be prejudicial to health or a nuisance	No smoke is expected to be generated during normal operation of the Proposed Scheme. This matter is not considered further within this Statement.
(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance	The air quality assessment did not identify any significant effects for human receptors from emitted fumes or gases. This matter is therefore considered under <b>Section 4</b> of this Statement.
(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance	The air quality assessment did not identify any significant effects for human receptors from dust, steam, smell or other effluvia. This matter

Matter	Section within Statement to be considered
	is therefore considered under <b>Section 4</b> of this Statement.
(e) any accumulation or deposit which is prejudicial to health or a nuisance	The ground conditions and waste and materials assessments did not identify any significant effects for human receptors. This matter is therefore considered under <b>Section 4</b> of this Statement.
(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance	No animals will be kept at the Proposed Scheme. This matter is not considered further within this Statement.
(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance	It is not anticipated that insects will emanate from the Proposed Scheme or be attracted to it. This matter is not considered further within this Statement.
(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance	No significant effects are anticipated from light emitted from the premises. This matter is therefore considered under <b>Section 4</b> of this Statement.
(g) noise emitted from premises so as to be prejudicial to health or a nuisance	The noise assessment did not identify any significant effects for human receptors from noise emitted from premises. This matter is therefore considered under <b>Section 4</b> of this Statement.
(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street	The noise assessment did not identify any significant effects for human receptors from noise emitted or caused by a vehicle, machinery or equipment in a street. This matter is therefore considered under <b>Section 4</b> of this Statement.
(h) any other matter declared by any enactment to be a statutory nuisance	No other matters are considered to be a potential statutory nuisance associated with the construction, operation or demolition of the Proposed Scheme

### **3. LIKELY SIGNIFICANT EFFECTS**

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#### **3.1. EPA SECTION 79(1) (A) “ANY PREMISES IN SUCH A STATE AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”**

3.1.1. The assessment of effects on landscape and visual amenity is presented within **Chapter 9 (Landscape and Visual Amenity)** of the ES Volume 1 and supporting appendices in Volume 2 (document reference 6.2).

##### **LOCAL RESIDENTS**

3.1.2. A moderate adverse (significant) effect during construction is anticipated on views in relation to residents living in properties with western facing views (Pear Tree Avenue, Wren Hall Lane, Carr Lane and Main Road). The change in views would be due to visible construction activities within the East Construction Laydown Area, the movement of plant and materials along New Road and views of tall construction plant. These effects would be temporary, short term and would impact a small portion of the view at close proximity only.

3.1.3. A moderate adverse (significant) effect during construction is anticipated on views in relation to residents living in properties with eastern facing views (Camela Lane / Clay Lane). The change in views would be due to views of tall construction plant within the western aspect of the Site. These effects would be temporary, short term and would impact a small portion of the view at close proximity only.

3.1.4. A moderate adverse (significant) effect during construction is anticipated on views in relation to residents living in properties with eastern facing views from the settlement of Camblesforth. The change in views would be due to views of tall construction plant within the western aspect of Drax Power Station. These effects would be temporary, short term and would impact a small portion of the view at close proximity only.

##### **USERS OF PUBLIC RIGHTS OF WAY**

3.1.5. A moderate adverse (significant) effect during construction is anticipated on views in relation to people travelling along PRow with close proximity eastern facing views. The change in view would be due to the proximity and prominence of construction activity associated with the Proposed Scheme, experienced in sequential views approaching the Power Station and alongside its boundary. These effects would be temporary, short term and would impact a small portion of the view at close proximity only.

3.1.6. A moderate adverse (significant) effect during construction is anticipated on background views in relation to people travelling along PRow with south-western facing views. The change in view would be due to visible construction activities within the East Construction Laydown Area and the movement of plant and materials along New Road and views of tall plant associated with the construction and in the gaps between the built form of Drax Power Station. These effects would be temporary, short term and would impact a small portion of the view at close proximity only.

## MITIGATION

- 3.1.7. To minimise risk of any statutory nuisance from occurring as a result of the construction phase measures will be put in place such as:
- a. Landscape mitigation planting, for the purpose of visual screening, proposed along the eastern boundary of the East Construction Laydown Area. The existing hedgerow would remain in place and be enhanced along its length, to include the thickening and gapping up of the hedge and the planting of frequent broadleaved tree species. The intention is to provide additional filtering of views towards the East Construction Laydown for footpath users east of the Drax Power Station Site and for occupiers of nearby residential properties during construction;
  - b. Construction compounds and laydown and demolition areas would be surrounded by hoardings to reduce visual effects due to the presence of construction traffic, plant and equipment, as well as demolition of existing and construction of built form. The hoardings would create an orderly appearance to the edge of the Site and be a minimum of 2.4 m high, maintained in good condition;
  - c. Upon completion laydown areas and site compounds would be returned to their original use;
  - d. The construction programme would be no longer that is reasonably necessary to construct the Proposed Scheme, and as such, would limit the duration of any landscape and visual impacts. Areas would be cleared for construction as close as possible to works commencing and topsoiling, seeding and planting would be undertaken during the next available season after works are complete.
  - e. Construction compounds and working areas would be kept in a tidy condition (e.g., free of litter and debris);
  - f. Surrounding roads (New Road) and pavements to be maintained free of excessive dust and mud via wheel washers and road sweepers; and
  - g. Implementation of the measures set out in the **Outline Landscape and Biodiversity Strategy** (document reference 6.6.1).

## SUMMARY

- 3.1.8. Whilst significant adverse effects have been identified as likely, these do not constitute a statutory nuisance under EPA Section 79(1)(a) as this is only considered to occur if poor levels of housekeeping or maintenance are applied at the Proposed Scheme.
- 3.1.9. Statutory nuisance occurring as a result of poor housekeeping or maintenance is not anticipated and the Proposed Scheme would be kept in tidy condition and good working order as a matter of course in connection with its construction. The land used for construction would also be required to be restored in accordance with requirements in the **dDCO** and measures to ensure landscape planting is implemented and maintained are also to be secured through the requirements of the DCO. These measures are set out in both the **Register of Environmental Actions**

**and Commitments (REAC)** (document reference 6.5) which also details how the actions and commitments set out within it are secured and the **Outline Landscape and Biodiversity Strategy (OLBS)** (document reference 6.6) the measures within which are secured by a requirement in the DCO.

## 4. NOT SIGNIFICANT EFFECTS

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### 4.1. EPA SECTION 79(1)(C) “FUMES OR GASES EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”

- 4.1.1. The assessment of air quality is included in **Chapter 6 (Air Quality)** of the ES (document reference 6.1.6).
- 4.1.2. Detailed atmospheric dispersion modelling has been undertaken to model the air quality impacts associated with the operational phase of the Proposed Scheme at a number of discrete sensitive receptors and across a defined receptor grid.
- 4.1.3. The modelled impacts for all assessed pollutants were calculated to be below 1% of the relevant air quality assessment levels (AQALs), with the exception of the hourly mean NO<sub>2</sub>, hourly mean SO<sub>2</sub> and annual mean nitrosamine (as NDMA), where the maximum modelled impacts equate to 1.2% (NO<sub>2</sub>), 2.4% (SO<sub>2</sub>) and 8.7% (NDMA) of the respective AQALs. For hourly mean NO<sub>2</sub> and SO<sub>2</sub>, the maximum impact corresponds to a ‘negligible’ magnitude of change and for NDMA, the maximum impact corresponds to a ‘slight adverse’ magnitude of change. For all other assessed pollutants and averaging periods, the maximum modelled impacts are classified as ‘negligible’.
- 4.1.4. As such the ES concluded no significant adverse effects on human receptors anticipated from the construction or operation of the Proposed Scheme in relation to emitted fumes or gases.

### 4.2. EPA SECTION 79(1)(D) “ANY DUST, STEAM, SMELL OR OTHER EFFLUVIA ARISING ON INDUSTRIAL, TRADE OR BUSINESS PREMISES AND BEING PREJUDICIAL TO HEALTH OR A NUISANCE”

- 4.2.1. The assessment of air quality is included in **Chapter 6 (Air Quality)** of the ES (document reference 6.1.6).
- 4.2.2. A qualitative dust assessment has been completed as part of the assessment with reference to the relevant IAQM guidance (IAQM, 2016) to determine the potential for dust impacts at human receptors within the construction phase study area. The risk of construction dust effects without mitigation applied is assessed to be low risk for human health effects and medium risk for dust soiling. Given that the dust emission magnitude is assessed as large there is some potential for temporary, moderate adverse effects. These effects are most likely to occur when earthworks and construction activities are being undertaken in the eastern, northern and southern areas of the Site, due to the proximity of residential properties.
- 4.2.3. In line with IAQM guidance the following mitigation measures are proposed to reduce any such effects. These measures are detailed in the **REAC** (document reference

6.5) which sets out how the actions and commitments set out within it are secured and includes within it a requirement for a Construction Environmental Management Plan (CEMP) to be produced for the Proposed Scheme.

**a. Site Management:**

- i. All dust and air quality complaints would be recorded, and causes identified. Appropriate remedial action would be taken in a timely manner.

**b. Monitoring:**

- i. When there is a risk of dust from construction activities, daily on-site and off-site inspections will be undertaken, to monitor compliance with the relevant Dust Management Plan (DMP) which would form part of the CEMP. Inspections would be recorded, and the inspection log made available to the local authority, as required; and
- ii. The frequency of site inspections would be increased when activities with a high potential to produce dust are being carried out and during prolonged dry or windy conditions.

**c. Preparing and Maintaining the Site:**

- i. The Site layout would be planned so that machinery and dust causing activities are located away from receptors, as far as is practicable;
- ii. Where practicable, solid screens or barriers would be erected around dusty activities or the Site Boundary that are at least as high as any stockpiles on site; and
- iii. Where practicable, stockpiles would be covered, seeded or fenced to prevent wind whipping.

**d. Operating Vehicle / Machinery and Sustainable Travel:**

- i. All vehicle operators would switch off engines when stationary - no idling vehicles; and
- ii. The use of diesel- or petrol-powered generators would be avoided and mains electricity or battery powered equipment used where practicable.

**e. Operations:**

- i. An adequate water supply on the Site for effective dust / particulate matter suppression / mitigation would be made available, using non-potable water where possible and appropriate; and
- ii. Drop heights from loading or handling equipment would be minimised and fine water sprays used on such equipment as appropriate.

**f. Measures Specific to Earthworks:**

- i. Earthworks and exposed areas / soil stockpiles would be revegetated to stabilise surfaces as soon as practicable;
- ii. Where practicable, windbreak netting / screening would be positioned around material stockpiles and vehicle loading / unloading areas, as well as exposed excavation and material handling operations, to provide a physical barrier between the Site and the surroundings;

- iii. Where practicable, stockpiles of soils and materials would be located as far as possible from sensitive properties, taking account of the prevailing wind direction; and
  - iv. During dry or windy weather, material stockpiles and exposed surfaces would be dampened down using a water spray to minimise the potential for wind pick-up.
- g. Measures Specific to Construction**
- i. All construction plant and equipment would be maintained in good working order and not left running when not in use;
  - ii. Measures Specific to trackout;
  - iii. Water-assisted dust sweeper(s) would be used on the access and local roads, to remove, as necessary, any material tracked out of the Site;
  - iv. Vehicles entering and leaving sites would be covered to prevent escape of materials during transport; and
  - v. A wheel washing system would be implemented (with rumble grids to dislodge accumulated dust and mud prior to leaving the Site where reasonably practicable).

4.2.4. Furthermore, an **Outline Construction Traffic Management Plan (CTMP)** (**Appendix 5.1** of the ES (document reference 6.3.5.1)) and a Framework **Construction Worker Travel Plan (CWTP)** (**Appendix 5.2** of the ES (document reference 6.3.5.2)) have been prepared to manage the impacts associated with dust from construction traffic.

4.2.5. The ES concluded no significant adverse residual effects on human receptors anticipated from the construction or operation of the Proposed Scheme in relation to dust, steam, smell or other effluvia.

### **4.3. EPA SECTION 79(1)(E) “ANY ACCUMULATION OR DEPOSIT WHICH IS PREJUDICIAL TO HEALTH OR A NUISANCE”**

4.3.1. The assessment of ground conditions, including a conceptual site model of various contaminative substances, is included in **Chapter 11 (Ground Conditions)** of the ES (document reference 6.1.11). The assessment of waste is included in **Chapter 13 (Materials and Waste)** of the ES.

4.3.2. **Chapter 11 (Ground Conditions)** identified a number of possible sources of contamination which could impact on human receptors within the study area. It concluded that with implementation of appropriate mitigation measures, the impact on construction workers during construction of the Proposed Scheme would be not significant.

4.3.3. **Chapter 13 (Materials and Waste)** identified that waste will be produced during construction activities. It is intended that where possible waste would be reused on Site and diverted from landfill. The volume of material that will require removal from the Site is not expected to be significant. It would be the contractor’s responsibility to

work in accordance with a Site Waste Management Plan during construction activities, which would adhere to the Waste Hierarchy and a Materials Management Plan which would be CL:AIRE compliant. The Applicant would be responsible for applying for any necessary Waste Permits with the Environment Agency and working in compliance with these.

- 4.3.4. To minimise the risk of any statutory nuisance occurring through accumulation or exposure to deposits which are prejudicial to health or a nuisance, the following mitigation measures would be implemented. These measures are detailed in the **REAC** which sets out how the actions and commitments set out within it are secured and includes within it a requirement for a Construction Environmental Management Plan (CEMP) to be produced for the Proposed Scheme:
- a. The construction phase will proceed in accordance with all legislation, guidance and best practice (including that which is relevant to the health and safety of construction workers);
  - b. The construction phase will proceed in accordance with a comprehensive CEMP (of which a site waste management plan and Materials Management Plan will be part of), compliance with which is secured by a requirement to the **dDCO**;
  - c. The Proposed Scheme would operate in accordance with current pollution prevention industry guidance and controls in relevant permits issued by the EA;
  - d. The appointed Main Contractor would be responsible for the completion of Control of Substances Hazardous to Health (COSHH) assessments identifying hazards from and methods preventing or controlling exposure to hazardous substances (for example, through mandatory use of Personal Protective Equipment (PPE));
  - e. Maintain prohibited access to the Existing Drax Power Station Site for members of the public;
  - f. The decommissioning phase would proceed in accordance with a comprehensive Decommissioning Environmental Management Plan (DEMP), required to be approved and implemented by a requirement to the **dDCO**;
  - g. All construction and operation activities would adhere to the Waste Hierarchy by reusing and / or recycling waste materials in order to reduce the significance of the effect on waste treatment and disposal facilities;
  - h. The contractor would develop and implement a SWMP and Materials Management Plan (MMP), to drive performance in the highest tiers of Waste Hierarchy as required by the Site environmental permit, thereby maximising reuse, recycling and recovery. This would include testing site arisings to determine suitability for reuse.
  - i. The MMP would be produced following the Contaminated Land: Applications in Real Environments (CL:AIRE) 'Definition of Waste: Development Industry Code of Practice' (CL:AIRE, 2011) and / or exemptions / environmental permits, to ensure that soil re-use and imported materials are suitable for their intended use and will not significantly affect human health or the environment;

- j. The Main Contractor would be responsible for setting and reviewing waste targets from the outset to ensure that high standards are maintained with the emphasis being on continual improvement;
  - k. Arisings would be suitably stockpiled to maximise reuse and would be designed to minimise quality degradation, damage and loss of resource. Good practice measures in terms of on-site storage would be implemented to assist in reducing unnecessary wastage of material and ensure that high standards are maintained throughout the development process;
- 4.3.5. Where practicable, waste streams that have the potential to be reused on-site or transported off-site for recycling would be segregated. No significant accumulation or deposit is expected from the Proposed Scheme which would be prejudicial to health or give rise to nuisance.

#### **4.4. EPA SECTION 79(1)(FB) “ARTIFICIAL LIGHT EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE”**

- 4.4.1. Artificial lighting is proposed to illuminate the outdoor areas of the Proposed Scheme during both construction and operation. The assessment of Landscape and Visual Amenity concluded that some changes may be experienced at night during the construction, operation and decommissioning phases of the Proposed Scheme as a result of lighting required for the safe operation of the Site. However, given that lighting would be directional and focused and considering this within the context of the existing baseline lighting levels on the Site this is deemed to be not significant.
- 4.4.2. A requirement has been included in the **draft DCO** (Requirement 10) in relation to external construction and operational lighting which requires that a written scheme for the temporary external lighting to be installed for the purposes of construction must be submitted to and approved by the relevant planning authority before construction works begin. Similarly, it requires that a written scheme for the permanent external lighting to be installed for the purposes of operation must be submitted to and approved by the relevant planning authority before the Proposed Schemes is operational.
- 4.4.3. A **Draft Lighting Strategy** (document reference 6.7) has been prepared and submitted alongside the DCO Application which includes design recommendations and control measures for both construction and operation.
- 4.4.4. All proposed lighting associated with construction, compound areas and security would be detailed within the Construction Environmental Management Plan (CEMP) to be approved prior to the start of construction.
- 4.4.5. The use of artificial lighting for the Proposed Scheme during construction and operation is not anticipated to constitute a statutory nuisance. No significant artificial light emissions are expected from the Proposed Scheme which would have the potential to give rise to a statutory nuisance.

#### **4.5. EPA SECTION 79(1)(G) NOISE EMITTED FROM PREMISES SO AS TO BE PREJUDICIAL TO HEALTH OR A NUISANCE AND SECTION 79(1) (GA) NOISE THAT IS PREJUDICIAL TO HEALTH OR A NUISANCE AND IS EMITTED FROM OR CAUSED BY A VEHICLE, MACHINERY OR EQUIPMENT IN A STREET**

- 4.5.1. The assessment of effects on noise and vibration is presented in **Chapter 7 (Noise and Vibration)**.
- 4.5.2. The methodology for the operational noise assessment of the Proposed Scheme s been undertaken in line with guidance described in BS4142:2014+A1:2019 (British Standards Institute, 2014).
- 4.5.3. The assessment concludes that with the implementation of appropriate mitigation, as set out below, there are no significant effects anticipated during construction, operation and decommissioning.
- 4.5.4. The following Best Practicable Means are proposed, as set out in the **REAC**, to minimise the potential for significant effects during construction;
- a.** The appropriate selection of plant, construction methods and programming: Only plant conforming with, or that is better than, relevant national or international standards and directives will be used;
  - b.** Construction plant will be maintained in good condition with regards to reducing noise output; and
  - c.** Design and use of Site hoardings and screens, where necessary, to provide acoustic screening at the earliest opportunity. Gates to the Site will not be located opposite buildings containing noise sensitive receptors
- 4.5.5. The following primary mitigation has been included to reduce noise impacts during operation:
- a.** A single acoustic enclosure for the steam turbine building;
  - b.** A single acoustic enclosure for the pumps such that the noise level at 1 m from each pump does not exceed 80 dB(A);
  - c.** Double acoustic enclosures for the CO<sub>2</sub> compressor buildings. CO<sub>2</sub> compressor buildings will include mechanical ventilation with appropriate noise silencing on air louvres;
  - d.** Double acoustic enclosures for the gas flue blower fans;
  - e.** Acoustic cladding for the ducting of the gas flue blower fans; and
  - f.** Cladding on the building envelope of the compressor building.
- 4.5.6. No significant noise emissions are expected from the Proposed Scheme which would give rise to nuisance.

## 5. CONCLUSION

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### 5.1. POTENTIAL FOR NUISANCE

- 5.1.1. In line with Regulation 5(2)(f) of the APFP Regulations, this Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisance and considers whether the Proposed Scheme could cause a statutory nuisance.
- 5.1.2. The only matter addressed by the ES which has been assessed as likely to be significant for the Proposed Scheme and which may have a bearing on the EPA is visual amenity.
- 5.1.3. However, it is demonstrated in **Section 3** of this Statement that the Proposed Scheme would have no significant visual nuisance effects following the implementation of the identified mitigation measures.
- 5.1.4. Other potential nuisance aspects have been considered in **Section 4** and through the application of appropriate mitigation no statutory nuisance effects are considered likely to occur.
- 5.1.5. The operation of the Proposed Scheme would be regulated by the Environment Agency through an extension to the existing Environmental Permit.

### 5.2. DEVELOPMENT CONSENT ORDER

- 5.2.1. The **dDCO** (document reference 3.1) that accompanies the DCO Application contains a provision in Article 379 that would provide a defence, subject to certain criteria, to proceedings in respect of statutory nuisance falling within Section 79(1) of the EPA.

## REFERENCES

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British Standards Institute. (2014). *BS 4142 (2014) + A1 (2019): Methods for rating and assessing industrial and commercial sound* .

DECC. (2011). *Overarching National Policy Statement for Energy*. Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/47854/1938-overarching-nps-for-energy-en1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf)

IAQM. (2016). *Guidance on the Assessment of Dust from Demolition and Construction v1.1*.