

Laura Evans
Health and Safety Executive
Specialised Industries Division Policy - Land Use Planning
Hazardous Installations Directorate
5.S.2 Redgrave Court
Merton Road
Bootle
L20 7HS

EN030001
8 February 2012

Dear Ms Evans

**Planning Act 2008
Planning (Hazardous Substances) Act 1990**

**Preesall Underground Gas Storage Facility - deemed Hazardous Substances
Consent**

As discussed, I am writing to draw your attention to the role of the Health and Safety Executive (HSE) in relation to applications for deemed hazardous substances consent and to explain the relevant provisions in the Planning Act 2008 (the 2008 Act).

Paragraph 45(2) of Schedule 2 of the 2008 Act amends the Planning (Hazardous Substances) Act 1990 to enable a person making a development consent order (DCO) to, on making that order, direct that hazardous substances consent shall be deemed to be granted (subject to any conditions that may be specified). Annex B of Communities and Local Government (CLG): Planning Act 2008 Guidance for Local Authorities (March 2010) states that "when a DCO is made, a direction can be given deeming the grant of hazardous substances consent. This would be separate from the DCO itself".

Where a deemed hazardous substances consent application is made alongside a DCO application, the HSE must be consulted by the decision maker before making the DCO and deeming hazardous substances consent. Further information is available in Overarching National Policy Statement (NPS) for Energy (EN-1) and NPS for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4). Under the Localism Act 2011, the IPC will be abolished on 31 March 2012 and its functions will transfer to a new national infrastructure directorate that will be created within a restructured Planning Inspectorate. From April 2012, the relevant Secretary of State will therefore be the decision maker on all applications for development consent for nationally significant infrastructure projects. It will be the Secretary of State's responsibility to consult the HSE before giving a direction that hazardous substances consent may be granted.

The HSE is identified as a “statutory party” in relation to all DCO applications as set out in the Schedule to the Infrastructure Planning (Interested Parties) Regulations 2010 and, consequently, an “interested party” for the purposes of section 102 of the 2008 Act. Interested parties will be able to submit written representations and other documents as part of the examination and make oral representations at any hearings. To facilitate the examination, it would be helpful if the HSE (when submitting representations on an application which is also accompanied by an application for deemed hazardous substances consent) ensures that there is a clear distinction between representations relating to the DCO application and those relating to the deemed hazardous substances consent application. The HSE should also be aware that following the examination, and before deciding whether to direct that hazardous substances consent is deemed to be granted, the HSE will be consulted by the Secretary of State.

For your information, the IPC has accepted an application for examination which is accompanied by an application for deemed hazardous substances consent. The developer’s application documents, including those relating to the deemed hazardous substances consent application, are available on the IPC website at:
<http://infrastructure.independent.gov.uk/projects/north-west/preesall-saltfield-underground-gas-storage/>.

I trust the above provides a useful outline of the process as set out in the 2008 Act and related legislation. Should you have any queries in relation to the above please do not hesitate to contact me.

Yours sincerely



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Case Manager

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The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

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