

Southampton to London Pipeline Project

Volume 6

Environmental Statement (Volume D)
Appendix 13.5: Statement of Statutory Nuisance
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Appendix 13.5 Statement of Statutory Nuisance

1.1 Background

1.1.1 Esso Petroleum Company, Limited (Esso) is making an application for development consent to replace 90km (56 miles) of its existing 105km (65 miles) aviation fuel pipeline that runs from the Fawley Refinery near Southampton, to the Esso West London Terminal storage facility in Hounslow. The replacement pipeline is 97km (60 miles) long and is referred to as 'the project' within this appendix.

1.1.2 This appendix presents the Statement of Statutory Nuisance for the project to accompany the application for development consent.

1.1.3 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 require Development Consent Order (DCO) applications to be accompanied by (among other documents) a Statement of Statutory Nuisance (regulation 5(2)(f)), which states:

'(2) The application must be accompanied by -

'(f) a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefore) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them.'

1.1.4 This Statement therefore sets out the matters in Section 79(1) of the Environmental Protection Act (EPA) 1990 in respect to statutory nuisance, the potential of the project to cause statutory nuisance and the measures that have been incorporated into the project to mitigate any such potential nuisances.

1.1.5 This Statement should be read alongside the Environmental Statement (ES), including the Register of Environmental Actions and Commitments (REAC), which is included within Chapter 16 Environmental Management and Mitigation. Commitments include embedded design measures, good practice measures and mitigation required to reduce potentially significant effects. Good practice measures set out in the REAC are secured through DCO requirements such as the Code of Construction Practice (CoCP).

1.2 Environmental Protection Act 1990

1.2.1 Section 79(1) of the EPA 1990 states that the following matters constitute "statutory nuisances":

'(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;

(ea) any water covering land or land covered with water which is in such a state as to be 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;

(faa) any insects emanating from 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.

and it shall be the duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisances which ought to be dealt with under section 80 below or sections 80 and 80A below and, where a complaint of a statutory nuisance is made to it by a person living within its area, to take such steps as are reasonably practicable to investigate the complaint.'

1.2.2 Sections 79(2) and onwards contain exceptions to the above statutory nuisances.

Potential to Cause Statutory Nuisance

1.3 Screening of Topics

1.3.1 Matters that have the potential to constitute 'statutory nuisances' that are not applicable to the project have been screened out of this Statement.

1.3.2 As per Section 1.2, 'statutory nuisance' is a state of affairs that is 'prejudicial to health' or a 'nuisance'. The findings of the environmental impact assessment have been drawn on to inform this statement, but it is acknowledged that the legal standard of what constitutes a statutory nuisance is different to what may be a significant environmental effect under the EIA Regulations.

1.3.3 Paragraphs (a), (b), (c), (e), (ea) (f), (fa), (faa) and (h) of Section 79(1) of the EPA 1990 are deemed to not be applicable to the project and are therefore not considered within this Statement due to the following:

(a) There would be no premises in such a state so as to be prejudicial to health or nuisance. Measures to avoid and/or control construction activities which have the potential to be prejudicial to health or create nuisance are included in the REAC.



During the construction and operation of the proposed development, the project is not predicted to cause a nuisance or be prejudicial to health.

(b) No burning of waste materials would be permitted on site. Smoke would not be emitted to cause a nuisance or be prejudicial to health during construction or operation of the project.

(c) Emission of fumes and gases applies only to private dwellings (as noted in Section 79 (4) of the Act) and is therefore not relevant to the project.

(e) The waste produced on the project is expected to be low. Accumulations or deposits of excavated material or waste are not predicted to cause a nuisance or be prejudicial to health during construction or operation of the project.

(ea) The project does not involve covering any land with water. So, this is not predicted to cause a nuisance or be prejudicial to health during construction or operation of the project.

(f) No animals would be kept on-site as part of the project during construction or operation. Animals are not predicted to cause a nuisance or be prejudicial to health during construction or operation of the project.

(fa) and (faa) No materials would be stored on-site which could attract insects which could cause a nuisance or be prejudicial to human health. Any food waste from the construction compounds would be removed off-site. Insects emanating are not predicted to cause a nuisance or be prejudicial to health during construction or operation of the project.

(h) There are no other matters or elements of the project which could be considered to be a statutory nuisance.

1.3.4 The only matters included in Section 79(1) of the EPA 1990 that could potentially arise as a consequence of the project are:

(d) relating to dust, steam, smell or other effluvia (where emanating from industrial trade or business premises);

(fb) relating to artificial light;

(g) and (ga) relating to noise (which for the purposes of the above, includes vibration).

1.3.5 The following sections outline the activities that have the potential to cause a statutory nuisance under the EPA 1990, that is, they could be prejudicial to health or are a nuisance. Measures that have been incorporated into the project to reduce the potential for such effects are also set out in the following sections.



1.4 Relating to Dust, Steam, Smell or Other Effluvia (Section 79(1)(d))

Construction

- 1.4.1 Where emanating from industrial trade or business premises, some of the construction activities have the potential to generate dust emissions that could give rise to a statutory nuisance. These would be limited to the excavation, stockpiling and replacement of soil associated with the pipeline trench and driving construction vehicles along temporary haul routes. These could affect human receptors in the vicinity of the project. It is not anticipated that construction activities would give rise to any material amounts of steam, smell or other effluvia.
- 1.4.2 A Dust Risk Assessment, reported in Appendix 13.2 Air Quality Technical Note, was undertaken to assess the potential risk of causing adverse effects at sensitive receptors. As is standard practice in the construction industry, good practice measures would be put in place to control dust emissions at source and to manage or reduce the release of dust beyond the boundaries of the construction areas. These measures are included within the REAC. The Dust Risk Assessment concluded that, with these measures in place, there would be no significant effect as a result of construction dust. It is expected that these dust control measures would reduce dust to a level which would neither generate a nuisance nor be prejudicial to health and thus would not give rise to a statutory nuisance. Supporting technical details can be found in Appendix 13.2 Air Quality Technical Note.
- 1.4.3 On the above basis, there would be no statutory nuisance related to dust, steam, smell or other effluvia during the construction phase of the project.

Operation

- 1.4.4 As outlined in Appendix 13.2 Air Quality Technical Note, the operational effects of the project on air quality are expected to be similar to the baseline situation. There are unlikely to be any significant effects on air quality and this was scoped out from requiring assessment. Operation of the pipeline is not anticipated to generate dust, steam, smell or other effluvia which could cause a nuisance or be prejudicial to health and thus would not create a statutory nuisance.

1.5 Artificial Light (Section 79(1) (fb))

Construction

- 1.5.1 Temporary artificial lighting would be required to illuminate the compound areas and logistics hubs during pipeline installation, to aid safety and to provide security to the site. Site lighting may also be required for working areas in consideration of winter working hours and non-standard working arrangements. All lighting will be set up to avoid nuisance as far as is practicable so will be low-level and directional to avoid glare into residential properties.
- 1.5.2 The REAC includes measures relating to artificial lighting. With these measures in place, the potential for the temporary lighting to cause a nuisance would be low and there is no likelihood of the temporary lighting being injurious to health.



Operation

- 1.5.3 A new pigging station would be constructed southwest of Netherhill Lane between Boorley Green and Durley. The compound would be provided with manually operated lighting for when the station is operated in low light conditions. It would not be permanently lit and would not constitute a statutory nuisance.

1.6 Noise and Vibration (Section 79(1) (g) and (ga))

Construction

- 1.6.1 Pipeline installation would include activities and equipment likely to produce noise and vibration, such as formation of the construction compounds and logistics hubs, earthworks and excavations, auger units and concrete pumps. Noise and vibration from the installation activities may cause significant short term effects at a number of receptors. Using a precautionary approach, Appendix 13.3 Noise and Vibration Technical Note identifies the numbers of receptors which may experience significant noise effects without noise-reducing measures. The number of receptors which may experience significant noise effects, assuming that noise measures achieve 'moderate' and 'good' standards, are also presented.
- 1.6.2 The Technical Note also identifies thresholds for significant observed adverse effect levels (SOAEL) as required by the Government's Noise Policy Statement for England (NPSE) (Department for Environment Food and Rural Affairs (DEFRA), 2010). The SOAEL is not expected to be exceeded during installation works.
- 1.6.3 To constitute a statutory nuisance, a noise must occur regularly and continue for a period of time that makes it unreasonable. The short term and transitory nature of the construction activities reduces the potential for statutory nuisance to occur.
- 1.6.4 The contractor would be required to produce a Noise and Vibration Management Plan for the approval of the relevant planning authority. The Noise and Vibration Management Plan would, having regard to the approved operational hours, set out where applicable, the best practicable means that would be used to reduce noise and vibration during installation (G99).
- 1.6.5 The Noise and Vibration Management Plan would include the following details in relation to the project within the relevant local authority area:
- description of works pursuant to DCO;
 - programme;
 - plant noise and vibration data;
 - receptors at risk of >1.0mm/s peak particle velocity and a protocol for providing prior warning and explanation;
 - best practicable means (BPM) measures where applicable (as defined in Section 72 of the Control of Pollution Act (CoPA) 1974 for the control of noise and vibration);
 - predicted noise and vibration levels; and



- BPM justification for short term higher noise/vibration levels or out of hours working and community communication details (G100).

1.6.6 The implementation of the Noise and Vibration Management Plan would reduce the likelihood of a statutory nuisance to negligible.

Operation

1.6.7 As outlined in Appendix 13.3 Noise and Vibration Technical Note, the noise effects of pipeline operation are expected to be similar to the baseline situation. The only location where there is the potential for change is at Alton Pumping Station, where a replacement pump would be installed. Appendix 13.3 Noise and Vibration Technical Note shows that this is unlikely to result in a significant noise effect. Operation of the pipeline is not expected to create a nuisance or be injurious to health.

1.7 Conclusion

1.7.1 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 has the potential to cause nuisance.

1.7.2 The REAC in Chapter 16 Environmental Management and Mitigation includes commitments to embedded design measures, good practice measures and mitigation required to reduce potentially significant effects. These would be secured through Development Consent Order requirements such as the CoCP. These measures would reduce impacts that could otherwise result in nuisance during construction. With these measures in place, no breach of Section 79(1) of the EPA 1990 (Ref 2) is expected as a result of the project.



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