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Mr Mike Davies
Development Group Manager
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Knowsley Metropolitan Borough Council
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Your Ref: 14/00481/FUL
Our Ref: WS010004
Date: 30 September 2015

By email and post

Dear Mr Davies

Re: Future Industrial Services Ltd (FISL) – hazardous waste facility in Knowsley Industrial Park

As you know we were contacted on the 13th August 2015 by Claire Brooks of Bond Dickinson, the lawyer representing the developer (Hydrodec Re-refining (UK Ltd)) of the proposed Oil Re-refinery in Eastham, about an alleged breach of the Planning Act 2008 (PA2008) by FISL. I thought it would be helpful for me to draw Knowsley Metropolitan Borough Council's (KMBC) attention to the enforcement powers in the PA2008 and to set out, in a consolidated form, the advice we have provided to KMBC about the NSIP regime and the relevant provisions of the PA2008.

Below is a summary in bullet point form of the information contained in the extant planning permission (14/00481/FUL), extant Environmental Permit (EPR/VP3936UG) and also a reiteration of the advice we gave you previously about the provisions of the PA2008 via email and over the phone:

- The PA2008 defines a non landfill hazardous waste Nationally Significant Infrastructure Project (NSIP) to be a new facility expected to have a capacity of more than 30,000 tpa; or, an alteration to an existing facility which results in an increase of the capacity of a facility by more than 30,000 tpa.
- "Capacity" in section 30 of the PA2008 could be taken to mean the physical capacity of a facility to contain the relevant amount.
- The definition of "development" in the PA2008 is the same as that in the Town and Country Planning Act 1990 (TCPA)
- The planning permission authorises the demolition of 3 buildings and the construction of a new industrial building and new plant. Its operation is

restricted to 235,000 tpa of hazardous waste to be treated at the site (condition 11). This is a historic maximum limit carried over from the previous planning permission for this facility and not the physical capacity of the actual facility and its component parts.

- The variation to the Environmental Permit allows an increase in the capacity of the oil/water separation plant from 80 tonnes per day to 200 tonnes per day, which represents an annualised increase of 43,000 tpa.
- The variation to the Environmental Permit permits a new oil recovery unit with a capacity of 45,000 tpa.
- The total increase in capacity resulting from the alteration to the hazardous waste facility is 88,000 tpa
- No formal complaint has yet been made to KMBC by Hydrodec Re-refining (UK) Ltd about the potential breach of the PA2008.

The PA2008 provisions which relate to the development of a hazardous waste NSIP came into force on 18 August 2011 and the Hazardous Waste National Policy Statement (NPS) was published on 6th June 2013. However, I note that there is no mention of the PA2008 regime or the NPS in the planning committee report for application ref 14/00481/FUL, which you forwarded to me by email on 14th August 2015.

With regard to the Environmental Permit, the Environment Agency is responsible for monitoring the operational activity on the site in accordance with the extant Permit; however, the Environment Agency is under no duty to monitor the output of the hazardous waste facility against the provisions in the PA2008 or indeed planning permission ref - 14/00481/FUL. The provisions of Environmental Permit ref - EPR/VP3936UG have no direct bearing on whether or not the project is an NSIP and whether a criminal offence has taken place or could take place if the planning permission was implemented. However, the permit does provide an important insight into the operational activity at the site and the capacity of the facility in relation to the NSIP threshold for non-landfill hazardous waste set out above.

Planning Act 2008 – Enforcement

Section 160 of the PA2008 creates a criminal offence to carry out, or cause to be carried out, development for which development consent is required at a time when no development consent is in force. Section 167 provides a power to local planning authorities to require information to be provided by an owner, occupier or anyone carrying out operations on the land if it appears to the relevant local planning authority that an offence under section 160 or section 161 (breach of terms of a DCO) may have been committed on or in respect of the land.

Later sections set out the enforcement powers available to local planning authorities if a developer has been prosecuted successfully for an offence under section 160 (or 161). A local authority may also apply to the court for an injunction if it considered it necessary or expedient for any actual or apprehended prohibited activity to be restrained by injunction.

In the event a formal complaint is made to the Council or following the information and advice provided by the Inspectorate, KMBC may investigate whether or not the planning permission has been implemented. In the event that the planning application has been implemented and having established that an offence may have taken place, KMBC is able investigate the operational activities intended to be undertaken (or being undertaken) on the site using the abovementioned provisions of the PA2008.

If the Council determines that an offence has been committed, and regardless of any decision by the Council in respect of the expediency of taking enforcement action, it is arguably in the public interest that FISL is made aware of any criminal liability.

I have copied this letter by email to Claire Griffiths in Redcar and Cleveland Borough Council, where I understand there are proposals by a different developer for another hazardous waste facility, similar to the one in Knowsley. In accordance with our openness and transparency policy a copy of this letter will also be published on our advice log on the National Infrastructure website.

I am going on a long term secondment to another government department from October and my colleague Tom Carpen will take over from me as sector lead for hazardous waste. Tom can be reached via the contact details at the top of this letter.

Yours sincerely

Mark Wilson

Mark Wilson
Infrastructure Planning Lead

Cc Redcar & Cleveland Borough Council; DCLG; Environment Agency

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.