

**From:** [Jennifer Mackerness](#) on behalf of [Craig Whelton](#)  
**To:** [York Potash Harbour](#)  
**Subject:** 151231 TR030002 CATS Parties Submission  
**Date:** 30 December 2015 16:18:45  
**Attachments:** [115123016183102167.jpg](#)  
[115123016183102467.jpg](#)  
[115123016183102867.jpg](#)  
[115123016183103067.jpg](#)  
[115123016183103367.jpg](#)  
[Statement of Response on behalf of the CATS Parties - 30\\_12\\_2015.PDF](#)

---

Dear Sirs

Please find attached a Statement of Response prepared by the CATS Parties in relation to the application by York Potash Limited for an Order Granting Development Consent for the York Potash Harbour Facilities.

Please confirm receipt of this representation.

Regards

**Craig Whelton**  
Partner  
Burness Paull LLP

Direct Dial: +44 (0)131 473 6025  
Mobile: +44 (0)7432 376 464  
Email: [Craig.Whelton@burnesspaull.com](mailto:Craig.Whelton@burnesspaull.com)



This message is from a law firm. It is confidential and may be privileged. If it is not for you please inform us and then delete it. If the content is not about the business of the firm or its clients then the message is neither from nor sanctioned by the firm. Use of this or any other e-mail facility of Burness Paull LLP signifies consent to interception by Burness Paull LLP. It is the responsibility of the addressee to scan this email and any attachments for computer viruses or other defects. The sender does not accept liability for any loss or damage of any nature, however caused, which may result directly or indirectly from this email or any file attached. Services and advice are provided by Burness Paull LLP on the basis of the firm's terms and conditions of business (unless otherwise expressly agreed in writing by the firm). Clients may request a copy by emailing [info@burnesspaull.com](mailto:info@burnesspaull.com). The firm does not provide advice and will have no liability whatsoever to any party who is not a client of the firm (unless otherwise expressly agreed in writing by the firm). Burness Paull LLP is a limited liability partnership registered in Scotland (SQ300380) and reference to it includes reference to its subsidiary companies. The registered office is at 50 Lothian Road, Festival Square, Edinburgh EH3 9WJ. Lawyers with offices in Aberdeen, Edinburgh and Glasgow. A list of members is available for inspection at the firm's registered office.

This email was scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec. (CCTM Certificate Number 2009/09/0052.) In case of problems, please call your organisations IT Helpdesk. Communications via the GSi may be automatically logged, monitored and/or recorded for legal purposes.

**APPLICATION BY YORK POTASH LIMITED FOR A DEVELOPMENT CONSENT  
ORDER FOR THE YORK POTASH HARBOUR FACILITIES ORDER**

**STATEMENT OF RESPONSE**

**ON BEHALF OF**

**THE CATS PARTIES**

<b>Clause</b>	<b>Heading</b>	<b>Page No.</b>
1	INTRODUCTION	3
2	APPLICANT'S RESPONSE TO BP CATS OBJECTION	3
3	INDEMNITY	6
4	CONCLUSION	7
	APPENDIX	9

## 1 INTRODUCTION

- 1.1 This submission is made by the CATS Parties in response to the deadline 6 submission by the applicant to BP CATS' objection to the southern conveyor route (Document 8.11).
- 1.2 As previously advised, CATS North Sea Limited, owner of the BP group's former interest in, and operator of, the Central Area Transmission System ("CATS"), including the pipeline and terminal forming part thereof, has been the subject of a transfer process over the last few months. We can confirm that on 17 December 2015 CATS Management Limited, a member of the Antin Infrastructure Partners group of companies, completed their acquisition of CATS North Sea Limited from the BP group. On and with effect from completion of this acquisition Wood Group PSN Limited were appointed by CATS North Sea Limited, on behalf of the CATS owners, as their operating partner in respect of the CATS terminal and CATS pipeline. For consistency, we have retained reference to the CATS owner and operator in this submission as the "CATS Parties". We note that the applicant has tended to refer in their previous submissions to the "BP CATS Pipeline" and "BP CATS" and respectively suggest that, following the aforementioned transfer by the BP group of their entire CATS interest that such references be read with that in mind.
- 1.3 Included with this submission, as an appendix, is a short technical summary of the CATS Parties' position on the matters contained in the applicant's deadline 6 submission (document 8.11).

## 2 APPLICANT'S RESPONSE TO BP CATS OBJECTION

- 2.1 At paragraph 6 of their submission the applicant repeats text from their submission on alternatives dated 2 October 2015. At that time, the applicant's understanding of the CATS Parties' position was that the CATS Parties had an objection "in principle" to the southern route. That is clearly no longer the case. The CATS Parties' objection is based on, and informed by, detailed analysis of the risks associated with the southern route when compared to the northern route. This is set out in previous submissions, including the CATS Parties' deadline 6 submission.
- 2.2 The applicant has re-stated their assertion that the southern route is operationally "far superior". However, they have not provided any meaningful quantification of that purported superiority. In particular, there is no evidence as to the benefits available via the southern route that could not be achieved using the northern route. As identified in the CATS Parties' deadline 6 submission, the applicant has not made any distinction between the two routes when setting out the benefits of their Project. It is apparent from the applicant's own documents, and in particular the statement of reasons justifying the use of compulsory purchase powers, that they consider the northern route to be in the public interest in the same way as the southern route.
- 2.3 Moreover, insofar as the applicant appears to have given any consideration to the benefits of the two routes, this has been done solely on the basis of the operational benefits to them,

without any meaningful consideration of the impacts on the operations of other parties, including the CATS Parties.

- 2.4 In the absence of any detail on the relative benefits/dis-benefits of the two routes, the applicant's submissions in this respect cannot be afforded meaningful weight in the decision making process.
- 2.5 The suggestion that the southern route should be preferred because it minimises the need for compulsory acquisition is also without merit. The applicant itself is actively seeking the use of compulsory purchase powers for both routes and it is the applicant's position that the use of compulsory purchase powers for the northern route is in the public interest. The CATS Parties do not understand the applicant's position to be that the use of compulsory purchase powers for the northern route is in anyway contingent on the availability of the southern route.
- 2.6 In any event, the opposition to the northern route, such as it remains, is significantly less than that from those impacted by the southern route<sup>1</sup>. The CATS Parties note that Sabic, Huntsman and INEOS (formerly DEA) all confirmed in their deadline 6 submission that they supported the removal of the southern route from the DCO on the basis this would limit to the greatest extent possible the interaction between the applicant's development and the apparatus belonging to such parties. Sabic, Huntsman and INEOS' positions are consistent with, and supportive of, that put forward by the CATS Parties.
- 2.7 Much of the applicant's argument appears to be that because Sabic are allowed to construct in the pipeline corridor the applicant should similarly be allowed to construct in the pipeline corridor. We fail to see the logic in this argument.
- 2.8 Sabic have the benefit of certain rights in the pipeline corridor that do not apply to the applicant or their Project.
- 2.9 The conveyor belt proposal would introduce a very different type of infrastructure in close proximity to the CATS pipeline. Construction of the conveyor will require highly intrusive works of a type not currently undertaken within the pipeline corridor. This includes piling works, and significant amounts of oversailing.
- 2.10 As the applicant has noted, Sabic are installing their apparatus under the existing legal mechanisms available to them. There is no reason why the applicant should be afforded the same rights to install the conveyor belt simply because those rights are available to an unrelated third party. It is significant to note that beneficiaries of those rights, e.g. Sabic, have opposed the application, and, in common with the CATS Parties, do not consider the protections that exist between the pipeline operators to be sufficient for the applicant's conveyor belt development.

---

<sup>1</sup> We note that TATA Steel in their submission of 16 December 2015 indicated that their concerns regarding the northern route were capable of being addressed by way of amendments to the draft DCO.

- 2.11 The protective provisions in schedule 9 (PPs) are confirmation that the applicant itself accepts that the “permit to work” regime contained in the Sembcorp lease is not sufficient to allow their development to proceed. Notwithstanding this position, they are seeking to cherry-pick from the Sembcorp lease to justify their position.
- 2.12 For operational reasons Sabic, the CATS Parties and other operators are required to install and maintain infrastructure within the existing pipeline route. The applicant is not under similar constraints, and has the ability to take a different alignment away from existing infrastructure, i.e. the northern route.
- 2.13 The applicant also appears to be saying that because the pipeline corridor is “congested” that is justification for the CATS Parties accepting further infrastructure within that corridor. That is not a compelling argument.
- 2.14 So far as decisions taken regarding the routing of the CATS pipeline are concerned, these were made over 30 years ago. There is no evidence from the applicant that that decision was made in contemplation that a third party would seek to construct a conveyor belt to take potash directly over the pipeline. Again, this argument should be afforded no real weight in the decision-making process.
- 2.15 It is noted that the applicant accepts that the “southern route has an increased risk when compared to the northern route”. The applicant claims that the southern route is below HSE guidance thresholds. In order for it to be so the applicant seeks to integrate the protected provisions into the southern route design. The CATS Parties do not accept this approach for the reasons set out previously.
- 2.16 The applicant refers to the PPs as “engineering controls” (their statement para 5(1)). That is not the case in respect of those PPs referred to in Appendix 1 Section 5.4 of applicant’s submission, relied upon by them to determine the location of the CATS pipeline. Engineering controls are measures that do not require additional human intervention in order for them to be effective. The PPs place considerable onus on the personnel involved in the works, and should properly be regarded as “administrative” or “procedural” controls. To claim that they are ‘engineering controls’ overstates the robustness of the PPs within the hierarchy of controls (Elimination, Substitution, Engineering Controls, Administrative Controls and Personal Protective Equipment).
- 2.17 The applicant seeks to rely on the fact there are construction vehicles in the pipeline corridor as justification for their works. This is an erroneous comparison. The applicant’s Project will require use of vehicles that are significantly larger and heavier than those used for the other works referred to by the applicant. The installation of above ground pipelines present a significantly lower risk to existing assets and infrastructure than that of the conveyor belt that requires piling to be undertaken. Again, the applicant’s argument appears to be predicated on the basis that it is acceptable to compound or increase risk. The CATS Parties are aware of two incidents in recent years where there have been vehicle related incidents on CATS pipelines, one specifically where a pipeline was damaged as a result of an impact. These are reported incidents, but there may, of course, be additional incidents not reported to the CATS

Parties and therefore of which the CATS Parties are not aware. These events illustrate that, even where administrative controls are in place, incidents can still occur.

- 2.18 If the CATS Parties' approach is to be preferred then it is clear that the southern route is above HSE thresholds and should not be permitted. Even if the applicant's approach were taken, it remains the case that the northern route is less congested, not subject to the same level of opposition as the southern route and has a lower level of risk. Following the principle of "as low as reasonably practicable" (ALARP), the northern route is to be preferred.
- 2.19 In addition, in their deadline 6 submission, the CATS Parties identified the potential economic impacts to both their own interests, and the wider interests of third parties in North Sea oil and gas fields. These fields rely on the continuous operation of the CATS pipeline and terminal. These parties accrue no benefit from the applicant's proposal, but are being asked to carry a higher risk for (undefined) operational benefits to the applicant.
- 2.20 There is no evidence from the applicant that the southern route delivers economic benefits over and above those deliverable from use of the northern route, of sufficient scale to outweigh the adverse safety, operational and economic impacts from the southern route.

### 3 **INDEMNITY**

- 3.1 The wording of the indemnity between the applicant and the CATS Parties is agreed. However, the applicant has an in principle objection to the CATS Parties' proposed indemnity. As set out in our deadline 6 submission, the form of wording agreed between the parties reflects industry practice in the oil and gas industry, and represents what the CATS Parties would expect to see had a pipeline crossing agreement or proximity agreement been put in place in its ordinary course of business.
- 3.2 The applicant has put forward 4 reasons for its in principle objection.
- 3.3 Two of the applicant's arguments are based on the fact the form of indemnity in the draft DCO has been agreed by them with other parties, and used in other DCOs. These are matters of commercial and drafting convenience for the applicant, and not sufficient justification to refuse to provide the indemnity as requested.
- 3.4 The applicant regards the standard form of pipeline crossing indemnity as "fundamentally objectionable". We are surprised by this comment, as the form of indemnity proposed by the CATS Parties is regularly entered into by pipeline operators and others in the oil and gas industry and correctly recognises the disproportionate risk to which a party, whose infrastructure is affected by the relevant works merely due to its location, is exposed with no corresponding benefit.
- 3.5 The final ground of objection is that the proposed cap on liability is of no benefit to the applicant, in light of their potential liability to other parties. That is a commercial judgement for the applicant which, in our view, fails to recognise that the potential loss associated with any incident may in fact be greater and also the certainty it affords the applicant. Further, it

does not in itself provide adequate grounds to refuse to agree to a cap on liability with the CATS Parties.

- 3.6 It is a matter of common ground that the PPs are required if this application is to be considered acceptable. The PPs themselves are only of value if they are underpinned by suitable indemnity and insurance provisions.
- 3.7 The applicant has suggested a form of indemnity in recognition of the fact their development will introduce increased risk and potential loss to the CATS Parties. The CATS Parties will obtain no direct benefit from the applicant's development. It is not appropriate that the CATS Parties should have a higher duty of care imposed on them as a result of the applicant's development when they derive no benefit from it. There are also concerns that any claim under the indemnity could be delayed or nullified by allegations of negligence.
- 3.8 The applicant's indemnity does not represent standard practice in the oil and gas industry. It places an additional burden on the CATS Parties in respect of the applicant's development – from which the CATS Parties do not derive any direct benefit.
- 3.9 The wording of the CATS Parties' indemnity having been agreed between the parties, it is requested this is retained within the DCO.

#### 4 **CONCLUSION**

- 4.1 The applicant agrees with the CATS Parties that the northern route carries less risk than the southern route. The applicant's approach is highly dependent upon the safe, continued and proper operation of the PPs. The northern route does not have such a high degree of dependency on the PPs.
- 4.2 The applicant has not provided any meaningful or quantifiable evidence as to the benefits to them of the southern route versus the northern route. The applicant has clearly had no regard to the financial impacts to which the southern route gives rise for the CATS Parties and their customers. The southern route risk results in an increased risk for the CATS Parties and their customers for no benefit. This is reinforced by the submissions on behalf of the other pipeline operators.
- 4.3 The applicant appears to rely on the fact that the pipeline operators are allowed to install and maintain pipelines within the pipeline corridor as justification for their conveyor belt. The applicant does not benefit from any of the rights relied on by the pipeline operators in this regard. For this reason alone, these submissions are not relevant. In addition, the applicant's works are significantly different to those of the other pipeline operators, and introduce new and unique risks. Comparisons with what pipeline operators are able to do are irrelevant and should be afforded no weight in this process.
- 4.4 The applicant's argument that the CATS pipeline is proximate to other infrastructure is no justification for the introduction of even more infrastructure. As the applicant itself has



conceded in their justification for the northern route, the southern route is “congested”. Further development within the pipeline corridor should be avoided where alternatives exist.

- 4.5 There exists a wholly deliverable and lower risk alternative in the form of the northern route. Nothing in the applicant’s deadline 6 submission justifies choosing the southern route over the northern route. It is respectfully submitted that the southern route should be removed from the DCO.

**APPENDIX TO CATS PARTIES' RESPONSE TO DEADLINE 6 SUBMISSION (DOCUMENT 8.11)**

Principle	CATS	RH	CATS Justification
<p>The level of risk mitigation that can be claimed for administrative controls (in the form of the protective provisions)</p> <p>CATS – single human error is required for the unsafe condition (1-in-1000 per opportunity)</p> <p>Applicant (YPL / RHDHV) – two separate and subsequent human errors are required for the unsafe condition (1-in-1 million per opportunity)</p>	7.4 to 7.15	5.4	<p>PPs form a single layer of protection – identification of the location of the CATS pipeline. As such, a single error may lead to the unsafe condition. Therefore, claiming risk mitigation of greater than 0.001 per opportunity is an overly simplistic and erroneous assumption.</p> <p>CATS Parties' position is justified by:</p> <ul style="list-style-type: none"> <li>• PPs are Administrative Controls (procedures)</li> <li>• Claiming a human error rate of more than 0.001 per opportunity (1-in-1000) assumes greater reliability for a human than is typically claimed for an automated safety system in the process industries (Nuclear, Chemical or Oil &amp; Gas)</li> <li>• Claiming two errors (1-in-1 million) are required for the unsafe condition to occur places greater risk mitigation on a single human layer of protection than can be claimed for any automated safety system (IEC 61508)</li> <li>• The congested nature of the pipeline corridor may negate a number, if not all of the protections afforded to the CATS pipeline by the PPs</li> <li>• Independence cannot be claimed for the verification steps of different organisations in justifying any more than a single layer of protection as demonstrated by HSE publications and investigations by both HSE and notable commentators of incidents such as Buncefield and Deep Water Horizon.</li> <li>• Dependency of the PPs was demonstrated using guidance presented by the HSE, thus disproving any claim that two errors would be required within the PPs for the unsafe condition to exist.</li> </ul>

Principle	CATS	RH	CATS Justification
<p>The impact of over familiarisation and normalisation of risk on human error rate for repetitive activities</p> <p>CATS – human error rate for the Southern Route is increased due to over familiarisation and normalisation of risk</p> <p>Applicant (YPL / RHDHV) – human error rate for Southern and Northern Routes are identical</p>	7.16 to 7.22	5.3	<p>CATS Parties consider that numerous major construction activities associated with the Southern Route (as opposed to the Northern Route), may lead to over familiarisation and normalisation of risk (complacency). Therefore, the human error rate for the activities of the Southern Route should be increased by a factor of ten to 1-in-100.</p> <p>CATS Parties’ position is justified by:</p> <ul style="list-style-type: none"> <li>• The issue is not one of competency, but normalisation of risk. Therefore, the greater the frequency of activity the greater the potential error rate.</li> <li>• There is no ‘feedback’ to the operatives to inform them of a potential error and thus proximity to the CATS pipeline and danger. On this basis, experiential corrective actions cannot be taken.</li> <li>• The empirically validated Human Reliability Assessment (HRA) technique HEART (Human Error Assessment and Reduction Technique) was used to demonstrate the validity of the CATS Parties assertion that a factor of ten increase was applicable to the human error rate associated with the construction of the Southern Route.</li> </ul>

Principle	CATS	RH	CATS Justification
<p>Base input information with respect to the risk presented by vehicle movements in the pipeline corridor</p> <p>CATS – site specific data should be utilised in the QRA</p> <p>Applicant (YPL) – generic data should be used in the QRA</p>	7.23 to 7.25	6	<p>CATS Parties’ submission and QRA was based upon actual historic data that related to the local area and procedural controls that have been cited by the applicant, rather than generic data.</p> <p>CATS Parties’ position is justified by:</p> <ul style="list-style-type: none"> <li>• Industry standard practice of initiating a risk assessment using generic data and then gaining greater accuracy by modifying generic data with site specific data</li> <li>• The risk presented by a ‘domino effect’ impact on a third-party above ground pipeline is only relevant to the Southern Route – this is not credible for the Northern Route due the lack of adjacent infrastructure</li> <li>• The risk to the CATS pipeline is greatly increased over the existing situation in the pipeline corridor due to the fact that the CATS pipeline will be required to be exposed during the construction activities</li> </ul>