



Immingham Green Energy Terminal

TR030008

Volume 7

7.5 Statutory Nuisances Statement

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Regulation 5(2)(f)

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amended)

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Immingham Green Energy Terminal

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7.5 Statutory Nuisances Statement

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Table of contents

Chapter	Pages
Executive Summary	1
1 Introduction	2
2 The Project	4
2.1 Overview	4
3 Statutory Context	6
3.1 Overview	6
3.2 National Policy Statement for Ports.....	8
4 Potential Breaches of Section 79(1) of the Environmental Protection Act 1990	
4.1 Overview	9
4.2 Relevant matters of statutory nuisance	9
4.3 Exemptions	9
4.4 Application to Project.....	10
4.5 Sections 79(1)(b), (d) and (e): smoke emitted from premises; dust arising on premises; and any accumulation or deposit.....	10
4.6 Section 79(1)(fb): Artificial light emitted from premises	11
4.7 Sections 79(1)(g): Noise emitted from premises; noise emitted from or caused by a vehicles, machinery or equipment in a street.....	11
4.8 Section 79(1)(h): Statutory nuisances under the Public Health Act 1936	13
5 Conclusion	15

Executive Summary

This Statutory Nuisance Statement (“this Statement”) accompanies an application by Associated British Ports (“the Applicant”) under section 37 of the Planning Act 2008 seeking development consent for the construction and operation of the Immingham Green Energy Terminal (“the Project”). This Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”).

The purpose and objective of this Statement is to consider whether the Project engages one or more of the matters of statutory nuisances set out in Section 79(1) of the Environmental Protection Act 1990 (“the EPA”) and, if so, how the Applicant proposes to mitigate or limit such nuisances.

Potential statutory nuisance may include noise, vibration, dust, fumes, insects and emissions. Without appropriate mitigation, the construction and operation of the Project could potentially create a statutory nuisance.

As a result of the mitigation measures proposed, and as set out in the **Environmental Statement (“ES”), Volumes 1-3 [TR030008/APP/6.2/6.3/6.4]**, the **Lighting Assessment Report at Appendix 2.B of the ES [TR030008/APP/6.4]**, the **Outline Construction Environmental Management Plan [TR030008/APP/6.5]** and the **Drainage Strategy at Appendix 18.B of the ES [TR030008/APP/6.4]**, the Applicant has demonstrated that the construction and operation of the Project is not likely to give rise to any statutory nuisance under the provisions of the EPA.

1 Introduction

- 1.1.1 This Statutory Nuisance Statement accompanies an application submitted by Associated British Ports (“ABP” or the “Applicant”) to the Secretary of State for Transport (the “SoS”) for development consent to construct, operate and maintain a multi-user liquid bulk Terminal which would be located on the eastern side of the Port of Immingham (the “Port”), as well as associated development (collectively termed the “Project”). A part of the associated development is the construction and operation of a green hydrogen production facility for the on-site production of green hydrogen from imported ammonia by Air Products (BR) Limited (“AP”). AP will be the first customer for the new terminal as the owner and operator of the proposed green hydrogen production facility.
- 1.1.2 The Project comprises a Nationally Significant Infrastructure Project (“NSIP”) under sections 14(1)(j), 24(2) and 24(3)(c) of the Planning Act 2008 (as amended) (“PA 2008”). The Project is defined as an NSIP as it comprises the alteration of harbour facilities wholly in England and in waters adjacent to England and it would be capable of handling the embarkation and disembarkation of at least the relevant quantity of material per year, which in the case of facilities for cargo ships is 5 million tonnes. As such the Project requires an application for a Development Consent Order (“DCO”) to be submitted to the Planning Inspectorate (the “Inspectorate”) for determination by the SoS under Section 37 of the PA 2008.
- 1.1.3 The Project would meet a need for port infrastructure and handling capacity and would directly support the aims of the Government’s decarbonisation strategy and 2050 net zero obligations through the provision of port infrastructure to support the energy sector in producing clean energy, specifically hydrogen production (helping meet the Government’s 2030 low carbon hydrogen production target) and facilitating carbon capture and storage.
- 1.1.4 This Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”) and in accordance with the Department for Communities and Local Government Guidance - Planning Act 2008: Application form guidance (June 2013).
- 1.1.5 The purpose and objective of this Statement is to consider whether the Project engages one or more of the matters of statutory nuisances set out in Section 79(1) of the Environmental Protection Act 1990 (“the EPA”) and, if so, how the Applicant proposes to mitigate or limit such nuisances.
- 1.1.6 This Statutory Nuisance Statement forms part of a suite of documents, submitted in support of ABP’s application for the Development Consent Order (“DCO”) and as such, should be read alongside those other documents.
- 1.1.7 In considering the potential effects of the Project in the context of the matters set out in section 79(1) of the EPA, reference is made to the following:
- a. **The ES [TR030008/APP/6.2/6.3/6.4]**

- b. **The Outline Construction Environmental Management Plan (“Outline CEMP”)** [TR030008/APP/6.5] - one or more final CEMP must be submitted in accordance with the Outline CEMP, approved and complied with pursuant to the requirements of the draft DCO.
- c. **Drainage Strategy, Appendix 18.B** of the **ES** [TR030008/APP/6.4] - one or more final drainage strategy must be submitted in accordance with this initial drainage strategy, approved and complied with pursuant to the requirements of the draft DCO.
- d. **Lighting Assessment Report, Appendix 2.B** of the **ES** [TR030008/APP/6.4] - the landside operational lighting will be required to comply with the principles of the proposals and the strategy pursuant to a requirement of the DCO.

1.1.8 After this Introduction, this Statement is divided into the following sections:

- a. **Section 2** provides a brief summary of the Project.
- b. **Section 3** sets out the relevant provisions of the EPA.
- c. **Section 4** considers the potential for the Project to give rise to statutory nuisance, and if so, how any such issues will be mitigated or limited.

2 The Project

2.1 Overview

2.1.1 In summary, the Project would consist of the following key components (references to 'Work No.' are to the corresponding Work Numbers in Schedule 1 of the **draft DCO [TR030008/APP/2.1]** whilst the location of each Work No. within the Site is shown on the **Works Plans [TR030008/APP/4.2]**):

- a. The NSIP, Work No. 1, comprising:
 - i. On the marine side, a Terminal for liquid bulks: comprising:
 - A. A jetty (defined by Work No. 1a) including a loading platform, associated dolphins, fenders and walkways, topside infrastructure but not limited to control rooms, marine loading arms, pipe-racks, pipelines and other infrastructure.
 - B. A single berth, with a berthing pocket with a depth of up to 14.5m below chart datum.
 - ii. related landside infrastructure including, but not limited to, a jetty access ramp, a flood defence access ramp and works to raise the seawall locally under the jetty access ramp
- b. Associated Development on the landside, comprising:
 - i. A corridor between the new jetty and Laporte Road which would support a private road (the 'jetty access road'), pipe-racks, pipelines to enable the ammonia import to the East Site, as well as security gates, a security building, a power distribution building and associated utilities – (**Work No. 2**).
 - ii. 'East Site - Ammonia Storage' (**Work No. 3**) on which an ammonia storage tank and related plant including an ammonia tank flare stack would be constructed (**Work No. 3a**) as well as additional buildings (including welfare building, power distribution building and a process instrumentation building), pipe-racks, pipelines, pipes, cable-racks, utilities and other infrastructure.
 - iii. Construction of a culvert (**Work No. 4**) under Laporte Road for pipelines, pipes and cables and other conducting media linking the two parts of the East Site.
 - iv. 'East Site – Hydrogen Production Facility' (**Work No. 5**) on which up to three hydrogen production units and associated plant including flue gas stacks and flare stacks would be constructed (**Work No. 5a**) together with additional buildings (including process control building, power distribution buildings, process instrumentation buildings, analyser shelters), pipe-racks, pipelines, pipes, utilities and other infrastructure.
 - v. Underground pipelines, pipes, cables and other conducting media (**Work No. 6**), between the East and West Sites, for the transfer of ammonia, hydrogen, nitrogen and utilities, with cathodic protection against saline corrosion.

- vi 'West Site' (**Work No. 7**) involving the construction of up to three hydrogen production units with associated flue gas stacks and flare stacks and up to four liquefier units (**Work No. 7a** and **Work No. 7b** combined); hydrogen storage tanks, hydrogen trailer filling stations, a hydrogen vent stack and associated process equipment (**Work No. 7c**); and hydrogen vehicle and trailer filling stations, hydrogen compressors and associated process equipment (**Work No. 7d**). Also additional buildings (including but not limited to control room and workshop building, security and visitor building, contractor building, warehouse, driver administration building, safe haven building, electrical substation and metering station, power distribution buildings, process instrumentation buildings, analyser buildings and additional temporary buildings during construction), process and utility plant including cooling towers and pumps, fire water tank, pipe-racks, pipelines, pipes, cable-racks, utilities and other infrastructure.
- vii Formation of temporary construction and laydown areas on Queens Road (**Work No. 8**) and off Laporte Road (**Work No. 9**).
- viii Temporary removal of street furniture and modification of overhead cables on Kings Road (**Work No. 10**) associated with the transport of large construction components from the Port to the Site.

- 2.1.2 In addition to Work No. 1 to 10 which are each spatially defined within the **Works Plans [TR030008/APP/4.2]**, Schedule 1: Authorised Project of the **draft DCO [TR030008/APP/2.1]** includes 'Further associated development' and 'Ancillary Works' which both extend across the full extent of the Site.
- 2.1.3 In broad terms, 'Further associated development' would be the undertaking, as required, of works such as site clearance, creation of additional construction compounds, utility works, landscaping works and street works on a site wide basis.
- 2.1.4 'Ancillary works' constitute works that would not necessarily constitute development, such as vegetation removal, the installation of fencing and the demobilisation of construction works.
- 2.1.5 A detailed description of the Project is set out in **Chapter 2: The Project of the ES [TR030008/APP/6.2]**.
- 2.1.6 Landside the Project is located on the south bank of the Humber Estuary, to the east of the existing Port. The landside works fall entirely within the administrative boundary of North-East Lincolnshire Council. That part of the Project that extended seaward and falls beyond the local authority's boundary is located in the Humber Estuary which is owned by the Crown Estate and over which ABP, in its capacity as the Humber Conservancy Commissioner, has the benefit of a long lease. In its entirety, the Project covers an area of approximately 121ha.

3 Statutory Context

3.1 Overview

3.1.1 Regulation 5(2)(f) of the APFP Regulations provides that an application for a DCO 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".

3.1.2 Section 79(1) of the EPA (as it applies in England) provides 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;*
- (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.*

3.1.3 Section 79(1)(h) of the EPA (above) acts as a general "catch-all" incorporating any statutory nuisance contained in other legislation.

3.1.4 In this context, the Public Health Act 1936 provides that various other matters constitute statutory nuisances for the purposes of the EPA, including the following which are potentially relevant to the Project:

- a. Section 259(1)(a) - *"any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance"; and*

- a. Section 259(1)(b) – *“any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.”*
- 3.1.5 Section 79(2) of the EPA and onwards contains exceptions and definitions in respect of statutory nuisance.
- 3.1.6 The particular exceptions of relevance to the Project are:
- b. Section 79(4) - *“Subsection (1)(c) above [fumes or gases emitted from premises so as to be prejudicial to health or a nuisance] does not apply in relation to premises other than private dwellings”;*
- c. Section 79(5B) – *“Subsection (1)(fb) [artificial light emitted from premises so as to be prejudicial to health or a nuisance] does not apply to artificial light emitted from... (b) harbour premises”;* and
- d. Section 79(6A) - *“Subsection (1)(ga) above [noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street] does not apply to noise made– (a) by traffic”.*
- 3.1.7 The definitions applying to Section 79 of the EPA, are set out in Section 79(7) of the EPA, and the following are relevant in this case:
- a. ‘Dust’ does not include dust emitted from a chimney as an ingredient of smoke.
- b. ‘fumes’ means any airborne solid matter smaller than dust.
- c. ‘Gas’ includes vapour and moisture precipitated from vapour.
- d. ‘Harbour premises’ means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition ‘harbour area’ and ‘harbour operations’ have the same meaning as in part 3 of the aviation and maritime security act 1990.
- e. ‘industrial, trade or business premises’ means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial, trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;
- f. ‘Noise’ includes vibration.
- g. ‘Prejudicial to health’ means injurious, or likely to cause injury, to health.
- h. ‘Premises’ includes land and, any vessel.
- i. ‘Private dwelling’ means any building, or part of a building, used or intended to be used, as a dwelling.
- j. ‘Smoke’ includes soot, ash, grit and gritty particles emitted in smoke.
- k. ‘Street’ means a highway and any other road, footway, square or court that is for the time being open to the public.

3.2 National Policy Statement for Ports

- 3.2.1 Paragraphs 4.14.1 – 4.14.3 of the National Policy Statement for Ports (“NPSfP”) relate to common law nuisance and statutory nuisance. Paragraph 4.14.1 sets out that Section 158 of the PA 2008 provides statutory authority for providing a defence in any civil or criminal proceeding for nuisance, including nuisance under Part III of the Environmental Protection Act (EPA) 1990, to the extent that the nuisance is the inevitable consequence of what has been authorised under the DCO. Paragraph 4.14.1 goes on to state that, *“The defence does not extinguish the local authority’s duties under Part III of the EPA 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.”*
- 3.2.2 Paragraph 4.14.2 sets out that it *“is very important that, at the application stage of an NSIP, possible sources of nuisance under section 79(1) of the 1990 Act and how they may be mitigated or limited are considered by the decision-maker so that appropriate requirements can be included in any subsequent order granting development consent.”*
- 3.2.3 Paragraph 5.8.1 of the NPSfP sets out that during construction, operation and decommissioning of port infrastructure there is potential for the release of a range of emissions such as dust, odour, artificial light, smoke, steam and insect infestation and that all *“have the potential to have a detrimental impact on amenity or cause a common law nuisance or statutory nuisance under Part III, Environmental Protection Act 1990”*. Paragraph 5.8.2 further states that because *“of the potential effects of these emissions and infestation, and in view of the availability of the defence of statutory authority against nuisance claims”* that *“it is important that the potential for these impacts is considered by the decision-maker.”*

4 Potential Breaches of Section 79(1) of the Environmental Protection Act 1990

4.1 Overview

4.1.1 This section considers the type of impacts associated with the Project that could potentially engage one or more of the matters set out in Section 79(1) of the EPA.

4.2 Relevant matters of statutory nuisance

4.2.1 Placing the Project in the context of the matters of statutory nuisance provided in section 79(1), it is considered that matters that could potentially be engaged are:

- (b) smoke 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;*
- (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.*

4.2.2 The following provisions of section 259 of the Public Health Act 1936 could also potentially be engaged:

259(1)(a) “any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance”; and

259(1)(b) “any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.”

4.3 Exemptions

4.3.1 The following categories of statutory nuisance are not engaged by the Project because they are covered by the exemptions set out at sections 79(4), 79(5B) and 79(6A) of the EPA:

- a. 79(1)(c) - fumes or gases emitted from premises – as it only applies to fumes from private dwellings.
- b. 79(1)(fb) artificial light emitted from premises – as it does not apply to harbour premises. However, this has been considered in respect of the landside development.

- c. 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 – as it does not apply to noise made by traffic, which is the only anticipated source of noise on streets.

4.4 Application to Project

- 4.4.1 Each of the categories of statutory nuisance which could potentially be engaged by the Project are considered below.

4.5 Sections 79(1)(b), (d) and (e): smoke emitted from premises; dust arising on premises; and any accumulation or deposit.

- 4.5.1 **Chapter 6: Air Quality [TR030008/APP/6.2]** sets out the methodology and findings of an air quality assessment, which has identified the likely sources and effects of dust nuisance on sensitive receptors resulting from the construction of the Project.
- 4.5.2 Receptors sensitive to dust include the designated Humber Estuary Special Area of Conservation (“SAC”)/Special Protection Area (“SPA2) and the residential properties and businesses located on Queens Road.
- 4.5.3 Dust is not considered within the operational phase as it was considered that there should be no notable source of dust emissions during the operation of the Project. Additionally, smoke, accumulation or deposits are also not considered within the Air Quality Assessment as there should be no notable source of smoke emissions, accumulation or deposits during both the construction or operational phases. The **Outline CEMP [TR030008/APP/6.5]** prohibits the burning of materials onsite. Therefore the Project is unlikely to give rise to statutory nuisance in respect of section 79(1)(b) and section 79(1)(e).
- 4.5.4 Smell and other effluvia have been considered within **Chapter 6: Air Quality [TR030008/APP/6.2]** as odour. During operation, potential sources from Odour receptors are considered within Chapter 6 of the ES. Given the nature of potential odour sources, the control secured by Environmental Permit and an Odour Management Plan, and the commitment to review odour throughout the operational lifetime of the Project, the residual impacts are negligible and not significant. Additionally, steam has not been considered as it is not a sensitive pollutant in terms of air quality. It is considered that the Project is unlikely to give rise to statutory nuisance in respect of steam, smell and other effluvia (as per section 79(1)(d)).

Potential dust nuisance during construction

- 4.5.5 During the construction phase of the Project, the assessment identifies the following dust generating activities would be undertaken:
 - a. Earthworks associated with soil stripping, ground levelling and excavation works resulting in the use of heavy earth moving vehicles.
 - b. The use of dusty materials including concrete, if delivered dry, sand and hard core.
 - c. Concrete batching may be undertaken on site.

d. The deposition of mud and potentially dusty material from construction vehicles leaving the site.

- 4.5.6 Such activities can affect the amenity of local residents and businesses and can lead to complaints regarding dust nuisance if not adequately mitigated.
- 4.5.7 To mitigate the effects of dust during construction, the **Outline CEMP [TR030008/APP/6.5]** contains an Outline Dust Management Plan at Annex C which sets out standard practice dust mitigation. This includes a comprehensive package of measures such as a stakeholder communications plan, daily inspections to monitor dust including regular dust soiling checks and wheel washing facilities.
- 4.5.8 The assessment of likely significant effects on air quality has concluded that construction of the Project would not result in significant effects in relation to construction dust emissions. Accordingly in this regard, construction of the Project is unlikely to give rise to a statutory nuisance under s79(1)(d) of the EPA.
- 4.6 **Section 79(1)(fb): Artificial light emitted from premises**
- 4.6.1 The Port is already lit at night due to existing operations. As the Port is a “harbour premises”, it is exempt from being deemed a statutory nuisance by virtue of the exception at section 79(5B)(b) of the EPA (set out above).
- 4.6.2 As a consequence for marine side activities, the impacts of lighting during construction or operation will not generate a statutory nuisance, nor will any impacts in this regard be prejudicial to health under section 79(1)(fb) of the EPA.
- 4.6.3 For landside activities, the lighting strategy for the Project has been designed sympathetically in order to minimise impacts on nearby receptors. The **Outline CEMP [TR030008/APP/6.5]** and **Lighting Assessment Report at Appendix 2.B of the ES [TR030008/APP/6.4]** provide details of the proposed mitigation measures in relation to lighting including proposals to avoid excessive glare and minimise spill of light to nearby receptors (including local residents and some ecological receptors) outside of the Site Boundary so far as reasonably practicable.
- 4.6.4 The **Lighting Assessment Report at Appendix 2.B of the ES [TR030008/APP/6.4]** seeks to minimise light spill to residents and habitats from operational and security lighting.
- 4.7 **Sections 79(1)(g): Noise emitted from premises; noise emitted from or caused by a vehicles, machinery or equipment in a street.**
- 4.7.1 The Site is located adjacent to the operational Port of Immingham which is one of the busiest ports in the UK, operating 24hrs a day, 365 days a year. The area surrounding the Port is also primarily industrial in nature. The Project will generate additional off-site traffic movements, most notably along Queens Road.
- 4.7.2 **Chapter 7: Noise and Vibration [TR030008/APP/6.2]** details the methodology and findings of the noise and vibration assessment, which has identified the likely sources of noise and its effects on noise sensitive receptors resulting from the construction and operation of the Project.

- 4.7.3 Noise sensitive receptors (“NSR”) include residential properties on Queens Road (construction phase only) and residential properties on the eastern extent of the Immingham residential urban area. The NSRs on Queens Road are excluded from the operational noise assessment on the basis that the residents of these properties are not anticipated to be present should the Project obtain development consent and become operational.
- 4.7.4 This is due to the fact that the residential use of the residential and mixed residential / commercial properties on the west side of Queens Road is considered incompatible with the operation of the hydrogen production facility on the West Site (and an impediment to the grant of the necessary hazardous substances consent). Discussions are ongoing with the owners and occupiers with a view to negotiating the acquisition of these residential properties by agreement. Where it is not possible to acquire the properties through negotiation, compulsory acquisition powers for these properties sought through the draft DCO are intended to be exercised. Following acquisition, a Requirement of the draft DCO secures the permanent cessation of the residential use of these properties.
- Potential noise nuisance during construction**
- 4.7.5 The noise assessment contained in **Chapter 7: Noise and Vibration [TR030008/APP/6.2]** states that there is potential for short-term temporary medium adverse impacts to arise if significant construction works for site clearance, and roads and hardstanding are undertaken at the closest location within the Site Boundary to the nearest NSRs on Queens Road. There is also potential for major adverse/moderate adverse effects as a result of construction activities outside of the core working hours.
- 4.7.6 There are also some anticipated vibration impacts on human receptors in terms of vibration annoyance which will potentially result in moderate/major adverse significant effects.
- 4.7.7 Predicted changes in construction traffic noise will result in negligible effects at all NSRs along the road links.
- 4.7.8 The Applicant has, however, proposed a number of mitigation measures in order to minimise noise and vibration impacts during the construction phase which are set out in Section 7.10 of **Chapter 7: Noise and Vibration [TR030008/APP/6.2]**. Based on the implementation of these impact avoidance measures, and following implementation of additional noise specific measures which will be secured through the CEMP, the assessment concludes that residual construction noise effects at residential NSRs are not likely to be significant from on-site works.
- 4.7.9 As noted above, the acquisition of the residential properties on Queens Road is proposed. However, some residents may be present during at least part of the construction works and the adverse construction noise effect is expected to arise for any such residents.
- 4.7.10 Noise and vibration from construction is not likely to give rise to significant effects with the mitigation measures proposed for residential NSRs to the west at the eastern edge of Immingham.

- 4.7.11 With the proposed mitigation measures in place, noise impacts during construction are reduced to negligible or minor adverse, which are not significant. It is therefore concluded that potential construction noise and vibration impacts would not constitute a statutory nuisance under section 79(1)(g) of the EPA.

Potential noise nuisance during operation

- 4.7.12 **Chapter 7: Noise and Vibration [TR030008/APP/6.2]** considers the operational noise impacts of the Project on NSRs. During operation, the Project is expected to give rise to noise effects ranging between minor adverse which are not significant and below the Lowest Observable Adverse Effect Level (“LOAEL”), to major adverse which are significant and at or above the Significant Observed Adverse Effect Level (“SOAEL”), before consideration of the context. Operational road traffic noise impacts on sensitive receptors will be negligible or result in no change.
- 4.7.13 Based on the implementation of the impact avoidance measures, and following implementation of additional noise specific mitigation measures, which will help minimise the risk of noise complaints and potential enforcement action under the EPA by North East Lincolnshire Council, the operational noise assessment concludes that at residential NSRs at the eastern edge of Immingham, residual effects of operational sound are likely to be minor adverse significance (not significant, and not exceeding the LOAEL) once mitigation measures have been deployed. Mitigation measures will be secured through a Requirement of the **draft DCO [TR030008/APP/2.1]** which requires the production and approval of a written scheme for noise management.
- 4.7.14 It is therefore considered that the Project will not give rise to a statutory nuisance in relation to noise and vibration during operation.
- 4.8 **Section 79(1)(h): Statutory nuisances under the Public Health Act 1936**
- 4.8.1 The Project will not give rise to any statutory nuisance under Section 79(1)(h) of the EPA which relates to the following sections of the Public Health Act 1936:
- 259(1)(a) “any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance”; and*
- 259(1)(b) “any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.”*
- 4.8.2 The Project has been designed, as far as possible, to avoid and minimise impacts and effects to water quality, coastal protection, flood risk and drainage through the process of design development, and by embedding mitigation measures into the design.
- 4.8.3 Mitigation measures to protect surface water from pollution during the construction and operational phases of the Project are set out in **Chapter 18: Water Use, Water Quality, Coastal Protection, Flood Risk and Drainage** of the **ES [TR030008/APP/6.2]** and secured through approval and compliance with

the final CEMP and the Drainage Strategy. At the construction stage, these measures include:

- a. Following the specified standards and good practice guidance for pollution prevention;
- b. Plans for the management of construction site run-off;
- c. Plans for the management of construction spillage risk; and
- d. Management of flood risk including by siting construction materials in areas of low flood risk where possible and planning works by reference to regularly monitored weather forecasts.

4.8.4 At the operational phase, mitigation measures include:

- a. A new surface water drainage network and management system including the use of sustainable drainage systems (“SuDS”) to manage run-off; and
- b. Plans for the management of hazardous substances on site in line with the relevant regulations and an emergency response plan in accordance with statutory requirements for dealing with loss of containment of hazardous substances.

4.8.5 The **Outline CEMP [TR030008/APP/6.5]** will outline the measures necessary to avoid, prevent and reduce adverse effects where possible on the local surface water and groundwater environment. The Drainage Strategy has also been prepared detailing how surface water run-off will be managed on-site during operation of the Project **[TR030008/APP/6.4]**. Approval of and compliance with the final Drainage Strategy will be secured by a Requirement of the **draft DCO [TR030008/APP/2.1]**.

5 Conclusion

- 5.1.1 This Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisances and considers whether the Project would engage one or more of those matters.
- 5.1.2 As required by Regulation 5(2)(f) of the APFP Regulations the Applicant has, in this Statement considered whether the Project has engaged one or more of the matters set out in section 79(1) of the EPA.
- 5.1.3 With the proposed mitigation in place, as described above, it is not anticipated that there will be a breach of any of the nuisances as set out under Section 79(1) of the EPA during either the construction or operation of the Project and the Project will not create a statutory nuisance.
- 5.1.4 The construction activities that have the potential to create a statutory nuisance will be controlled through a CEMP containing measures set out in the **Outline CEMP [TR030008/APP/6.5]** which accompanies the Application. Approval of and compliance with the CEMP is secured by a requirement in the **draft DCO [TR030008/APP/2.1]**.
- 5.1.5 No operational activities are expected to give rise to statutory nuisances under s79(1) of the EPA. The Application contains a number of management plans which contain mitigation measures to control operational activities. Mitigation measures will be secured through requirements of the **draft DCO [TR030008/APP/2.1]** which require the production of a written scheme for noise management, submission and approval of and compliance with the final Drainage Strategy, and the approval of details of the proposed operational landside external lighting.