



Ministry of Housing,
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By email: LeslieHeasman@mjca.co.uk

Date: 21 June 2018

Dear Ms Heasman

**PLANNING ACT 2008 (the “2008 Act”)
Infrastructure Planning (Changes to, and Revocation of, Development Consent
Orders) Regulations 2011 (the “2011 Regulations”)
THE EAST NORTHAMPTONSHIRE RESOURCE MANAGEMENT FACILITY ORDER
(SI 2013/1752)
Application for a non-material change to the consented capacity of the soil
treatment facility**

1. I am directed by the Secretary of State for Housing, Communities and Local Government (the “Secretary of State”) to notify you that consideration has been given to the application (the “Application”) made by Augean South Limited (the “Applicant”) on 28 February 2018 for a change which is not material to the East Northamptonshire Resource Management Facility Order 2013 (“the 2013 Order”) under paragraph 2 of Schedule 6 to the 2008 Act.

2. The original application for development consent under the 2008 Act was submitted to the Planning Inspectorate, acting on behalf of the Secretary of State, on 7 March 2012 and was granted consent by the Secretary of State on 11 July 2013. Consent was granted for the alteration of existing and the construction of new facilities for the recovery and disposal of hazardous waste and the disposal of low level radioactive waste at the East Northamptonshire Resource Management Facility, Stamford Road, Kings Cliffe, Northamptonshire.

Summary of the Secretary of State’s Decision

3. The Secretary of State is satisfied that the changes requested by the Applicant are not material ones and has decided under paragraph 2(1) of Schedule 6 to the 2008 Act to make an Order amending the 2013 Order as requested in the Application subject to the minor changes described in paragraph 17 below. This letter is the notification of the

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Secretary of State's decision in accordance with paragraph 2(12) (b) of Schedule 6 to the 2008 Act and Regulation 8 of the 2011 Regulations.

Consideration of the Materiality of the Proposed Changes

4. The Secretary of State has given consideration as to whether the Application is for a material or non-material change.

5. There is no statutory definition of what constitutes a 'material' or 'non-material' change for the purposes of Schedule 6 to the 2008 Act and the 2011 Regulations. Paragraph 2(2) of Schedule 6 to the 2008 Act requires the Secretary of State, when deciding whether a proposed change is material, to have regard to the effect of the changes on the development consent order (DCO) as originally made. The Applicant's assessment states that the proposed changes would not result in new or materially different likely significant effects to those previously assessed.

6. The Secretary of State has considered the materiality of the change proposed in the Application against the characteristics identified in The Department for Communities and Local Government's 'Planning Act 2008: Guidance on Changes to Development Consent Orders', published in December 2015:

<https://www.gov.uk/government/publications/changes-to-development-consent-orders> that indicate a change to a consent is more likely to be treated as material, as follows:

a. *Environmental Statement – a change to a DCO requires an updated Environment Statement to take account of new, or materially different, likely significant effects on the environment* In the Application the Applicant considers the likely environmental impacts of the proposed changes with reference to the Environmental Statement which accompanied the original DCO application. Consideration was given to assessing the impacts on population including health, socio-economic impacts, air quality, ecology, water resources and flood risk, landscape and visibility including cultural heritage, noise and transport. The Applicant concludes in the Application that the baseline has not changed materially since the 2012 Environmental Statement was produced and the proposed changes will not result in any new or materially different impacts as compared to those set out in the 2012 Environmental Statement. The Secretary of State has considered the information provided and has no reason to disagree with this assessment and therefore concludes that no update is required to the Environmental Statement which accompanied the original DCO application as a result of the proposed changes to the 2013 Order.

b. *Habitats and Protected Species – a change to a DCO would invoke a need for a Habitats Regulations Assessment or the need for a new or additional licence in respect of European Protected Species* The proposed changes will not impact on a Natura 2000 site (i.e. a Special Area of Conservation or a Special Protection Area) nor a Ramsar site, nor any candidate Special Areas of Conservation or potential Special Protection Areas, so there is no requirement for a Habitats Regulations Assessment. The Secretary of State notes that Natural England did not comment on the proposed changes including in relation to the Appropriate Assessment carried out for the DCO. The Secretary of State considers that there is no need for a new or additional licence in respect of any European Protected Species or any further Appropriate Assessment to be work undertaken.

c. *Compulsory Acquisition – a change that would authorise the compulsory acquisition of any land, or an interest in or rights over land, that was not authorised through the original DCO* The Secretary of State notes that the proposed changes are all within the

approved order limits as set out in the 2013 Order, all within the Applicant's land ownership and that no additional compulsory acquisition powers, or powers for the acquisition of any interest in or rights over land, are being sought as part of the Application.

d. *Impact on Businesses and Residents – the potential impact of the proposed changes on local people* The Secretary of State notes the location of the nearest residential properties and nearby settlements in relation to the location of the application site. Having regard to the consultation undertaken he is content the proposed changes will not have a material effect on businesses and residents i.e. in relation any of the environmental impacts considered in the Applicant's assessment.

7. Following the publicity and consultation no representations were made disputing the Applicant's position that the proposed changes are non-material in nature.

Consultation, Publicity and Responses

8. Following a request from the Applicant on 11 January 2018, the Secretary of State consented on 24 January 2018 to allow, in accordance with regulation 7(3) of the 2011 Regulations, the Applicant to consult a more limited number of persons than would ordinarily need to be consulted under regulation 7(2). The reasons for that grant of consent are set out in the decision letter issued by the Secretary of State on 27 February 2018.

9. In accordance with the requirements of regulation 7(1) of the 2011 Regulations, specified parties were consulted about the Application by the Applicant. The consultation ran for 6 weeks ending on 6 April 2018.

10. In accordance with regulation 6 of the 2011 Regulations a notice of the Application was also published for two consecutive weeks in the local press, the Stamford Mercury, and was also made publicly available on the Planning Inspectorate's website, providing an opportunity for anyone not consulted about the Application to also submit representations to the Planning Inspectorate. No representations were received as a result of this publicity.

11. Representations were received during the consultation period from: the Environment Agency, Natural England, the Health and Safety Executive, Northamptonshire County Council and Collyweston Parish Council and are all publically available to view at <https://infrastructure.planninginspectorate.gov.uk/projects/east-midlands/east-northants-resource-management-facility/?ipcsection=docs&stage=7&filter1=Non-Material+Change+1>

12. The Secretary of State has carefully considered these representations and notes that none of them raise any objections to or make substantive comments on the Application.

13. The Secretary of State, having considered all the representations received, and all other relevant matters, does not consider that any further information needs to be provided by the Applicant or that any further consultation of those already consulted or any wider consultation is necessary before determining the Application.

Environmental Impact Assessment

14. The Secretary of State is satisfied that the information in the Application is sufficient for him to determine the Application. The Secretary of State has considered whether the Application would be likely to give rise to any new significant effects or materially different effects when compared to the effects set out in the Environmental Statement for development authorised by the 2013 Order and is content that there is no need to carry out another Environmental Impact Assessment nor provide an updated Environmental Statement.

The Secretary of State's Conclusions and Decision

15. The Secretary of State has no reason to disagree with the Applicant's assessment of materiality, and having regard to the effect of the changes on the 2013 Order, the Secretary of State is satisfied that the proposed change to the Application is appropriately categorised as a non-material one (for the purposes of paragraph 2 of Schedule 6 to the 2008 Act). The Application has therefore been handled in accordance with Part 1 of the 2011 Regulations.

16. For the reasons given in this letter, the Secretary of State is satisfied that the changes to the 2013 Order applied for are not material when considered in the context of the development authorised by the 2013 Order and, therefore, has made an Order in the form of a statutory instrument to amend the 2013 DCO which comes into force on Friday 22 June 2018. This is substantially in the form of the draft Order submitted with the application, subject to a number of minor modifications, set out below.

Amendments to the Order

17. The following modifications have been made by the Secretary of State to the draft Order provided by the Applicant:

- the Secretary of State has decided to make various minor drafting changes which do not materially alter the effect of the Order, including changes to conform with current practice for Statutory Instruments, changes in the interests of clarity and consistency (e.g. in relation to footnotes), and changes to ensure that the Order has the intended effect.

Challenge to Decision

18. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached as an Annex to this letter.

Publicity for Decision

19. The Secretary of State's decision on this Application is being notified as required by paragraph 2(12) (b) of Schedule 6 to the 2008 Act and regulation 8 of the 2011 Regulations.

Yours sincerely

Richard Watson

**Ministry of Housing, Communities and
Local Government**

ANNEX

LEGAL CHALLENGES RELATING TO DECISIONS TO MAKE A NON-MATERIAL CHANGE TO A DEVELOPMENT CONSENT ORDER

Under section 118(5) of the Planning Act 2008 (the 2008 Act), a decision under paragraph 2(1) of Schedule 6 to the 2008 Act to make a change to an Order granting development consent, can be challenged only by means of a claim for judicial review. The judicial review claim form must be filed in the High Court before the end of the period of six weeks beginning with the day after the day on which the order making the change is published. The East Northamptonshire Resource Management Facility (Amendment) Order is being published on the date of this letter on the Planning Inspectorate web-site at the following address:

<http://infrastructure.planningportal.gov.uk/projects/east-midlands/east-northants-resource-management-facility/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make these changes to the Order as referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London WC2A 2LL (0207 947 6655).