



**STATUTORY NUISANCE STATEMENT**

**FOR THE DEVELOPMENT CONSENT ORDER APPLICATION FOR  
THE ALTERATION AND CONSTRUCTION OF HAZARDOUS  
WASTE AND LOW LEVEL RADIOACTIVE WASTE FACILITIES AT  
THE EAST NORTHANTS RESOURCE MANAGEMENT FACILITY,  
STAMFORD ROAD, NORTHAMPTONSHIRE**

***PINS project reference: WS010005 PINS document reference 6.3***

September 2021



## Summary

- S.1. The current operations at the East Northants Resource Management Facility (**existing ENRMF**) are the subject of three Environmental Permits and the proposed Development will also be the subject of Environmental Permits if the Development Consent Order is granted. As part of the permit application process it is necessary to demonstrate that the operations at the site will not result in harm to human health or the environment.
- S.2. This statement identifies the aspects of the proposed development that engage with Section 79(1) of the Environmental Protection Act 1990 (as amended) (**EPA 1990**) and identifies where necessary the mitigation measures that are proposed to minimise the risk of statutory nuisance arising as a result of the operations at the site. As a result of the site operational practices, the proposed mitigation measures and regulatory controls imposed by the Environmental Permits it is considered unlikely that the proposed development will give rise to statutory nuisance.

## 1. Introduction

- 1.1 This statement addresses whether the proposed development, the subject of the application for a Development Consent Order (**DCO**), engages in one or more of the matters set out in Section 79(1) of the EPA 1990 and refers to the mitigation specified in the Environmental Statement (PINS document Ref 5.2) where appropriate. The application for the DCO is made by Augean South Limited (**Augean**) and is for the construction of a new landfill void to the west of the currently consented hazardous waste and LLW landfill area and the alteration of the restoration profile and the timescale for completion of the existing landfill site as well as an increase in the consented throughput of waste to the waste treatment and recovery facility and an increase in the total input rate to the site.
- 1.2 This statement has been compiled in accordance with Regulation 5(2)(f) of The Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009.

### Background to the application

- 1.3 Augean operates the existing ENRMF in Northamptonshire. The facility comprises an active waste treatment and recovery facility and an operational landfill for the disposal of hazardous waste and low level radioactive waste with an activity typically of up to 200Bq/g, clay extraction and stockpiling operations and associated infrastructure.
- 1.4 The current DCO granted in 2013 and amended in 2018 states that it shall cease operating by 31 December 2026 and shall be progressively restored and completed no later than 31 December 2036 .
- 1.5 The development description is set out in detail in Sections 5 to 9 of the Environmental Statement (PINS document Ref 5.2). In summary the main elements of the application comprise:
- The construction of new landfill void in the Proposed Western Extension for the continued disposal of the same range of predominantly hazardous wastes and a limited amount of low level radioactive waste (**LLW**) as deposited at the Existing ENRMF with a capacity of greater than 100,000 tonnes per annum (**tpa**) of hazardous waste.

- A proposal for a coherent landform for the restoration of the Existing Landfill Facility and the Proposed Western Extension resulting in the construction of new landfill void in the Existing Landfill Facility to connect with the Proposed Western Extension with a capacity of greater than 100,000 tonnes per annum (**tpa**) of hazardous waste.
- A total additional landfill void to be constructed of approximately 2.5 million cubic metres.
- The winning and working of minerals in the Proposed Development in order to create the landfill void and provide extracted materials for use on site as well as the exportation of clay and overburden for use in engineering, restoration and general fill at other sites.
- The temporary stockpiling of clay, overburden and soils for use in the construction of the engineered containment system at the site and restoration of the site.
- The direct input of waste into the Existing Landfill Facility and the Proposed Western Extension will continue at a rate of up to 150,000 tpa.
- An increase to the hazardous waste throughput of the Existing Waste Treatment and Recovery Facility from 200,000tpa to 250,000tpa which comprises an increase of 50,000tpa compared with the rate consented in the Original Order and the extension of the treatment area to the south while remaining within the Existing ENRMF footprint.
- A combined total waste importation rate limit to site for the Proposed Development of 300,000tpa which is an increase of 50,000tpa compared with the rate consented in the Original Order.
- The LLW which will continue to be disposed of at the ENRMF and will be disposed of in the Proposed Western Extension will be limited to that which is at the lower end of the activity range and typically will have a level of radioactivity of up to 200 Bq/g.
- The diversion of the overhead electricity cable that crosses the Proposed Western Extension to a trench which follows the route of the water pipes across the Proposed Western Extension and then follows the western margin of the site to the northern corner.
- The operational hours of the site will not change from those already consented in the Original Order.

- Restoration of the whole site to generally domed profiles to create a coherent restoration landform.
- Restoration of the site to improved biodiversity and nature conservation interest using the soils available at the site as well as suitable imported materials. The site will be restored to a mosaic structure of woodland with shrubby edges, flower meadow grassland, scattered trees, hedgerows and waterbodies.
- Completion of the landfilling and restoration operations by December 2046 and removal of the Existing Waste Treatment and Recovery Facility.
- Retention of infrastructure until 2046 and the retention of long term management infrastructure beyond this date.

**1.6** The current operations at existing ENRMF are operated under 3 separate Environmental Permits issued by the Environment Agency:

- Environmental Permit to operate a landfill facility. Permit number EPR/TP3430GW/V005.
- Environmental Permit to operate a waste treatment and recovery facility. Permit Number YP3138XB/V005.
- Environmental Permit for the disposal of LLW. Permit number FB3598DD.

Applications have been submitted to the Environment Agency to vary the Environmental Permits in respect of the existing landfill facility and the existing waste treatment and recovery facility in order to include the activities and areas the subject of the DCO application. An application to vary the Environmental Permit for the disposal of LLW will be submitted during the DCO application process.

**1.7** In order to obtain an Environmental Permit, as part of the permit applications it is necessary to demonstrate to the satisfaction of the Environment Agency that the operations at the site will not result in harm to human health or the environment. The Environmental Permits include conditions which specify mitigation measures and control matters such as noise and monitoring, dust emissions and monitoring, radioactive emissions and monitoring, landfill gas emissions and monitoring, the management and monitoring of leachate and the control of potential impacts on amenity such as odour, litter and vermin. The Environmental Permits are regulated by the Environment Agency.

## **2. Identification and assessment of statutory nuisance**

### **2.1 Legislative Framework**

**2.2** Section 79(1) of the EPA 1990 identifies the matters which are considered to be statutory nuisance as follows:

- (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 [or in Scotland, road];*
- and*
- (h) any other matter declared by any enactment to be statutory nuisance.'*

### **2.3 Statutory Nuisance and Nationally Significant Infrastructure Projects**

**2.4** Paragraph 4.11 of the National Policy Statement for Hazardous Waste (Department for Environment, Food and Rural Affairs, June 2013) states:

*Section 158 of the Planning Act provides a defence of statutory authority in civil or criminal proceedings for nuisance. Such a defence is also available in respect of anything else authorised by an order granting development consent. 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.*

*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 Examining Authority during the examination so they can recommend appropriate requirements that the Secretary of State might include in any subsequent order granting development consent.*

- 2.5** As this document demonstrates, it is not expected that the construction, operation (including maintenance) and decommissioning of the Proposed Development would cause a statutory nuisance. However, Article 17 of the draft DCO (PINS document ref 3.1) contains a provision that would provide a defence to proceedings in respect of statutory nuisance should they be initiated against the Applicant in respect of section 79(1) of the EPA 1990, subject to certain criteria.
- 2.6 Assessment of Significance**
- 2.7** The ES (PINS document ref 5.2) for the Proposed Development addresses the likelihood of significant effects arising that could constitute a statutory nuisance, as identified in Section 79(1) of the EPA.
- 2.8** Chapters 5 to 9 describe impact avoidance measures embedded into the proposed design and methods of construction. Chapter 12: Population including impacts on human health, Chapter 21: Air Quality, Chapter 20: Noise and Vibration and Chapter 22: Amenity (PINS document ref. 5.2) and their associated appendices (PINS document ref. 5.4.20.1 and 5.4.22.1 – 5.4.22.4), where relevant, provide detailed assessments of these potential statutory nuisances and identify mitigation measures where necessary.
- 2.9** The ES provides an assessment of the potential effects on receptors as negligible, minor, moderate or major. Moderate and major effects are considered to be significant for the purposes of the Environmental Impact Assessment.

### **3. Potential Nuisance Impacts**

- 3.1** This section identifies how the proposed development engages with Section 79(1) of the EPA 1990 and where the mitigation measures are specified in the Environmental Statement (PINS document ref 5.2).

#### **EPA 1990, Section 79(1)(a) any premises in such a state as to be prejudicial to health or a nuisance;**

- 3.2** To minimise the risk of any such statutory nuisance from occurring through poor maintenance or housekeeping, operational and management controls will be put in place through an EMS, controlled by the EPs which includes procedures for the acceptance of waste, the waste acceptance criteria, waste storage and treatment processing controls, controls on the placement and covering of waste deposited in the landfill, the engineering design and construction of the containment cap and lining to the landfill, the active management of leachate and gas, the capping of completed cells with a low permeability cap, the application of wheel washing facilities and the maintenance of site access and haul road surfaces, and regular monitoring of the quality of the environment around the site in order to identify and potentially unacceptable emissions.
- 3.3** The site operations will also be the subject of Environmental Permits which will be regulated by the Environment Agency. The Environmental Permits will contain conditions which are intended to control the operations so that they do not have an unacceptable impact on the environment or on human health.
- 3.4** The measures for the control of the emissions which have the potential for an impact on human health and amenity are described in Sections 5 to 9 of the Environmental Statement (PINS document Ref. 5.2). An assessment of the impact on human health and amenity are presented in Sections 12 and 22 respectively of the Environmental Statement.

#### **EPA 1990, Section 79(1)(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;**

- 3.5** An assessment of the impact on human health and air quality are presented at Sections 12 and 21 respectively of the Environmental Statement (PINS document ref. 5.2).
- 3.6** The nature of the activities and the wastes accepted at the existing ENRMF Site will not change significantly and, while they will take place over a larger area overall, the active area and intensity of operations at any one time will



not be significantly different to the currently consented activities. The potential impacts associated with the continuation of the operation of the consented and extended landfill and waste treatment and recovery facility to 2046 are similar to those for the current site operations but will be present over a longer time.

- 3.7** The site operations will also be the subject of Environmental Permits which will be regulated by the Environment Agency. The Environmental Permits will include conditions which specify mitigation measures and control matters such as radioactive emissions and monitoring and landfill gas emissions and monitoring. The results of the monitoring will continue to be made available on the company web site to provide confidence that the site is being managed effectively.

**EPA 1990, Section 79(1)(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance, and Section 79(1)(e) any accumulation or deposit which is prejudicial to health or a nuisance**

- 3.8** The wastes that are and will be accepted at the ENRMF Site for landfill and treatment have a low level of organic carbon which means they have a limited potential for biodegradation hence a limited potential for the generation of gases or vapours. The wastes have a limited potential to generate odour. Based on the proposed continuation of the current controls including those that will be specified and implemented through the Environmental Permits, and based on the nature of the current and proposed wastes accepted at the site it is considered that there will be no significant impacts on air quality including impacts associated with odour as a result of the site activities.
- 3.9** An assessment of the impact on human health, water resources and amenity are presented at Sections 12, 17 and 22 respectively of the Environmental Statement.
- 3.10** To minimise the risk of any such statutory nuisance from occurring from dust, steam, smells or other effluvia, operational and management controls will be put in place, such as dust control measures, a soil management scheme and a stockpile management scheme (PINS document ref 6.5).
- 3.11** To minimise the risk of any such statutory nuisance from occurring from accumulations or deposits, operational and management controls will be put in place, through an EMS, controlled by the EPs which includes procedures for the acceptance of waste, the waste acceptance criteria, waste storage and

treatment processing controls, controls on the placement and covering of waste deposited in the landfill, the engineering design and construction of the containment cap and lining to the landfill, the active management of leachate and gas, the capping of completed cells with a low permeability cap and regular monitoring of the quality of the environment around the site in order to identify and potentially unacceptable emissions.

**EPA 1990, Section 79(1)(g) noise emitted from premises so as to be prejudicial to health or a nuisance and (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**

- 3.12** An assessment for the impact on noise is presented at Section 20 of the Environmental Statement (PINS document ref. 5.2). Following an initial estimate of noise impact along with consideration of the context and any potential effects of uncertainty it is considered that with the implementation of the proposed noise mitigation and monitoring scheme (PINS document ref 6.5) the proposed development is not likely to result in adverse or significant adverse impacts. It is also considered unlikely that road traffic noise and vibration associated with the proposed development will cause significant adverse effects. The potential noise and vibration levels associated with the activities including the construction phase of the application are likely to remain within the recommended threshold values and are therefore not considered to be significant.

## **4. Conclusions**

- 4.1** Due to the current site operational practices which have not given rise to any statutory nuisance to date and in light of the proposed mitigation secured by the DCO, it is considered unlikely that the proposed development will give rise to statutory nuisance.
- 4.2** The operation of the Proposed Development will also be regulated by the Environment Agency through Environmental Permits and would undergo regular monitoring and reporting.
- 4.3** However, in the unlikely event that proceedings are brought under Section 82(1) of the Environmental Protection Act 1990 in relation to a nuisance falling within paragraphs (a), (c), (d), (e), (g) or (ga) the draft DCO (PINS document ref. 3.1) that accompanies the Application contains a draft Article 17 that would provide a defence to proceedings for statutory nuisance should they be initiated against Augean. Such defence is available subject to Augean being able to demonstrate that the nuisance is a consequence of the construction, maintenance or use of the authorised development and that it cannot reasonably be avoided.