

Appendix 4 - Environmental permit and the role of the Environment Agency

1. One element of the proposed development is the incineration of healthcare waste to generate energy. It is acknowledged that the process of incineration of waste creates emissions. Regulation of waste incineration is currently controlled by EU legislation, principally the Industrial Emissions Directive 2010 (IED) which from 2014 repealed and replaced (amongst other legislation) the Waste Incineration Directive 2000. The IED aims to prevent or reduce emissions to air, land and water from industrial installations. It requires installations within its scope to operate under a permit based on the use of Best Available Techniques (BAT). BAT aim to reduce emissions including noise and odour. Other environmental issues such as energy efficiency, resource efficiency (water and reagents consumption, recovery of useful materials), are also covered.
2. The principal regulations implementing the EU permitting requirements in England and Wales are the Environmental Permitting (England and Wales Regulations) 2016, as amended. Regulation of incinerators in England is split between the Environment Agency and local authorities. The Environment Agency regulates incinerators with a capacity of greater than 3 tonnes per hour for non-hazardous waste and 10 tonnes per day for hazardous waste. Incinerators below this size are regulated by local authorities. Envar's proposal is for over 10 tonnes per day of hazardous waste therefore the Environment Agency will be the regulator. The environmental permit will set conditions which limit the discharge to air, water and soil of specified substances.
3. As part of the environmental permitting process for new incinerator plants, the regulator is required to make an assessment of the environmental impact of each site and to set limit values in the environmental permit for emissions to air of a wide range of key pollutants. These atmospheric emissions are subject to a strict monitoring regime. The Global Warming Potential (GWP) of a waste incineration plant is assessed as part of the permitting process undertaken by the regulator, taking into account emissions of carbon dioxide (CO₂) as well as nitrous oxide. The regulator assesses the equivalent amount of CO₂ that the plant will emit against the European standards to ensure that the plant is using best available techniques to minimise GWP. If issued, permits will contain a requirement for the operator to review opportunities for improving energy efficiency at least every four years and thereby reduce CO₂ emissions where possible.
4. Planning practice guidance (Paragraph: 005 Reference ID: 32-005-20191101) states that:

“For large and complex industrial processes, the Environment Agency should also be able to help by identifying:

 - if an environmental permit is also required before the proposed development can start operating;
 - if there are any significant air quality issues that may arise at the permitting stage (so there are ‘no surprises’); and
 - whether there are any special requirements that might affect the likelihood of getting planning permission (such as the height of chimneys).

5. The Environment Agency document “Guidance for developments requiring planning permission and environmental permits” (October 2012) [LIT_7260_bba627.pdf \(publishing.service.gov.uk\)](#) explains the relationship between the planning and permitting regimes, their role as a consultee in the planning process and their permitting role. When responding to consultations on planning applications for development that would require an environmental permit the Environment Agency has three possible positions:
 1. No major permitting concerns - Have not identified any major concerns about issuing a permit for this development. Consider risks to people and the environment can be reduced satisfactorily using measures to prevent, minimise and/or control pollution.
 2. More detailed consideration is required and parallel tracking is recommended as appropriate - Do not currently have enough information to know if the proposed development can meet our requirements to prevent, minimise and/or control pollution.
 3. Don't proceed - unlikely to grant a permit. Will object to the development because it is unlikely that the risks to people and the environment can be satisfactorily mitigated in this location.
6. The Environment Agency's response on the Envar application is category 1 – they have advised that a substantial variation to the existing environmental permit would be needed for the proposed development to be able to operate and has indicated some of the matters that the applicant would need to address (see paragraphs 6.4 – 6.6 in the report. Envar's environmental permit was most recently varied (a statutory review initiated by the Environment Agency) on 9 February 2021 (Permit number EPR/GP3930DF; Variation number EPR/GP3930DF/V004). The permit limits the total throughput of waste to 200,000 tpa of which 135,000 tpa is green waste for composting, 45,000 tpa for the [biomass] drying process and 20,000 tpa for the waste treatment and transfer operation. It is considered that it would be helpful to reproduce parts of the EP to show what areas currently fall within its control. These are set out in Appendix 5.
7. The government is clear that the planning regime should not be used to control matters that would be regulated under other legislation. Paragraph 188 of the NPPF states:

“The focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.”
8. Although not directly applicable to the current proposal, National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011) gives similar advice to the Infrastructure Planning Commission (IPC) which determines applications for waste incinerators which are of a scale to be nationally significant renewable energy

infrastructure (>50 megawatts). In the section on Biomass/Waste Impacts – Air quality and emission and IPC decision making:

“2.4.41 Compliance with the WID and the Large Combustion Plant Directive (LCPD) is enforced through the environmental permitting regime regulated by the Environment Agency (EA). Plants not meeting the requirements of the WID and/or LCPD would not be granted a permit to operate. The IPC should refer to the policy in Section 4.10 of EN-1 relating to other regimes.

2.5.42 The pollutants of concern arising from the combustion of waste and biomass include NO_x, Sox, particulates and CO₂. In addition, emissions of heavy metals, dioxins and furans are a consideration for waste combustion generating stations but limited by the WID and regulated by the EA.

2.5.43 Where a proposed waste combustion generating station meets the requirements of WID and will not exceed the local air quality standards, the IPC should not regard the proposed waste generating station as having adverse impacts on health.”

In the section on mitigation:

“2.5.45 Abatement technologies should be those set out in the relevant sector guidance notes as produced by the EA. The EA will determine if the technology selected for the waste/ biomass combustion generating station is considered Best Available Technique (BAT) and therefore the IPC does not need to consider equipment selection in its determination process.”

9. Overarching National Policy Statement for Energy (EN-1) (July 2011) says the following in respect of pollution control and other environmental regulatory regimes:

“4.10.2 The planning and pollution control systems are separate but complementary. The planning system controls the development and use of land in the public interest. It plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching conditions to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through conditions. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the releases of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment or human health.

4.10.3 In considering an application for development consent, the IPC should focus on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the control of processes, emissions or discharges themselves. The IPC should work on the assumption that the relevant pollution control regime and other environmental regulatory regimes, including those on land drainage, water abstraction and biodiversity, will be

properly applied and enforced by the relevant regulator. It should act to complement but not seek to duplicate them.”

4.10.5 Many projects covered by this NPS will be subject to the Environmental Permitting (EP) regime, which also incorporates operational waste management requirements for certain activities. When a developer applies for an Environmental Permit, the relevant regulator (usually EA but sometimes the local authority) requires that the application demonstrates that processes are in place to meet all relevant EP requirements. In considering the impacts of the project, the IPC may wish to consult the regulator on any management plans that would be included in an Environmental Permit application.

4.10.6 Applicants are advised to make early contact with relevant regulators, including EA and the MMO, to discuss their requirements for environmental permits and other consents. This will help ensure that applications take 61 Overarching National Policy Statement for Energy (EN-1) account of all relevant environmental considerations and that the relevant regulators are able to provide timely advice and assurance to the IPC. Wherever possible, applicants are encouraged to submit applications for Environmental Permits and other necessary consents at the same time as applying to the IPC for development consent.

4.10.7 The IPC should be satisfied that development consent can be granted taking full account of environmental impacts. Working in close cooperation with EA and/or the pollution control authority, and other relevant bodies, such as the MMO, Natural England, the Countryside Council for Wales, Drainage Boards, and water and sewerage undertakers, the IPC should be satisfied, before consenting any potentially polluting developments, that:

- the relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
- the effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable, particularly in relation to statutory environmental quality limits.

4.10.8 The IPC should not refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution control permits or licences or other consents will not subsequently be granted.”

10. In respect of health NPS EN-1 says:

4.13.5 Generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation of them, so that it is unlikely that health concerns will either constitute a reason to refused consents or require specific mitigation under the Planning Act 2008. However, the IPC will want to take account of health

concerns when setting requirements relating to a range of impacts such as noise.”

11. The clear message in government advice is that waste planning authorities responsible for determining planning applications and the IPC in determining application for a development consent order should not seek to duplicate the environmental permitting process. NPS EN-1 provides similar advice in respect of the remit of the Health and Safety Executive and the Hazardous Substances consent regime.
12. When determining an application for an environmental permit the Environment Agency will take advice from the UK Health Security Agency and consult the relevant local authorities and their health departments, the Food Standards Agency and the Health and Safety Executive. The UK Health Security Agency assesses the potential public health impact of a proposed installation and makes recommendations based on a critical review of the information provided for the environmental permit application. They will request further information at the environmental permitting stage if they believe that this is necessary to be able to fully assess the likely public health impacts.