

Review of an Environmental Permit under the Environmental Permitting (England & Wales) Regulations 2010 (“EPR”)

Decision document recording our decision-making process

We have decided to vary the Permit for Kiln Lane Treatment Plant operated by FBM Metals (UK) Limited and FBM Holdings Limited as a result of an application made by the Operator.

The Permit number is EPR/EB3002XK

The Variation notice number is EPR/EB3002XK/V002

What this document is about

This is a decision document, which accompanies a variation notice.

This decision document:

- explains how the application has been determined
- provides a record of the decision-making process
- shows how all relevant factors have been taken into account
- justifies the specific conditions in the permit other than those in our generic permit template.

Preliminary information and use of terms

We refer to the Permit (both existing and as varied) as “the **Permit**” in this document; and to the variation of the Permit as “the **Variation**”.

The Operator of the Installation is FBM Metals (UK) Limited and FBM Holdings Limited: we call FBM Metals (UK) Limited and FBM Holdings Limited “the **Operator**” in this document. We refer to FBM Metals (UK) Limited and FBM Holdings Limited’s Kiln Lane Treatment Plant as “the **Installation**”.

The Application was duly made on 13/01/2015.

How this document is structured

- Our decision
- The legal framework
- How we took our decision
- Key issues in the determination
- Annex 1 – the decision checklist

1 Our decision

We have issued a Variation, which will allow the Operator to operate their facility as an Installation, subject to the conditions in the varied Permit.

This Variation does several different things:

- **First**, it gives effect to our decisions following the identification of the Operator as undertaking a “newly prescribed activity” (NPA) under the Industrial Emissions Directive (IED);
- **Second**, it takes the opportunity to bring earlier variations into an up-to-date, consolidated Permit. The consolidated Permit should be easier to understand and use; and
- **Third**, it modernises the entire Permit to reflect our current template. The template reflects our modern regulatory permitting philosophy and was introduced because of a change in the governing legislation. This took place when the Pollution Prevention and Control (England and Wales) Regulations 2000 (“PPC”) were replaced in 2008 by a new statutory regime under the Environmental Permitting Regulations 2007 (now the 2010 version).

The introduction of new template conditions makes the Permit consistent with our current general approach and philosophy. Although the wording of some conditions has changed, while others have disappeared because of the new regulatory approach, it does not affect the level of environmental protection achieved by the Permit in any way.

We consider that, in reaching our decision, we have taken into account all relevant considerations and legal requirements and that the Permit will continue to ensure that a high level of protection is provided for the environment and human health.

The original Permit, issued on 05/02/1998, ensured that the facility, would be operated in a manner which would ensure the protection of the environment specified in the existing Guidance at the time. To the extent that we have substantively altered the Permit as a result of this variation, the new requirements will deliver a higher level of protection to that which was previously achieved.

As we explained above, we do not address changes to the Permit in this document, to the extent that they give effect to either the consolidation of earlier variations, or introduce new template conditions.

2 The legal framework

The original Permit was granted on 05/02/1998 under the Environmental Protection Act 1990 and regulated under the Waste Management Licensing Regulations 1994.

The Installation will be subject to the requirements of the Industrial Emissions Directive (IED) 2010/75/EU and regulated under the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No 675). The IED was transposed in England and Wales by the Environmental Permitting (England and Wales)(Amendment) Regulations 2013 on 27 February 2013.

The IED seeks to achieve a high level of protection for the environment taken as a whole from harmful effects of industrial activities. It does so by requiring each of the industrial installations to have a permit from the competent authority (in England, the Environment Agency, or for smaller Installations, the relevant Local Authority). The IED has increased the number of activities that require an Installations permit. These are predominantly regulated as “waste operations” and include (when exceeding specific thresholds described in IED):

- hazardous waste treatment for recovery;
- hazardous waste storage;
- biowaste treatment – recovery and/or disposal;
- treatment of slags and ashes
- metals shredding;
- pre-treatment of waste for incineration/co-incineration;
- biological production of chemicals; and
- independently operated wastewater treatment works serving only industrial activities subject to the Directive

Article 11 of the IED requires the relevant authority (the Environment Agency in this case) to ensure that the Installation is operated in such a way that all the appropriate preventative measures are taken against pollution, in particular through the application of Best Available Techniques (BAT). Under Article 15(2), the Permit must contain emission limit values (ELVs) (or equivalent parameters or technical measures) for any pollutants likely to be emitted from the Installation in significant quantities. These ELVs are to be based on BAT, but also on local factors and EU Environmental Quality Standards. The overarching requirement is to ensure a high level of protection for the environment and human health.

We are required by Article 13 of the IED to keep abreast of developments in BAT. In addition, Article 13 requires us to carry out a periodic review of the permit’s conditions, and to update them if necessary.

The IED also requires the European Commission to organise an exchange of information between EU Member States so that what are known as BAT reference documents (or BREF notes) can be published, creating a level playing field across the EU, providing a consistent set of standards for new plant, to which regulatory authorities in the Member States can then have reference. These BREF notes are the basis for our own national sector technical guidance. The Commission is also required to update BREF notes on a regular basis. The waste treatment BREF notes are currently being reviewed and a final issue date is anticipated in 2016. Under the IED, all permits will be subject to review within four years of the publication of revised BREF notes. This means that we will need to do a further review against any new standards in the BREF notes at sometime in the future.

The IED is to be implemented over several years commencing from 7 January 2013. For existing installations operating “newly prescribed activities”, the relevant date for implementation is 7 July 2015.

3 How we reached our decision

It is the Operators responsibility to ensure they are correctly regulated for the activities they are carrying out. Following adoption of the IED, the Environment Agency has engaged in a range of briefings and communications with the waste industry sector to raise awareness of the implications of the Directive and the need to ensure their facilities are correctly regulated (particularly after the implementation date of 7 July 2015 for newly prescribed activities).

Early in 2014, the Environment Agency provided further briefings to industry trade bodies and wrote to operators we believed may be implicated by these changes. We provided detailed information sheets that described the implications and the process operators should follow if they decided to have their activities permitted as Installations.

We confirmed that most facilities fell into one of two groups:

- Facilities permitted from April 2007
When these facilities were permitted, a thorough assessment would have been carried out to confirm whether the proposed activities were using “appropriate measures” as a standard to protect the environment.

This standard of protection is the same standards that would have been assessed against had the facilities applied as an Installation activity (i.e. BAT). The permit would have also been issued with modern conditions that ensured protection of the environment.

We consider that these facilities are effectively ‘IED-compliant’ in terms of the technical standard of the facility with the exception of the “newly prescribed activity”. For these facilities, we consider that, in general, no

further technical assessment is required, so administrative variations are an appropriate mechanism to show the activities as Installation activities. The administrative variation is a necessary route for the Operator to formally ask for this activity to be included in their permit and for us to advertise that request on our Public Register.

It is understood that the Environment Agency granted permits for new waste activities under the Waste Management Licensing Regulations 1994 beyond April 2007. Where a facility falls into this group, the Environment Agency shall determine whether or not the application was assessed using “appropriate measures”. Where it is determined that the application was assessed using “appropriate measures”, the application will be designated as an “administrative variation”.

- Facilities permitted before April 2007
For these facilities, a “normal” or “substantial” variation is appropriate because a detailed technical assessment is required on aspects of the Application ecological impact assessment and waste types, secondary containment in addition to the administrative changes.
Substantial variations will only be relevant where the newly prescribed activity is being added to an existing installation permit.

The original Permit was granted on 05/02/1998 and subsequently varied on 09/12/2003 and 14/07/2011. We have reviewed the documentation submitted in support of the original permit and subsequent variation application(s) in this determination. We are not satisfied that the standard of protection was assessed using appropriate measures. We have determined this Application as a normal variation. As the Variation will not have any negative effects on the environment, it is not a substantial variation and so does not require consulting on.

On the 10/03/2016 the permit was transferred from Selvic Shipping Services Limited and FBM Metals (UK) Limited to FBM Metals (UK) Limited and FBM Holdings Limited. The application for this transfer was received in conjunction with IED application (EPR/RP3294NK/V004) and issued with new permit number (EPR/EB3002XK/T001).

4 Key issues in the determination

The facility temporarily stores and treats hazardous waste and non hazardous slags and ashes to produce synthetic ore products, the facility also washes and bales the bulk bags in which waste is received. Therefore the facility now needs to be permitted as an installation covering Schedule 1 activities section:

- 5.3 A (1) (a)(ii) - Disposal or recovery of hazardous waste with capacity exceeding 10tonnes per day for physic-chemical treatment (including screening and crushing to produce synthetic ore and the washing and baling of bulk bags);

- S5.3 A(1) (a) (iii) - Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving blending or mixing prior to submission to any of the other activities listed in this Section or Section 5.1;
- S5.4 A(1) (b) (iii) - Recovery or a mix of recovery and disposal of non hazardous waste with a capacity exceeding 75 tonnes per day involving treatment of slags and ashes; and
- Section 5.6 Part A(1) (a) – Temporary storage of hazardous waste with a total capacity exceeding 50 tonnes.

1. Operating techniques

The operating techniques contained within the original permit are considered to be IED compliant and therefore have not been altered in this variation. However, as a result of the transfer of the permit the operator has agreed to update the operating techniques to address the operator names. An improvement condition is therefore included to ensure the update is agreed within 3months of the issue of the permit.

It has been agreed between the Area Officer and Operator that a Fire Prevention Plan is needed for the site and therefore an improvement condition has been included for this to be agreed within 3months of issue of the permit.

2. Waste types

The original permit does not define the waste codes in detail, the Area Officers and Operator have agreed the waste codes that cover the current site operations and operating techniques and these are included in the permit.

3. Ecological impact assessment (where relevant)

The Kiln Lane Treatment Plant, located in a port side trading estate, is completely surfaced with impermeable concrete and has a 0.9metre bund around the storage and processing areas. The site is within 50metres of the nearest human occupation and approximately 2km from the Humber Estuary, there are no habitat sites within 1km of the installation. There are no emissions points to air, water, land or sewer and all site drainage is collected and retained on site for use in dust suppression and product formulation

Annex 1 – decision checklist

This document should be read in conjunction with the Duly Making checklist, the application and supporting information and notice.

Aspect considered	Justification / Detail	Criteria met
Consultation		
Responses to web publicising	No public responses were received in response to the web publicising of the application.	✓
Operator		
Control of the facility	We are satisfied that the applicant (now the operator) is the person who will have control over the operation of the facility after the grant of the permit. The decision was taken in accordance with EPR RGN 1 Understanding the meaning of operator.	✓
The facility		
The regulated facility	<p>The regulated facility is an installation which comprises the following activities listed in Part 2 of Schedule 1 to the Environmental Permitting Regulations and the following directly associated activities:</p> <p>Relevant Activity</p> <ul style="list-style-type: none"> • 5.3 A (1) (a)(ii) - Disposal or recovery of hazardous waste with capacity exceeding 10tonnes per day for physico-chemical treatment (screening and crushing to produce synthetic ore); • S5.3 A(1) (a) (iii) - Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving blending or mixing prior to submission to any of the other activities listed in this Section or Section 5.1; • S5.4 A(1) (b) (iii) - Recovery or a mix of recovery and disposal of non hazardous waste with a capacity exceeding 75 tonnes per day involving treatment of slags and ashes; • 5.3 A (1) (a)(ii) - Disposal or recovery of hazardous waste with capacity exceeding 10tonnes per day for physic-chemical treatment (washing and baling of bulk bags); and • Section 5.6 Part A(1) (a) – Temporary storage of hazardous waste with a total capacity exceeding 50 tonnes. <p>Directly Associated Activities</p> <ul style="list-style-type: none"> • Storage of non hazardous • Storage of processed material • Raw material storage. 	✓

Aspect considered	Justification / Detail	Criteria met
		Yes
European Directives		
Applicable Directives	All applicable European Directives have been considered in the determination of the application.	✓
The site		
Extent of the site of the facility	The operator has provided a plan which we consider is satisfactory, showing the extent of the site of the facility. A plan is included in the permit and the operator is required to carry on the permitted activities within the site boundary.	✓
Environmental Risk Assessment and operating techniques		
Environmental risk	We have reviewed the operator's assessment of the environmental risk from the facility. The operator's risk assessment is satisfactory.	✓
Operating techniques	As a result of the transfer of the permit to the new operator the operating techniques require updating. We have therefore included an improvement condition in the notice which requires a review of the site's operating techniques within 3 months.	✓
The permit conditions		
Updating permit conditions during consolidation	We have updated previous permit conditions to those in the new generic permit template as part of permit consolidation. The new conditions have the same meaning as those in the previous permit(s).	✓
Waste types	We have specified the permitted waste types, descriptions and quantities, which can be accepted at the regulated facility. We are satisfied that the operator can accept these wastes because they have the necessary infrastructure, operating systems and technical capability to manage these wastes in an appropriate manner. We made these decisions with respect to waste types in accordance with our Technical Guidance Note WM2 – <i>Hazardous Waste</i> or other relevant guidance.	✓
Improvement conditions	Based on the information on the application, we consider that we need to impose improvement conditions. We have imposed improvement conditions to ensure that: <ul style="list-style-type: none"> ➤ the site's operating techniques/management system/plans are reviewed and updated against the standards specified in the technical guidance note(s): <ul style="list-style-type: none"> • IPPC S5.06 – Guidance for the Treatment of 	✓

Aspect considered	Justification / Detail	Criteria met
		Yes
	Hazardous and Non-Hazardous Waste; <ul style="list-style-type: none"> • H3 – Noise assessment and control; • H4 – Odour Management The development and submission of a Fire Prevention Plan for approval.	
Operator Competence		
Environment Management System	There is no known reason to consider that the operator will not have the management systems to enable it to comply with the permit conditions. The decision was taken in accordance with RGN 5 on Operator Competence.	✓
Technical competence	Technical competency is required for activities permitted. The operator is a member of an agreed scheme.	✓
Financial provision	There is no known reason to consider that the operator will not be financially able to comply with the permit conditions. The decision was taken in accordance with RGN 5 on Operator Competence.	✓