

# 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 Castle Bromwich IBA Facility operated by Ballast Phoenix Limited as a result of an application made by the Operator.

The Permit number is EPR/DB3335RV.

The Variation notice number is EPR/DB3335RV/V003.

## 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 Ballast Phoenix Limited. We call Ballast Phoenix Limited “the **Operator**” in this document. We refer to Ballast Phoenix’s Castle Bromwich IBA Facility as “the **Installation**”.

The Application was duly made on the 9<sup>th</sup> of September 2014.

## 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 gives effect to our decision following the identification of the Operator as undertaking a “newly prescribed activity” (NPA) under the Industrial Emissions Directive (IED);

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 the 19th of February 2013 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.

## 2 The legal framework

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 some time 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 was 7 July 2015.

### **3 How we reached our decision**

It is the Operator's 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 [such as ecological impact assessment, waste types, and 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.

#### This Variation

The original Permit was granted on 19/02/13 and subsequently varied on 08/11/13. We have reviewed the documentation submitted in support of the original permit and subsequent variation application(s) in this determination. We are satisfied that the standard of protection was assessed using appropriate measures. We have determined this Variation as an administrative variation.

## 4 Key issues in the determination

The facility is varied to an Installations permit. The listed activity as listed in Schedule 1 of the EP Regulations is as follows - **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).

## 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
		Yes
<b>Consultation</b>		
Responses to web publicising	No public responses were received in response to the web publicising of the application.	✓
<b>Operator</b>		
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.	✓
<b>The facility</b>		
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>Listed activity: 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.</p> <p>Directly associated activities:</p> <ul style="list-style-type: none"> <li>• Storage of waste pending recovery</li> <li>• Raw material storage</li> <li>• Surface water collection and storage</li> <li>• Process water collection and storage</li> </ul>	✓
<b>European Directives</b>		
Applicable Directives	All applicable European Directives have been considered in the determination of the application.	✓
<b>The site</b>		
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.	✓

Aspect considered	Justification / Detail	Criteria met
		Yes
<b>Environmental Risk Assessment and operating techniques</b>		
Operating techniques	<p>The techniques used by the operator were implemented post April 2007 and we consider that the techniques were assessed against 'appropriate measures' at the time of the original application under the Environmental Permitting Regulations.</p> <p>Operations do not occur within an enclosed building. The operator has a dust management plan to prevent and minimise off site emissions of dust. The dust management plan has been incorporated into the permit as an operating technique in Table S1.2</p>	✓
<b>The permit conditions</b>		
Updating permit conditions during consolidation	We have updated previous permit conditions to those in the new generic permit template as part of the permit consolidation. The new conditions have the same meaning as those in the previous permit(s).	✓
Raw materials	We have specified limits and controls on the use of raw materials and fuels as required by The Sulphur Content of Liquid Fuels (England and Wales) Amendment Regulations 2014.	✓
Waste types	No changes to the waste types.	✓
Reporting	We have specified reporting in the permit. Reporting forms have been prepared to facilitate reporting of data in a consistent format. These reporting requirements are deemed sufficient and proportional for the Installation. We made these decisions in accordance with our guidance <i>How to Comply with your Environmental Permit</i> and Regulatory Guidance Note 4 – Setting standards for environmental protection.	✓