

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 Tyne Terminal operated by Inter Terminals Tyneside Limited, as a result of an application made by the Operator.

The Permit number is EPR/CP3897ZQ

The Variation notice number is EPR/CP3897ZQ/V006

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 Inter Terminals Tyneside Limited: we call Inter Terminals Tyneside Limited “the **Operator**” in this document. We refer to Inter Terminals Tyneside Limited’s Tyne Terminal as “the **Installation**”.

The Application was duly made on 26/05/2015.

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 21/07/1977, 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 21/07/1977 as a Waste Disposal License under the Control of Pollution Act 1974, which was superseded by the Environmental Protection Act 1990.

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 is 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, secondary containment etc. 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 21/07/1977 and subsequently varied on 15/06/1991, 10/03/1994, 01/09/1997, 31/03/1998 and 20/10/2015. We have reviewed the documentation submitted in support of the original permit and subsequent variation applications 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.

4 Key issues in the determination

1. Operating techniques

The management system was updated in March 2014 and is considered appropriate for the site, however an improvement condition has been included to ensure the management is updated in accordance with Sector Guidance Note IPPC S5.06 – Guidance for the Treatment of Hazardous and Non Hazardous Waste and submitted to the agency for approval.

2. Waste types

The 1998 permit variation introduced a number of broad waste types to the permit, however within the application for this variation a full list of EWC codes covering both hazardous and non-hazardous waste was submitted. These were reviewed and agreed. The permit includes a condition limiting the site to accept liquid wastes only.

- **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
Consultation		
Responses to web publicising	No responses were received to the web publication. The decision was taken in accordance with our guidance.	✓
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 our current guidance on understanding the meaning of operator.	✓
The facility		
The regulated facility	<p>The extent/nature of the facilities taking place at the site required clarification.</p> <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>Repackaging and storage of hazardous and non-hazardous liquid wastes in bunded tanks before despatch for off-site recovery or disposal recovery or disposal.</p> <p>The facility therefore now needs to be permitted as an installation covering Schedule 1 activities section:</p> <ul style="list-style-type: none"> • S5.3 A(1)(a)(iv) Disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving repackaging prior to submission to any of the other activities listed in this Section or in Section 5.1; • Section 5.6 A(1)(a) Temporary storage of hazardous waste in a facility with a total capacity exceeding 50 tonnes pending any of the activities listed in Section 5.1, 5.2 and 5.3. <p>The non-hazardous waste repackaging and storage remains as a waste activity.</p>	✓
European Directives		
Applicable Directives	All applicable European Directives have been considered in the determination of the application.	✓

Aspect considered	Justification / Detail	Criteria met Yes
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	<p>We have reviewed the operator's assessment of the environmental risk from the facility.</p> <p>The operator's risk assessment is satisfactory.</p> <p>As a result of the storage of hazardous liquid waste the facility is regulated as an upper-tier COMAH site under the COMAH regulations. A revised safety report has been submitted to the Competent Authority in 2012 to comply with the COMAH Regulations. The terminal is also a Buncefield/PSLG Fuels site and is therefore undergoing improvements in line with the COMAH Containment Policy managed through the Competent Authority Scorecard.</p> <p>The terminal also holds the appropriate hazardous substances consents authorised by the local Authority.</p>	✓
Operating techniques	We consider that the operating techniques do not meet the technical standards specified Sector Guidance Note IPPC S5.06 – Guidance for the Treatment of Hazardous and Non Hazardous Waste. We consider that there are omissions in the supporting documents. We have therefore included an improvement condition in the notice which requires a review of the site's operating techniques within 6 months.	✓
The permit conditions		
Waste types	<p>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.</p> <p>We made these decisions with respect to waste types in</p>	✓

Aspect considered	Justification / Detail	Criteria met Yes
	accordance with our Technical Guidance Note WM3 – Waste Classification – Guidance on the classification and assessment of waste, and Sector Guidance Note IPPC S5.06 – Guidance for the Treatment of Hazardous and Non Hazardous Waste.	
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: The operator shall submit a revised working plan to the Environment Agency for written approval. The plan shall take into account the appropriate measures specified Sector Guidance Note IPPC S5.06 – Guidance for the Treatment of Hazardous and Non Hazardous Waste.	✓
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 our current guidance on Operator Competence.	✓
Technical competence	Technical competency is required for activities permitted. The operator is a member of an agreed scheme.	✓
Relevant Convictions	The National Enforcement Database has been checked to ensure that all relevant convictions have been declared. No relevant convictions were found.	✓