

Permitting decisions

Variation

We have decided to vary the environmental permits A and B, referred to below, and replace those permits with a consolidated environmental permit as a result of an application made by the Operator. Permit A will be the lead permit, Permit B will cease.

NuStar Eastham Limited operate a hazardous waste transfer station at Bankfields Drive, Eastham, spread across two sites, but operating as one site. This was previously regulated under two separate permits:

Permit A: EPR/SP3496CX (EAWML 53674) – site 1

Permit B: EPR/KP3096CN (EAWML 53733) – site 2

As a result of the changes brought about by the Industrial Emissions Directive (IED), all hazardous waste storage on site is now aggregated and permitted as one activity. The hazardous waste accepted under the above referenced permits is now regulated under activity S5.6A(1)(a) in Permit A. The non-hazardous waste authorised by the permits is now included in Permit A, table S1.1 as a separate waste operation. Permit B therefore ceases.

The consolidated permit authorises the following activities:

- Receipt and temporary storage of hazardous waste under the following activity listed in Schedule 1 of the Environmental Permitting Regulations: *S5.6A(1)(a) - the temporary storage of hazardous waste with a total capacity exceeding 50 tonnes.*
- Transfer of non-hazardous waste as a waste operation.

The variation also implements the following changes:

- The installation boundary is extended to include the permitted area of both Permits A and B as well as the NuStar pipe-line (dock-lines) which connects the two sites.
- The addition of table S1.3 setting out an improvement programme relating to the Environmental Management System, waste acceptance, secondary containment and emissions to air, water and sewer.
- The inclusion of the emission limits and monitoring requirements for emission point W1 to the Manchester Ship Canal previously authorised by a discharge consent.

The variation and consolidation number is EPR/SP3496CX/V005.

We consider in reaching that decision we have taken into account all relevant considerations and legal requirements and that the permit will ensure that the appropriate level of environmental protection is provided.

Purpose of this document

This decision document provides a record of the decision making process. It:

- explains how the application has been determined
- highlights key issues in the determination

- summarises the decision making process in the [decision checklist](#) to show how all relevant factors have been taken into account

Unless the decision document specifies otherwise we have accepted the applicant's proposals.

Read the permitting decisions in conjunction with the environmental permit and the variation notice. The introductory note summarises what the variation covers.

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**”.

In this document, we refer to NuStar Eastham Limited as “the **Operator**” and their NuStar Eastham Limited, Bankfields facility as “the **Installation**”.

The Application was duly made on 15/06/15.

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 and a waste operation, 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 2016 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 A, issued on 17/11/86, and Permit B, issued on 30/06/92, 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 Permits were granted as Waste Disposal Licences 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 2016. 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 not presently known. 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 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, 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

We have reviewed the documentation submitted in support of the original permits 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

a. Operating techniques

This variation and consolidation results in all the hazardous waste activities undertaken at the site being classified as an activity listed in Schedule 1 of the Environmental Permitting Regulations: S5.6A(1)(a) - the temporary storage of hazardous waste with a total capacity exceeding 50 tonnes.

A variety of wastes arrive at the site including hazardous and non-hazardous waste. The main purpose of the Installation is the storage of third party liquids in bulk. Most of the liquids stored are petroleum products or chemicals for distribution to industrial business or for bulking up of products for export. The Installation receives liquids from ships (via the QE2 dock or Manchester Ship Canal) and road tankers. The Installation is also a top tier COMAH site under the Control of Major Accident Hazard Regulations.

In the sections that follow we explain where the application does not contain enough information relating to operating techniques and how we have addressed it.

b. Installation boundary

NuStar Eastham Limited operate a hazardous and non-hazardous waste transfer station at Bankfields Drive, Eastham, spread across two sites, but operating as one site. This was previously regulated under two separate permits:

Permit A: EPR/SP3496CX (EAWML 53674) – site 1

Permit B: EPR/KP3096CN (EAWML 53733) – site 2

This variation and consolidation combines the permitted areas into one permitted boundary, including the dock-lines/pipelines connecting sites 1 and 2. The Operator does not own or lease the land over which the pipelines sit but they only utilise the pipelines owned and maintained by NuStar. All pipelines are above ground and no other third parties use the pipelines.

The Installation boundary does not include the flexible transfer hoses connecting the pipelines to ships. It starts at the solid transfer pipeline as this is where the Operator has control from.

A revised site plan is included in Schedule 7 of the consolidated permit.

c. Emission points to air

All 176 tanks are fitted with vents. Non-volatile products are generally stored in tanks fitted with gooseneck vents. Volatile products are fitted with pressure/vacuum relief valves.

In an email response received on 11/07/17 the Operator informed us that the facility has four horizontal multi-tubular steam boilers that run on gas. Information about the boilers was not included in the application and there was no mention of them in the original WMLs.

Steam is used to feed heating coils which are installed in the vertical steel storage tanks and used to raise the temperature of products stored within.

Site 1 has two boilers:

- One boiler with a thermal output of 2.84MW running for an average of 100 hours per year.
- One boiler with a thermal output of 1MW running for an average of 500 hours per year.

Site 2 has two boilers:

- Two boilers each with a thermal output of 2.84MW running for an average of 6 months per year (4,380 hours per year).

The Operator carried out some calculations to determine the thermal input and concluded the combined thermal input is 11.85MW. We agree with the Operator's calculation.

The Operator's risk assessment is unsatisfactory as it does not assess the impact of emissions to air from the boilers. We have therefore set Improvement Condition IC5 requiring the Operator to assess the impact of emissions to air from the four boilers using the Environment Agency's H1 Environmental Risk Assessment tool (or equivalent as agreed with the Environment Agency). If the assessment finds that emissions are significant, the Operator is required to propose appropriate measures to mitigate the impact including emission limits and monitoring. Details of appropriate measures will need to be provided to ensure that where emission limits are proposed they are met, or that emissions remain insignificant where emission limits are not required.

d. Emission points to water and sewer

Site 1 discharges uncontaminated surface water run off to the Manchester Ship Canal. The water is collected from bunds and roadways in the non-operational areas and passes through an interceptor before being discharged. The discharge currently has a discharge consent from the Environment Agency. The emission limits and monitoring requirements have been added to this variation and consolidation. The Operator is then able to apply for the Environment Agency discharge consent to be surrendered. The monitoring frequency and reference period will be added to table S3.2 upon the completion of improvement condition 7.

Surface run off from process areas at sites 1 and 2 passes through an interceptor before being discharged to the United Utilities sewer. Process Water consists of rainwater collected from operational areas and boiler blow down water.

The Operator's risk assessment is unsatisfactory as it does not assess the impact of emission to water or sewer. We have therefore set improvement conditions 6 and 7. Improvement condition 6 requires the Operator to submit a proposed monitoring plan for the discharges from emission points W1, S1 and S2. Improvement condition 7 requires the Operator to assess the result of such monitoring using the Environment Agency's 'H1 Environmental Risk Assessment' tool (or equivalent as agreed with the Environment Agency). The Operator must propose appropriate measures to mitigate the impact of any emissions where the assessment determines they have the potential to be significant.

e. Odour and noise assessment

Due to the nature of the process and use of closed tanks there is not expected to be any odour issues from the Installation. The activities are not likely to create a significant noise nuisance.

The proposed changes in this variation do not increase the risk of noise or odour and, therefore, we are satisfied that a noise management plan and odour management plan are not required for this variation.

f. Waste pre-acceptance and waste acceptance

The application proposed a list of more than 300 wastes for acceptance, including wastes with codes ending in '99' that should only be used in the unusual event that a more suitable alternative is not available. The list included all liquid wastes that the Operator thought they could possibly be asked to store at the facility.

Prior to agreeing to accept a waste, a pre-contract procedure is followed which includes a detailed chemical analysis of the waste.

There is not a laboratory on site. The Operator has stated that any waste deemed to require sampling and analysis will be sampled and analysed by a certified laboratory before the vehicle presents at the site but would then be sealed before delivery. The Operator has the option to have the material sampled and analysed by a certified independent laboratory within the region, but the Operator has not provided the circumstances under which such sampling would be requested, or the turnaround time.

We are not satisfied that the Operator fully meets the requirements of sections 2.1.1, 2.1.2 and 2.1.3 of Sector Guidance Note (SGN) S5.06 for waste pre-acceptance, acceptance and storage. It is considered BAT for waste to be sampled, checked and tested upon arrival at the site as set out by a selection of the indicative BAT points below.

SGN S5.06 indicative BAT for waste acceptance (numbered as per SGN S5.06)

- Point 8: *“Other than pure product chemicals and laboratory smalls, no wastes should be accepted at the installation without sampling, checking and testing being carried out. Reliance solely on the written information supplied is not acceptable, and physical verification and analytical confirmation are required. All wastes, whether for on-site treatment or simply storage, must be sampled and undergo verification and compliance testing.”*
- Point 10: *“On-site verification and compliance testing should take place to confirm:*
 - *the identity of the waste*
 - *the description of the waste*
 - *consistency with pre-acceptance information and proposed treatment method*
 - *compliance with permit.”*
- Point 20: *“The installation should have a designated sampling point or reception area. These should be in close but safe proximity to the laboratory/checking facility and the sampling point should be visible (or covered by CCTV), if sampling is not directly supervised by, for example, laboratory staff.”*

We are not satisfied that the Operator can meet these requirements and, therefore, we have set Improvement Condition IC2 requiring the Operator to produce and implement written waste pre-acceptance, waste acceptance, and waste storage procedures that accord with sections 2.1.1, 2.1.2 and 2.1.3 of SGN S5.06 as well as ‘Compatibility Testing Guidance for Bulking Operations in the Waste Treatment Industry’.

Tank adaptations

We asked the Operator to explain how they have assessed this list of wastes to determine that the facility is able to accept them in terms of aspects such as storage arrangements, segregation, compatibility and quarantine procedures.

When a storage request is received, a Management of Change procedure is started to assess the particular material composition to see if it is suitable for storage in the tanks. This assessment might indicate the need for tanks to be adapted in some way. The Operator has explained this can include the fitting of steam or water heating coils, however as it is a costly exercise it would be normal practice to avoid this by ensuring a tank already fitted with the required equipment was available. Other adaptations include nitrogen blanketing, water drains, circulation lines and vapour returns.

We are concerned about the Operator changing the nature and functioning of the waste storage tanks which may have consequences for the environment. In accordance with condition 4.3.5 the Operator is required to notify the Environment Agency prior to any such adaptations to existing waste storage tanks to ensure that adaptations are appropriate and fall outside the scope of a variation. Such adaptations may not require a full scale variation but at the very least we need to be notified under condition 4.3.5.

Permitted wastes

We have revised the list of wastes the Operator proposed to accept. The permitted wastes are listed in tables S2.2 and S2.3 of the varied permit.

We have removed most waste codes ending in '99' as these should only be used in the unusual event that a more suitable alternative is not available. The only such code we have used is 02 02 99 as this is used for coding tallow which the operator has accepted previously.

All permitted wastes in this variation were previously permitted in Appendix W of the working plan as referenced in the previous waste management licences.

g. Secondary containment

The application states that all waste storage tanks were constructed to the appropriate standards. Tanks are bunded to 110% of the largest tank with tertiary containment where required in agreement with the COMAH competent authority.

We are not satisfied that all bunds are constructed to the appropriate standards. Some are constructed from grass and earth which we do not consider suitable. Therefore we have set Improvement Condition IC3 requiring a review of the design, method of construction and integrity of all secondary containment by a qualified structural engineer. IC4 requires a written inspection and maintenance procedure that identifies and addresses any defects that could compromise secondary containment.

h. Improvement programme and pre-operational measures for development

Based on the information included within the application we consider that we need to impose an improvement programme.

We have imposed improvement conditions to ensure that:

- the site's Environmental Management System (EMS) is reviewed and updated to ensure that activities are undertaken in accordance with Best Available Technique and in accordance with Sector Guidance Note S5.06 – Guidance for the Treatment of Hazardous and Non-Hazardous Waste.
- the site's waste acceptance procedures are written and implemented against the standards specified in Sector Guidance Note S5.06 – Guidance for the Treatment of Hazardous and Non-Hazardous Waste.
- the review of the design, method of construction and integrity of all secondary containment is carried out by a qualified structural engineer.
- appropriate measures are in place to ensure emissions to air are insignificant.

Subsistence fee

The subsistence fee for the facility is based on the Opra profile for activity AR1 and the relevant charge for the waste operation, AR3.

The Opra score for the Installation is 80 giving a subsistence charge of £8,080.00.

The subsistence fee for the waste operation is based on the keeping of (non-hazardous) waste for any purpose other than recycling at a site other than where it was produced. The relevant charge table reference is: Table 2 - Part E - (c). The subsistence fee is £4,130.

Decision checklist

Aspect considered	Decision
Receipt of application	
Confidential information	A claim for commercial or industrial confidentiality has not been made.
Identifying confidential information	We have not identified information provided as part of the application that we consider to be confidential.
Consultation/Engagement	
Consultation	<p>The consultation requirements were identified in accordance with the Environmental Permitting Regulations and our public participation statement.</p> <p>The application was publicised on the GOV.UK website.</p> <p>No responses were received.</p>
The facility	
The regulated facility	<p>We considered the extent and nature of the facility at the site in accordance with RGN2 'Understanding the meaning of regulated facility' and Appendix 2 of RGN 2 'Defining the scope of the installation'.</p> <p>The extent of the facility is defined in the site plan and in the permit. The activities are defined in table S1.1 of the permit.</p>
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. The plan is included in the permit.
Site condition report	The operator has provided a description of the condition of the site, which we consider is satisfactory. The decision was taken in accordance with our guidance on site condition reports and baseline reporting under the Industrial Emissions Directive.
Biodiversity, heritage, landscape and nature conservation	<p>The application is within the relevant distance criteria of a site of heritage, landscape or nature conservation, and/or protected species or habitat.</p> <p>Towards the end of the determination we were informed of four steam boilers on site. See key issues for information relating to the improvement condition requiring an assessment of emissions to air. This will consider whether emissions could have an impact on biodiversity, landscape and nature conservation.</p> <p>In all other regards we consider that the application will not affect any sites of nature conservation, landscape and heritage, and/or protected species or habitats identified.</p>

Aspect considered	Decision
Environmental risk assessment	
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 unsatisfactory as it did not consider the impact of emissions to air from four steam boilers. See key issues. We have therefore set improvement condition IC5 requiring an assessment of emissions to air to be undertaken using the Environment Agency's H1 Risk Assessment Tool.</p>
Operating techniques	
General operating techniques	<p>We have reviewed the techniques used by the operator and compared these with the relevant guidance notes and we consider them to represent appropriate techniques for the facility.</p> <p>The operating techniques that the applicant must use are specified in table S1.2 in the environmental permit.</p>
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).
Raw materials	We have not specified limits and controls on the use of raw materials and fuels.
Waste types	<p>We have specified the permitted waste types, descriptions and quantities, which can be accepted at the regulated facility.</p> <p>The only wastes permitted are those previously permitted under the two Waste Management Licences.</p>
Improvement programme	<p>Based on the information on the application, we consider that we need to impose an improvement programme.</p> <p>See key issues.</p>
Emission limits	We have imposed emission limits for W1 to the Manchester Ship Canal in accordance with the existing trade effluent consent. The Operator can now apply to revoke the trade effluent consent.
Reporting	We have added reporting in the permit for the parameters associated with emission point W1. We transposed these requirements from the existing Environment Agency discharge consent for the discharge to the Manchester Ship Canal.
Operator competence	
Management system	We have included an improvement condition requiring the operator to submit a written Environmental Management System (EMS) for approval as the operator was not required to have a formal written management system

Aspect considered	Decision
	under previous legislation. There is no known reason to consider that the operator will not comply with the EMS.
Technical competence	<p>Technical competence is required for activities permitted.</p> <p>The operator is a member of an agreed scheme.</p> <p>We are satisfied that the operator is technically competent.</p>
Growth Duty	
Section 108 Deregulation Act 2015 – Growth duty	<p>We have considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 110 of that Act in deciding whether to grant this permit.</p> <p>Paragraph 1.3 of the guidance says:</p> <p>“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”</p> <p>We have addressed the legislative requirements and environmental standards to be set for this operation in the body of the decision document above. The guidance is clear at paragraph 1.5 that the growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections.</p> <p>We consider the requirements and standards we have set in this permit are reasonable and necessary to avoid a risk of an unacceptable level of pollution. This also promotes growth amongst legitimate operators because the standards applied to the operator are consistent across businesses in this sector and have been set to achieve the required legislative standards.</p>