

Permitting decisions

Environment Agency initiated variation

We have decided to issue an Environment Agency initiated variation for John Brooks Metals operated by John Brooks Metals Limited.

The variation number is EPR/BP3430ZA.

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 Environment Agency initiated variation 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

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

Key issues of the decision

Change to Regulated Facility type

The effect of this Environment Agency initiated variation is to change the type of regulated facility from an installation to a waste operation. The regulated facility was formerly permitted as a low impact non-ferrous metals installation under Section 2.2 Part A(1)(c) of the Environmental Permitting (England and Wales) Regulations (EPR 2016). The change is the result of a statutory review of the permit in response to the publication of the Best Available Techniques (BAT) Conclusions for the Non-ferrous Metals Industries.

Under the Industrial Emissions Directive (IED) the Environment Agency is required to review installation permits within four years of the publication of BAT Conclusions, enabling the regulator to ensure that operators of installations use all relevant BAT Conclusions as described in the Commission Implementing Decision in order to prevent or minimise emissions from their activities. The BAT Conclusions for the Non-ferrous Metals Industries were published on 30th June 2016 in the Official Journal of the European Union (L174/32) following a European Union wide review of BAT, implementing decision (EU) 2016/1032 of 13th June 2016.

We have considered information provided by the operator and from this it is clear that the main purpose, and intent, of the site is the treatment of hazardous waste to separate out the various constituent parts and enable subsequent recovery or disposal of these wastes streams. Wastes accepted for treatment at the site

include batteries, thermometers, and waste from the dental sector. The technique of vacuum distillation is used to remove mercury from the incoming wastes. This technique allows for the separation of mercury in a pure form which the operator can sell as a raw material. The resultant mercury free waste stream is sent off-site for recovery or disposal.

The BAT Reference Document (BREF) and BAT Conclusions for the Non-ferrous Metals Industries does not include the recovery of mercury or the use of vacuum distillation. By contrast the Waste Treatment BREF and BAT Conclusions (*final draft, Oct 2017*) explicitly list vacuum distillation as a technique to recover mercury from hazardous waste streams such as batteries, activated carbon filters, thermometers, waste from the dental sector, and fluorescent tubes.

We have therefore determined that the primary activity of the site is more aptly defined as a waste treatment activity, rather than a non-ferrous metal production or recovery activity. We have also determined that the site does not meet the capacity threshold for hazardous waste treatment under Section 5.3 Part A(1)(a) of EPR 2016 and is therefore not an installation but a waste operation. Table S1.1 (Activities) of the permit has been amended to reflect the above decision.

Operator Competence

With this variation resulting in the operator being issued a waste operation permit, the operator needs to demonstrate that they are technically competent. To do this they need to demonstrate that they have joined and comply with one of the following two government approved schemes:

- **CIWM and WAMITAB scheme.** The scheme run jointly by the Chartered Institution of Wastes Management (CIWM) and Waste Management Industry Training and Advisory Board (WAMITAB)
- **EU Skills Scheme.** The Energy & Utility sector Skills Council (EU Skills) - a scheme run jointly by EU Skills and the Environmental Services Association (ESA)

The operator has not needed to demonstrate compliance with either of these schemes whilst operating as a Part A(1) installation as it is only required for permits which have a scheduled 5 activity as the main activity on the site. Environment Agency guidance would normally request that the operator has the technical competency requirements in place before a varied or transferred permit is issued. However we have decided not to insist upon this prior to the issue of this variation. We have instead opted to grant the operator a grace period to join and comply with the one of the two approved schemes. We consider this to be a reasonable, risk-based decision given that the operator's process has not changed as a result of this variation, and they have historically operated in a safe and appropriate manner.

An improvement condition (IC1) has been added to the permit to ensure that the operator completes the necessary technical competence by the end of the grace period.

Decision checklist

Aspect considered	Decision
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', Appendix 2 of RGN 2 'Defining the scope of the installation', Appendix 1 of RGN 2 'Interpretation of Schedule 1', guidance on waste recovery plans and permits.</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.
Environmental risk assessment	
Environmental risk	There has been no changes to the site processes or activities as a result of this variation, and therefore the risk remains the same.
Operating techniques	
Operating techniques	<p>We have removed a number of the operating techniques that were associated with aspects of the operation that no longer take place on site.</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 permit conditions to those in the current generic permit template as part of permit consolidation. The conditions will provide the same level of protection as those in the previous permit(s).
Changes to the permit conditions	<p>We have varied the permit as stated in the variation notice as follows:</p> <p>The permit has been varied to a waste operation from an Installation. Further details are given in the key issues section of this decision document.</p>
Improvement programme	<p>Based on the information on the application, we consider that we need to impose an improvement programme.</p> <p>We have imposed an improvement programme to ensure that the operator joins and complies with an approved scheme for technical competence.</p>
Emission limits	<p>Due to a change in the site operations we have removed the emission limits for discharges to air and sewer. This is because:</p> <ul style="list-style-type: none"> Emissions to air: The site operation is now managed in a way that

Aspect considered	Decision
	<p>results in there being no emission to air and thus no emission point, limit or monitoring requirements.</p> <ul style="list-style-type: none"> • Emission to sewer: This was previously in place to limit emission from a site drain which was used for decanted condensate and the onsite laboratory. Changes in operations have resulted in the removal of the laboratory from the site and all decanted condensate is now processed back through the process.
Monitoring	<p>Due to a change in the site operations we have removed the monitoring requirements for discharges to air and sewer. This is because:</p> <ul style="list-style-type: none"> • Emissions to air: The site operation is now managed in a way that there is no emission to air and thus no emission point, limit or monitoring requirements. • Emission to sewer: This was previously in place to monitor emission from a site drain which was used for decanted condensate and the onsite laboratory. Changes in operations have resulted in the removal of the laboratory from the site and all decanted condensate is now processed back through the process.
Reporting	<p>Due to the changes to site monitoring and emission limits the reporting requirements for this permit have been removed.</p>
Operator competence	
Management system	<p>There is no known reason to consider that the operator will not have the management system to enable it to comply with the permit conditions.</p> <p>The decision was taken in accordance with the guidance on operator competence and how to develop a management system for environmental permits.</p>
Technical competence	<p>Technical competence is required for activities permitted.</p> <p>Further details are given in the key issues section of this decision document.</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 issue this variation.</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</p>

Aspect considered	Decision
	economic growth at the expense of necessary protections. We consider the requirements and standards we have set in this variation 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.