

From: Patchett, Vicky
Sent: 10 May 2019 13:37
To: clare boles
Cc: Sara Jones
Subject: RE: Eco Power Environmental Limited formerly Attero Recycling Limited, EA Reference: EPR/EB3207LH/V005
Attachments: EPR-EB3207LH-V005 confirmation your application is HPI.pdf

Dear Clare,

Thank you for your email of 28 March 2019, requesting confirmation of aspects relating to the duly making and determination process for your high public interest application.

We received your application to substantially vary permit EPR/EB3207LH for Attero Recycling Limited (now Eco-Power Environmental Limited) on 17 October 2018. Your application was deemed to be of high public interest and you were made aware of this at the duly making stage of the application during December 2018 and on the 16 January 2019 in a letter to you, which is attached, which explained why your application was high public interest and what this meant for your application in terms of how we charge for our time, timescales for determination and the options available to you.

When we receive an application, basic administrative checks are carried out by the Permitting Support Centre after which time it is passed on to a permitting officer for technical completeness checks known as 'Duly Making'. Duly making is the process of checking an application to make sure that the forms have been completed, it contains all the relevant documents; and the fundamental requirements have been addressed to allow determination to begin. Duly making checks do not include a technical assessment of the documents to establish if all of the information needed to make a decision on the application is there, it is simply a check that relevant documents have been submitted which appear to address the key points relevant to that application. The technical assessment is carried out after duly making, during the determination stage of the application process.

Your application was allocated for duly making checks on 12 November 2018. Following initial checks, it was clear that further detail about the proposed installation was needed before it was possible to decide if all of the information was present to duly make the application. You were contacted on 16 November 2018 to discuss the application and explain the information needed to clarify the extent of the proposed installation. A follow up email was sent on 19 November 2018 setting out the information needed. A complete response to the request for information was submitted to us on 28 November allowing us to then proceed with the duly making checks. Following the duly making checks, it was decided that further information would be required to be able to proceed with the technical determination of the application, meaning the application could not be 'Not Duly Made'. On 29 November and 10 December 2018, you were made aware of the information that would be needed to duly make the application, which would be formalised in a 'Not Duly Made' email. Prior to the Not Duly Made email being sent to you, a 'Without Prejudice' response was received to raise concerns about the approach to the duly making assessment and challenge some of the information needed for duly making, some of which you felt should be requested during the determination stage instead; namely a noise impact assessment and revised air quality modelling; and a habitats management plan. The 'Without Prejudice' comments were reviewed and it was decided that the noise impact assessment and revised air quality modelling could be requested during the determination stage as requested and the habitats management plan would be requested if the revised air quality modelling showed it was necessary. Subsequently a formal Not Duly Made email was sent to you on 12 December 2018 and a response received on 18 December 2018 and outstanding payment received on 21 December 2018. Following assessment of the outstanding information, the application could be Duly Made. In total, the duly making process took 42.5 hours of the determining officers time, which was in part due to the poor quality of the application which meant that a two stage approach was needed to duly make the application; firstly to establish exactly what was being applied for and secondly to decide what information was needed to duly make the application and added to this, time to deal with the

challenge to the information required. The time spent also included liaising with the local area team to get a good understanding of the local concerns and becoming familiarised with the local area engagement plan.

Duly making, is also the stage to confirm which internal teams need to be involved in the determination and which external parties need to be consulted, including the public. The decision about when and who to consult is based on the type of application and whether the application is for a high public interest site or not. As your application is to substantially vary your permit, and your site is considered to be of high public interest, consultations with external bodies were required, which also included a 28 day consultation period with the public in accordance with our guidance <https://www.gov.uk/government/publications/environmental-permits-when-and-how-we-consult> and our local area engagement plan which explains how best to engage the public at your site.

Internally, our specialist staff on flood risk, site condition and biodiversity and habitats considered relevant parts of the application. No time was allocated to these assessments. Externally, in addition to those bodies specifically consulted, we also consulted the public through a newspaper advertisement, made sure that copies of the application were available online through our consultation pages on gov.uk and at the local public register office. We also arranged for a hard copy to be made available in Rossington Library and 2 officers attended a public consultation meeting at Rossington Parish Council on 4th February. The time spent on the consultation process at the time you received your letter was 35.5 hours. This was the time spent by 2 National Permitting Service (NPS) officers and 2 local area officers. Since then an additional 18.8 hours have been spent on engagement with the public including dealing with their responses, external consultees and attending a meeting at Caroline Flint MP's constituency office on 12th April.

Following duly making, the determination of the application can begin, where the technical content of the application is assessed against our online guidance and relevant industry technical standards such as Technical Guidance Notes and Best Available Techniques (BAT). It is at this assessment stage, that the quality and detail of the application is scrutinised to confirm if the proposal will meet the necessary standards. Where the application documents or proposals do not demonstrate that the relevant standards are met, then depending on the extent of the shortfall we can either refuse at that point or request information from the operator to allow them the opportunity to provide the information reasonably necessary to allow the determination to proceed. In the case of your application, whilst fundamental documents were present following duly making, when each was technically assessed against each of the relevant guidance documents and BAT conclusions, the application documents fell substantially short of the detail necessary to demonstrate that the proposed operations would be operated in accordance with the required standards. This applied to a significant number of documents such as management plans for odour, noise, fugitive emissions, pests, fire prevention, BAT assessments and risk assessments. A substantial request for further information was necessary which took a considerable amount of time to collate due the number of questions required. The Schedule 5 notice for information contained 89 questions and was issued to you on 15 April 2019. The time spent on determination at the time you received your letter was 82 hours. This included 1 NPS officer's time assessing the application documents against relevant guidance and starting to draft the Schedule 5 questions (77 hours) and 1 area officer's time (5 hours) reviewing the application as part of their role in the internal determination process. An additional 62.5 hours has been spent on the determination since you received the letter to continue assessing the application and completing the Schedule 5 request for information, including all reviews and administrative tasks required. This time is made up of 54 hours spent by 3 officers in NPS and 8.5 hours was spent by the local area team to support and provide information for the determination. Where you believe that a specific question has been unreasonably posed in a Schedule 5 notice, you should provide a detailed justification in your response to that question to explain why you believe this is the case.

As per our letter to you on 16 January 2019 and in accordance with our Environmental Permitting Charging Scheme 2019, we will charge for extra costs incurred on a time and materials basis for high public interest applications. This is because the amount of work required for these types of sites can be unpredictable and the work itself can be very complex. To date, 241.35 hours of time has been spent on the application, with 13.65 hours left until time and materials charging commences. The time spent to date is partly due to the high public interest status of the application as explained above, but in the main, it is due to

the poor quality of the application and the amount of information needed to be able to determine the application. Once we move to time and materials charging you will receive invoices regularly and an estimate of the costs likely to be incurred in the next month. If you do not pay these charges promptly this will result in a delay to your determination and could result in the application being refused. If the application is refused, you will have the right of appeal against the decision.

If you have any further concerns about our approach to time and materials charging for your application, you can submit a complaint by following our complaints procedures <https://www.gov.uk/government/organisations/environment-agency/about/complaints-procedure>.

Kind regards

Vicky
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From: clare boles [<mailto:c.boles@ecl.world>]

Sent: 28 March 2019 13:43

To: Patchett, Vicky <Vicky.Patchett@environment-agency.gov.uk>

Cc: Sara Jones <S.Jones@ecl.world>

Subject: Eco Power Environmental Limited formerly Attero Recycling Limited, EA Reference: EPR/EB3207LH/V005

Dear Vicky,

Re: Eco Power Environmental Limited formerly Attero Recycling Limited, EA Reference: EPR/EB3207LH/V005

I have been requested to contact you on behalf of our client, Eco Power Environmental Limited (Eco Power) formerly Attero Recycling Limited, to express very deep concerns regarding the Environment Agency's (EA's) approach and handling of their permit variation application which was Duly Made by the EA on 21st December 2018.

You will be aware that Eco Power received the attached letter from the EA dated 1 March 2019, informing them that as of that date, 160 hours had been used up and 95 hours remained before the EA start to charge on a time and material basis, it is understood these figures are based on an application fee of £25,433 @ £100/hr, equates to 255 hours. I telephoned you on 26 March 2019 requesting an update on the determination of the application and you informed me that the Schedule 5 Notice was being finalised and you are hoping to be able to send me a draft Schedule 5 Notice on the 3rd or 4th April 2019 following peer review. During this telephone conversation you informed me the Schedule 5 Notice contained 90 questions and suggested a meeting to discuss the Notice prior to it being finalised.

Whilst the offer of a meeting is welcomed, the fact that a Notice contains 90 questions really does call in to question the EA's approach to the determination of the application concerning transparency and accountability under the EA's fees and charges scheme. We are therefore requesting the EA provide information as needed and / or a written explanation to the following questions:

1. Why did the EA duly make the application in the first place if there are 90 outstanding questions? Surely if there was that

much information missing relating to the variation application it should have been obvious and the application should not have been duly made?

2. Of the hours spent to date, please provide a breakdown of the hours spent by each EA officer from each department or discipline involved in the internal consultation process;
3. Of each of the EA officers involved in the consultation process please provide the grade of officer and number of years of relevant experience for that officer;
4. Please provide the evidence of what work each officer has done to generate the number of hours spent;
5. What measures are in place by the EA to determine what information is reasonable to request an Operator to provide to determine the application?;
6. What measures are in place that provide the transparency and accountability by the EA to justify the hours spent on the determination of the application?;
7. What measures are in place to control the costs and hours spent by EA officers?;
8. What measures are in place that provide the applicants with a means of questioning whether EA officers are requesting information that is reasonable, justifiable and proportionate as opposed to what might be perceived risks or issues or what might indeed be particular 'pet' issues by individual EA officers or EA team disciplines?;
9. What is the mechanism through which an Operator has the ability to challenge the hours the EA have spent on the determination of the application?;
10. In the event that the Operator refuses to pay the additional costs when on a time charge basis is the application:
 - a) deem rejected by the EA? and
 - b) does the Operator have a right of appeal?
11. If it materialises that of the 90 questions, some are questions that should have been addressed through the normal day to day regulation of the site as opposed to as a result of this variation application then will the hours the EA spent on generating those questions be 'credited' back to the 255 hours originally paid for and allocated?

We look forward to receiving the EA's response.

Kind regards,
Clare

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