

Environment Agency

Review of an Environmental Permit for an Installation subject to Chapter II of the Industrial Emissions Directive under the Environmental Permitting (England & Wales) Regulations 2016

Decision document recording our decision-making process following review of a permit

The Permit number is: EPR/AP3435SD
The Operator is: MES Environmental Limited
The Installation is: Dudley Energy from Waste Facility
This Variation Notice number is: EPR/ AP3435SD /V007

What this document is about

Article 21(3) of the Industrial Emissions Directive (IED) requires the Environment Agency to review conditions in permits that it has issued and to ensure that the permit delivers compliance with relevant standards, within four years of the publication of updated decisions on best available techniques (BAT) conclusions.

We have reviewed the permit for this installation against the revised BAT Conclusions for waste incineration published on 3rd December 2019. This is our decision document, which explains the reasoning for the consolidated variation notice that we are issuing. This review has been undertaken with reference to the decision made by the European Commission establishing best available techniques (BAT) conclusions ('BAT conclusions') for incineration as detailed in document reference C(2019) 7987. It is our record of our decision-making process and shows how we have taken into account all relevant factors in reaching our position. It also provides a justification for the inclusion of any specific conditions in the permit that are in addition to those included in our generic permit template.

It explains how we will ensure that the installation complies with the BAT conclusions by 3rd December 2023. It is our record of our decision-making process and shows how we have taken into account all relevant factors in reaching our position. It also provides a justification for the inclusion of any specific conditions in the permit that are in addition to those included in our generic permit template.

As well as ensuring that the Installation complies with the BAT conclusions the consolidated variation notice takes into account and brings together in a

single document all previous variations that relate to the original permit issued. It also modernises the entire permit to reflect the conditions contained in our current generic permit template.

The introduction of new template conditions makes the Permit consistent with our current general approach and philosophy and with other permits issued to installations in this sector. Although the wording of some conditions has changed, while others have been removed because of the new regulatory approach, it does not reduce the level of environmental protection achieved by the permit in any way. In this document we therefore address mainly our determination of substantive issues relating to the new BAT Conclusions.

Throughout this document we will use a number of expressions. These are as referred to in the glossary.

We try to explain our decision as accurately, comprehensively and plainly as possible. We would welcome any feedback as to how we might improve our decision documents in future. The use of technical terms and acronyms are inevitable in a document of this nature: we provide a glossary of acronyms near the front of the document, for ease of reference.

How this document is structured

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1 Glossary

BAT	Best available techniques
BAT-AEL	BAT associated emission level
BAT-AEEL	BAT associated energy efficiency level
EPR	The Environmental Permitting (England and Wales) Regulations 2016
IED	Industrial Emissions Directive (2010/75/EU)

2 Our decision

We have decided to issue the consolidated variation notice to the operator. This will allow it to continue to operate the Installation, subject to the conditions in the consolidated variation notice.

We consider that, in reaching that decision, we have taken into account all relevant considerations and legal requirements and that the varied permit will ensure that a high level of protection is provided for the environment and human health.

The consolidated variation notice contains many conditions taken from our standard Environmental Permit template including the relevant Annexes. We developed these conditions in consultation with industry, having regard to the legal requirements of the Environmental Permitting Regulations and other relevant legislation. This document does not therefore include an explanation for these standard conditions. Where they are included in the Notice, we consider that those conditions are appropriate..

3 The legal framework

The consolidated variation notice will be issued under Regulation 20 of the EPR. The Environmental Permitting regime is a legal vehicle which delivers most of the relevant legal requirements for activities falling within its scope. In particular, the regulated facility is:

- an *installation* as described by the IED;
- subject to aspects of other relevant legislation which also have to be addressed.

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We consider that the consolidated variation notice will ensure that the operation of the Installation complies with all relevant legal requirements and that a high level of protection will be delivered for the environment and human health.

We explain how we have addressed specific statutory requirements more fully in the rest of this document.

4 The key issues

The key issues arising during this permit review are:

- Ensuring the Installation complies with the BAT Conclusions.
- Setting emission limits (including BAT-AELs) for emissions to air.
- The energy efficiency levels associated with the Best Available Techniques (BAT-AEELs)

4.1 Ensuring the Installation complies with the BAT conclusions

Based on our records and previous regulatory activities with the Installation we are satisfied that the operator will be able to operate the installation to comply with the BAT conclusions, in particular the BAT AELs that have been specified in the permit. Any improvements required to enable compliance are likely to be minor. In the unlikely event the submission to improvement condition IC1 is either not made or reveals any issues we will take action to rectify before 03/12/2023.

Our general approach to how we have chosen to implement the requirements of the BAT Conclusions is set out in the current version of the UK Waste Incineration BAT Conclusions Interpretation Document.

We have set an improvement condition (IC1) that requires the operator to submit a report to the Environment Agency to show how the installation will comply with each of the BAT conclusions.

The report will include:

- Whether and how the installation complies with the standards in set out in each BAT conclusion and justify if any standards are not relevant for the installation. If the installation does not currently comply with a standard set in a BAT conclusion describe how and when the installation will comply with that standard.
- If the installation will continue operating in a manner which would not comply with a BAT Conclusion, after 03/12/2023 the operator will be required to submit a justification for this to show how the techniques they propose using are equivalent.

We will assess the improvement condition response to ensure that the installation is in full compliance by 03/12/2023. If we are satisfied with the response then the techniques will be incorporated into and enforceable under the permit via incorporation of our written approval of the submission in table S1.2 of the permit.

4.2 Setting emission limit values

The consolidated permit includes new emission limits for emissions to air. These limits ensure that the installation will comply with the relevant BAT-AELs, as specified in the BAT conclusions, and the relevant limits from IED Annex VI.

A number of general principles were applied during the permit review, including those set out in the UK Waste Incineration BAT Conclusions Interpretation Document . These included:

- The upper value of the BAT-AELs ranges specified were used unless use of the tighter limit was justified.
- The principle of no backsliding where if existing limits in the permit were already tighter than the upper end of the BAT-AEL ranges, the existing permit limits were retained.
- Where a limit was specified in both IED Annex VI and the BAT Conclusions for a particular reference period, the tighter limit was applied and in the majority of cases this was from the BAT Conclusions.

We have set the emissions limit values at the top end of the BAT-AEL range in line with section 4.35 of Defra's Industrial emissions Directive EPR Guidance on Part A installations which states: *Where the BAT AELs are expressed as a range, the ELV should be set on the basis of the top of the relevant BAT-AEL range – that is to say, at the highest associated emission level - unless the installation is demonstrably capable of compliance with a substantially lower ELV, based on the BAT proposed by the operator, or exceptional environmental considerations compel a tighter ELV.*

We are satisfied that environmental considerations do not require tighter ELVs to be set, and the operator has not proposed any lower ELVs, and so we have set the ELVs at the top end of the BAT-AEL ranges.

We have set IC4 which requires the operator to optimise their currently installed NOx reduction systems as far as practicable.

Based on our records and previous regulatory activities with the Installation we are satisfied that the operator will be able to operate the installation to meet the BAT-AELs. If the operator does not want to comply with the BAT-AELs they will need to either obtain a derogation by 03/12/2023 or stop operating. We would only allow a derogation in **very limited circumstances** where the costs of achieving the BAT-AELs are disproportionately high compared to the environmental benefits, for a particular reason. The reason must be either:

- the geographical or local environmental conditions of the site
- the technical characteristics of the site

4.3 Energy efficiency

The BAT conclusions specify an energy efficiency level associated with the best available techniques (BAT-AEEL). The BAT-AEEL is based on gross electrical efficiency, gross energy efficiency or boiler efficiency depending on the type of plant.

The relevant BAT-AEEL for this installation is gross electrical efficiency. We have set an improvement condition (IC5) that requires the operator to determine the plant's efficiency and, if below the BAT-AEEL, to review measures to improve efficiency and submit an implementation plan for improvements identified.

4.4 Monitoring

The monitoring requirements for mercury and dioxins/furans are dependent on whether the waste has a low and stable mercury content and whether emissions of dioxins are stable respectively; improvement conditions IC2 and IC3 require the operator to submit information to demonstrate this. The varied permit contains options so that we can require the necessary monitoring after completion of the improvement conditions.

5 Other considerations not directly related to the BAT Conclusions permit review.

Aspect considered	Decision
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 at least the same level of protection as those in the previous permit and in some cases will provide a higher level of protection to those in the previous permit.
Installation specific permit conditions	None
Operator competence	
Management system	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.
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>