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Date Received
Appeal Ref

The Environmental Permitting (England and Wales) Regulations 2016

Environmental Permitting Appeal Form

If you need this document in large print, on audio tape, in Braille or in another language please call 0303 444 5584.

WARNING: The appeal must reach the Inspectorate with the statutory appeal deadlines as laid out in Schedule 6 of the above mentioned regulations.

PLEASE PRINT CLEARLY IN CAPITALS USING BLACK INK

A. APPELLANT DETAILS

Name

Organisation Name (if applicable)

Contact reference Number

Address

Postcode

Daytime Tel Fax

Email

I prefer to be contacted by: Email Post

B. AGENT DETAILS (if applicable)

Name

Organisation Name (if applicable)

Contact reference Number

Address

Postcode

Daytime Tel Fax

Email

I prefer to be contacted by: Email Post

C. REGULATOR DETAILS – ENVIRONMENT AGENCY/LOCAL AUTHORITY

Name E N V I R O N M E N T A G E N C Y

Contact reference Number S A R A H R A Y M O N D

Date of Application (DDMMYY) 0 1 0 8 2 2

Date of Decision (DDMMYY) 2 5 0 3 2 4

D. APPEAL SITE ADDRESS

Site Address M A P L E L O D G E S L U D G E T R E A T M E N T C E N T R E

M A P L E C R O S S R I C K S M A N S W O R T H

Postcode (if known) W D 3 9 S Q

E. GROUNDS OF APPEAL

Please indicate the grounds for appeal by ticking whichever box applies and then set out your reasons in section F of this form.

- | | | |
|--|----|-------------------------------------|
| 1. Refusal to grant a Permit; | 1. | <input type="checkbox"/> |
| 2. Refusal to grant a variation of the conditions of an existing Permit; | 2. | <input type="checkbox"/> |
| 3. Conditions attached to a Permit following an application for a Permit or variation; | 3. | <input checked="" type="checkbox"/> |
| 4. Refusal of application to transfer or conditions attached to Permit to take account of transfer; | 4. | <input type="checkbox"/> |
| 5. Refusal of application to surrender the Permit or conditions attached to Permit to take account of surrender; | 5. | <input type="checkbox"/> |
| 6. Variation, Enforcement, Revocation, Prohibition or Suspension Notice; | 6. | <input type="checkbox"/> |
| 7. Refusal of approval to initiate closure procedures or is served with closure notice; | 7. | <input type="checkbox"/> |
| 8. Failure by regulator to give notice of determination of application for Permit, variation, transfer or surrender within statutory time-period - 'deemed refusal'; | 8. | <input type="checkbox"/> |
| 9. Deemed withdrawal of application following failure to provide required information. | 9. | <input type="checkbox"/> |

F. REASONS FOR APPEAL

1. Thames Water Utilities Limited ("TWUL") seeks to appeal against condition 2.4.1 of environmental permit EPR/FP3435LA ("the Permit") and the following improvement conditions specified in Schedule 1, Table S1.3:
- IC12
IC13
IC14

IC15a, b and c
IC16
IC17a
IC19a

2. The reasons for appeal are set out below, in respect of each individual improvement condition.

IC12 – Secondary containment

3. Improvement condition IC12 is unreasonable in that:

- i) The Environment Agency (“EA”) erred in their interpretation of BAT and the available guidance, by insisting that the relevant industry guidance, CIRIA C736, “requires”, for the purposes of achieving BAT, a minimum of the greater of either 110 per cent of the capacity of the largest tank within the bund, or 25 per cent of the total capacity of all tanks within the bund. In fact, CIRIA C736 requires a site-specific assessment of the appropriate secondary containment and does not impose arbitrary minimum requirements.
- ii) TWUL submitted a secondary containment design having been directed by the EA that nothing less than the 110%/25% rule would be considered as a minimum threshold in order to submit a duly made permit application.
- iii) In adopting the position that it did on the interpretation of the relevant guidance and BAT, the EA has unfairly restricted TWUL’s discretion on how to achieve BAT. IC12 limits the design of secondary containment to only that in the document ‘J840 – STC IED Containment Maple Lodge STC – Containment Options Report, Dated October 2023’. TWUL should be permitted as part of the improvement condition to resubmit its proposed option for secondary containment afresh.
- iv) Alternatively, given that TWUL’s permit application was made on the basis that it was understood that the EA required adherence to the 25%/110% rule as a minimum requirement, following clarification of the interpretation of the guidance in the related appeal APP/EPR/659, as a matter of fairness TWUL should be permitted as part of the permit condition to resubmit its proposed option for secondary containment afresh.
- v) The timescales imposed by IC12 are unreasonable. TWUL has explicitly stated, as part of the permitting process, that TWUL is not able to commit to secondary containment requirements by the stated deadline of December 2024, delivery timescales will be subject to the outcome of PR24 and subsequent price reviews discussions. Cost and the requirement for available funding has been unreasonably ignored by the EA in determining appropriate timescales within the improvement condition.
- vi) Furthermore, the timescales that have been imposed are arbitrary and unreasonable. The final deadline for implementation of all required and approved containment improvements fails to properly take into account the practicalities of implementing secondary containment at the Maple Lodge site.

IC13 – Enclosure of tanks storing (or treating) sewage sludge (pre AD)

4. Improvement condition IC13 is unreasonable in that:

- i) Although IC13 purports to allow TWUL to submit a written ‘enclosure and abatement plan’ in line with BAT 14 and 53, the EA has made it explicitly clear through its permit decision document that it requires all tanks to be covered, irrespective of risk.
- ii) The EA’s position is wrong in law. BAT14 recognises that an appropriate combination of techniques are to be considered and allows for the consideration of risk in order to determine the need for any tank coverings at all.

- iii) IC13 fails to identify with sufficient precision that covering is one of an appropriate combination of techniques that could be deployed, depending on the level of risk, and consequently a risk assessment can determine whether a tank covering is required.
- iv) The timescales that have been imposed are arbitrary and unreasonable. TWUL has explicitly stated, as part of the permitting process, that TWUL is not able to commit to tank covering requirements by the stated deadline of December 2024, delivery timescales will be subject to the outcome of PR24 and subsequent price reviews discussions. Cost and the requirement for available funding has been unreasonably ignored by the EA in determining appropriate timescales within the improvement condition.
- v) The final deadline for implementation of all required vessel cover improvements fails to properly take into account the practicalities of implementing tanks coverings across the entire Maple Lodge site.

IC14 – Enclosure of tanks undertaking AD

5. Improvement condition IC14 is unreasonable in that:

- i) The timescales that have been imposed are arbitrary and unreasonable. TWUL has explicitly stated, as part of the permitting process, that TWUL is not able to commit to tank covering requirements by the stated deadline of December 2024, delivery timescales will be subject to the outcome of PR24 and subsequent price reviews discussions. Cost and the requirement for available funding has been unreasonably ignored by the EA in determining appropriate timescales within the improvement condition.
- ii) The final deadline for implementation of all required vessel cover improvements fails to properly take into account the practicalities of implementing tank coverings across the entire Maple Lodge site.

IC15 a, b, c – Enclosure of tanks storing or treating stable and unstable digestate

6. Improvement condition IC15 is unreasonable and/or unnecessary in that:

- i) The Environment Agency have withdrawn the previously referenced benchmark threshold limits stated in PAS110 for digestate stability. Collaborative discussions are currently taking place on the development of an industry benchmark on threshold limits for digestate stability. On 24 April 2024, the Environment Agency agreed an action to provide a written response to Water and Sewerage Companies (WaSCs) on how to ensure consistency across the data collection, the technical need for this data and how it will be used by the Environment Agency. Such data is required in order to derive an industry benchmark on threshold limits for digestate stability. The Environment Agency has previously confirmed on 20 February 2024 that they are in discussion with biowaste industry experts on how best to determine stability and the position remains unconcluded.
- ii) The timescale provided for adherence to IC15a does not take into account the fact of these discussions. The resulting deadline of 25 September 2024, 6 months from the date of permit issue, for a written report on the stability of the digestate, is unreasonable.
- iii) IC15b and IC15c are both predicated on the completion of a report under IC15a. It follows that the appropriate timescales should allow for the development of the relevant industry benchmark.
- iv) IC15c has been drafted on the mistaken premise that tank coverings for all tanks irrespective of any risk assessment are inevitable for the purposes of achieving BAT.

This is wrong in law. BAT14 recognises that a risk assessment can determine the need for any tank coverings at all. The improvement condition allows no scope for tanks to be left uncovered where warranted following an appropriate risk assessment.

- v) Furthermore, the EA have proposed that they intend to revise IC15, to remove the outcome of stability testing from the decision-making process on tank coverings. The lack of clarity renders the current improvement condition and its timescales unworkable.
- vi) The timescales imposed by IC15 are unreasonable. Further consideration is required to be taken into account in the design and implementation plan for covering tanks include:
 - (i) The wider health and safety, operational and regulatory compliance position of the existing wastewater treatment operation; and
 - (ii) The need to determine the level of residual fugitive emissions and then undertake a risk assessment to conclude what further interventions may be required;
 - (iii) The cumulative impact of IED improvements at other sites, both financial and operational;
 - (iv) Wider business implications of a single blanket deadline for all infrastructure improvements to relevant STCs, wider regulatory obligations imposed on TWUL and the need for funding.
- vii) TWUL has explicitly stated, as part of the permitting process, that TWUL is not able to commit to tank covering requirements by the stated deadline of December 2024, delivery timescales will be subject to the outcome of PR24 and subsequent price reviews discussions. Cost and the requirement for available funding has been unreasonably ignored by the EA in determining appropriate timescales within the improvement condition.
- viii) The resulting position is that a final deadline of 31 March 2025 for all improvements is unrealistic and unreasonable.

IC17a – Inventory of liquid waste water discharged from AD

7. Improvement condition IC17a is unreasonable in that:

- i) There is currently a lack of clarity on the ability to monitor parameters within the Environment Agency's Surface Water Pollution Risk Assessments and 'H1 process' guidance documents. Suitable analytical methodologies are not all commercially available or technically possible for the stated list of parameters for the type of waste waters produced for this process.
- ii) The improvement condition requires that the sampling programme shall be produced in accordance with EA guidance documents that are not fit for this purpose. In addition, the EA have failed to account for the cost of sampling.
- iii) Discussions are still ongoing at industry level on how the required sampling programme should be designed. There is an action, agreed on 19th June 2024 to issue a formal Environment Agency letter to Directors extending the deadline. On 18th September 2024, this action was recorded at the 'Task and Finish' industry group meeting as still outstanding with the Environment Agency.
- iv) IC17a unreasonably fails to consider the timescales involved in these discussions. Timescales in the improvement condition should be varied to permit these discussions to be finalised and to take account of the EA's yet-to-be-published national position.

IC19a – Inventory of liquid waste water discharged from head of works/installation activity

8. Improvement condition IC19a is unreasonable in that:

- i) There is currently a lack of clarity on the ability to monitor parameters within the Environment Agency's Surface Water Pollution Risk Assessments and 'H1 process' guidance documents. Suitable analytical methodologies are not all commercially available or technically possible for the stated list of parameters.
- ii) The improvement condition requires that the sampling programme shall be produced in accordance with EA guidance documents that are not fit for this purpose. In addition, the EA have failed to account for the cost of sampling.
- iii) Discussions are ongoing at industry level on how the required sampling programme should be designed. There is an action, agreed on 19th June 2024 to issue a formal Environment Agency letter to Directors extending the deadline. On 18th September 2024, this action was recorded at the 'Task and Finish' industry group meeting as still outstanding with the Environment Agency.
- iv) IC19a unreasonably fails to consider the timescales involved in these discussions. Timescales in the improvement condition should be varied to permit these discussions to be finalised and to take account of the EA's yet-to-be-published national position.

G. CHOICE OF PROCEDURE

Please choose option 1 , 2 or 3 by *ticking one box only*

Please note that we must also take the Environment Agency's/Local Authority's preference into account when we decide how the appeal will proceed.

1. Written Representations

This procedure involves an exchange of the parties' written statements, followed by a visit to the appeal site by the Inspector who is responsible for determining the appeal.

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W

You and a representative of the Environment Agency/Local Authority will be given an opportunity to accompany the Inspector during the site visit.

2. Hearing

A hearing is a discussion, held under the direction of the Inspector. It lets parties exchange their views in a less formal atmosphere than at a public inquiry. Hearings are open to the public, and third parties may be heard at the discretion of the Inspector.

Hearings are not usually suitable for appeals that:

- are complicated or controversial and have created a lot of local interest
- require cross-examination of witnesses.

H

Although you may prefer a hearing, the Inspectorate will also consider whether your appeal would be best dealt with at a more formal inquiry or on the basis of written representations.

I have completed all sections of the appeal form and confirm that the details are correct to the best of my knowledge. (Please Note: signature is not necessary for electronic submissions)

Signature

Date (DDMMYY)

2 4 0 9 2 4

Name (in capitals)

C A T H R Y N R C S S

On behalf of (if applicable)

T H A M E S W A T E R U T I L I T I E S L I M I T E D

For more information about how we process your personal information please see "Environmental Permitting (England and Wales) Regulations 2016 – The appeal procedure guidance."

Please now send this form and all the necessary supporting documents to:

Environment Team, The Planning Inspectorate, 3A Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

Or e-mail it to: ETC@planninginspectorate.gov.uk

You also need to send a copy of it to the regulator that issued the Notice.

When we receive your appeal form, we will:

1. Check that the appeal is valid and everything is in order;
2. If everything is in order, we will give you an appeal timetable and **start date**;
3. Inform the regulator of the start date of the appeal (if applicable).

If you submit information or representations late we may be unable to consider them, the Inspector may not see them, and they may be returned to you.

At the end of the appeal process you will receive the Inspector's decision, in writing (including details of the Inspector's reasoning).

J. SUPPLEMENTARY SHEET

