

POLLUTION PREVENTION AND CONTROL ACT 1999

ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2010

EXPLANATORY NOTES

THESE NOTES DO NOT COMPRISE PART OF PERMIT REFERENCE NUMBER [<insert permit reference no>](#) BUT CONTAIN INFORMATION AND GUIDANCE WHICH IS RELEVANT TO THAT PERMIT. THESE NOTES SHOULD BE READ IN CONJUNCTION WITH PERMIT NUMBER [<insert permit reference no>](#) AND KEPT FOR FUTURE REFERENCE

These notes are for guidance only. It is recommended that in the event of an enquiry regarding any matter in these notes, you should refer to the Pollution Prevention and Control Act 1999 and the Environmental Permitting (England and Wales) Regulations 2010, or contact the Environmental Health Department, North Norfolk District Council, Holt Road, Cromer. The terms "Regulator", "Local Authority" and "enforcing authority" used in these notes refer to North Norfolk District Council.

The Permit is issued in accordance with the Pollution Prevention and Control Act 1999, hereinafter referred to as "the Act" and the Environmental Permitting (England and Wales) Regulations 2010, hereinafter referred to as "the EP Regulations".

HEALTH AND SAFETY REQUIREMENTS

The responsibilities you have under legislation for health, safety and welfare in the workplace remain in force.

OTHER LEGISLATIVE REQUIREMENTS

This Permit does not detract from any other statutory requirement, such as the need to obtain planning permission, hazardous substances consent, discharge consent or a waste disposal licence from the Environment Agency or Anglian Water or Building Regulations approval.

BEST AVAILABLE TECHNIQUES (BAT) DUTY

BAT is the main basis for determining standards under the EP Regulations, and defined as the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for Emission Limit Values (ELV) designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole.

As your PPC permit has transferred automatically to an EP permit, the implied BAT duty will continue when it becomes an EP permit (EP regulation 72(6) as outlined below:

72(6) Notwithstanding the revocation of regulation 12(10) of the 2000 Regulations by these Regulations, any condition implied in a permit by that regulation continues to have effect when the permit becomes an environmental permit

If you have been issued with a new EP Permit, please take note of the condition below, which shall be contained within your permit:

“The best available techniques shall be used to prevent or, where that is not practicable, reduce emissions from the installation in relation to any aspect of the operation of the installation which is not regulated by any other condition of this permit.”

REVIEW OF PERMIT

Regulation 34 of the EP Regulations imposes an obligation on the Regulator to periodically review the Environmental Permit.

PROPOSED CHANGE IN THE OPERATION OF AN INSTALLATION

Your EP permit contains a condition which states that:

“If the operator proposes to make a change in operation of the installation, he must, at least 14 days before making a change, notify the regulator in writing. The notification must contain a description of the proposed changes in the operation. It is not necessary to make such a notification if an application to vary this permit has been made and the application contains a description of the proposed change. In this condition ‘change in operation’ means a change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment.”

VARIATION OF CONDITIONS OF PERMITS

Regulation 20(1) of the EP Regulations state that the regulator may vary an environmental permit, on the application of the operator, or on its own initiative.

TRANSFER OF PERMIT

Regulation 21 of the EP Regulations states

“The regulator may transfer an environmental permit in whole or in part from the operator to another person on the joint application of the operator and that other person.”

An application shall be accompanied by the Permit, any fee prescribed in respect of the transfer in accordance with the current charging scheme, the operator's and the proposed transferee's telephone number and address and, if different, any address to which correspondence relating to the application should be sent. Failure to notify the

Regulator of a transfer is an offence under regulation 21 the EP Regulations and will render the operator liable to prosecution.

SURRENDER OF PERMIT

Regulation 24 applies where an operator of a Part B installation or Part B mobile plant ceases or intends to cease operating the installation or mobile plant either in whole or in part. The notification must be made using the form obtained from the regulator, which shall require the following information:

- The operator's contact details
- Details of the permit to be surrendered and, if partial surrender, which parts are to be surrendered (or, in the case of mobile plant, which plant are covered by the surrender)
- If a partial surrender, details of any conditions the operator considers may need varying as a result.
- Details of any information contained in the notification which the operator wishes to be kept from the public register on grounds of commercial confidentiality.
- The date on which the surrender is to take effect, which must be no less than 20 working days from the date when the notification is given.
- The operator's signature.

REVOCAION OF PERMIT

Regulation 22 of the EP Regulations states that "the regulator may revoke an environmental permit in whole or in part." by serving a notice ("a revocation notice") on the operator. The Regulator may serve a notice under Regulation 23.

Where the regulator decides to revoke an environmental permit it must serve a notice on the operator specifying:

- (a) the reasons for the revocation;
- (b) in the case of a partial revocation - the extent to which the environmental permit is being revoked, and
 - (ii) any variation to the conditions of the environmental permit; and
- (c) the date on which the revocation will take place, which must not be less than 20 working days from the date on which the notice is served.

An appeal may be made before the notice takes effect (Schedule 6, paragraph 3(1) (a) of the EP regulations.

ENFORCEMENT NOTICE

Regulation 36 of the EP Regulations allows an authority to serve an enforcement notice, this must:

- (a) state that the Regulator is of that opinion that the operator has contravened, is contravening or is likely to contravene any condition of his or her permit;
- (b) specify the matters constituting the contravention or making a contravention likely;
- (c) specify steps to be taken to remedy the contravention or remedy the matter likely to cause the contravention; and
- (d) specify the period within which those steps must be taken.

The actions that may be specified in an enforcement notice must include those that need to be taken to remedy the contravention of any condition of a Permit and those that must be taken to remedy the effects of any pollution caused by the contravention. The Regulator may withdraw an enforcement notice at any time.

SUSPENSION NOTICES

Regulation 37 of the EP Regulations states “If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may serve a notice on the operator under this regulation (in these Regulations, a “suspension notice”).”

A suspension notice must:

- (a) State the Regulator's view that the operation of the installation involves a risk of serious pollution;
- (b) State the risk of serious pollution involved, the steps to be taken to remove the risk, and the period within which they must be taken;
- (c) State that the Permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and
- (d) if some activities covered by the installation are being allowed to continue under the permit (i.e. a partial suspension notice) state any steps that must be taken in relation to that activity on top of those already required by the permit.

Where a suspension notice is served under this Regulation the Permit shall, on the service of the notice, cease to have effect as stated in the notice. The Regulator may withdraw a suspension notice at any time.

PREVENTION OF POLLUTION NOTIFICATION

- (1) Regulation 57 of the EP Regulations states “If the regulator considers that the operation of a regulated facility under an environmental permit involves a risk of serious pollution, it may arrange for steps to be taken to remove that risk.”
- (2) If the commission of an offence under regulation 38(1) (a), (b) or (c) causes pollution, the regulator may arrange for steps to be taken to remedy the effects of that pollution.
- (3) If the regulator intends to arrange for steps to be taken under paragraph (2), it must notify the operator of the steps not less than 5 working days before they are taken.
- (4) If the regulator arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator.
- (5) But costs are not recoverable under paragraph (4) —
 - (a) if the steps referred to in paragraph (1) are taken and the operator shows that there was no risk of serious pollution; or
 - (b) to the extent that the operator shows that the costs were unnecessarily incurred by the regulator.

RIGHT OF APPEAL (Appeals to the Secretary of State)

Regulation 31 of the EP Regulations sets out that, with the exception of directions issued by the Secretary of State, the following persons,

1. Refusal or deemed refusal to grant a permit
2. Refusal of an application to vary a permit.
3. If the operator disagrees with the conditions imposed by the authority as a result of a permit application or an application for a variation notice;
4. Refusal of an application to transfer a permit, or if the operator disagrees with the conditions imposed by the authority to take account of such a transfer.
5. Refusal of an application to surrender a permit, or if the operator disagrees with the conditions imposed by the authority to take account of the surrender.
6. The service of a variation notice (not following an application by the operator), a revocation notice, an enforcement notice, or a suspension notice on the operator;
7. The deemed withdrawal by a local authority of a duly-made application because the operator has not provided further information (paragraph 4 of Schedule 5 to the EP regulations).

Under the EP regulations 53(1) operators have the right of appeal against a decision that information will not be withheld from the public register for reasons of commercial confidentiality.

- Operators may appeal, to the Secretary of State, against the decision of the Regulator before the expiry of the period of six months beginning with the date of the decision or deemed decision which is the subject of the appeal.
- For appeals against a revocation notice, the appeal must be made before the date on which the revocation takes effect.

- For appeals against a variation notice (not requested by the operator), an enforcement notice or a suspension notice, must be made before the expiry of the period of two months beginning with the date of the notice which is the subject of the appeal.
- Appeals in relation to confidentiality must be received within 15 working days after the local authority has given its determination:
- Appeals in relation to deemed withdrawal of duly made applications must be received not later than 15 working days from the date the notice of deemed withdrawal is served.

HOW TO APPEAL

Schedule 6 paragraph 2(2) of the EP Regulations, states that a person who wishes to appeal must:

- send the appropriate authority written notice of the appeal and the documents specified in sub-paragraph (2); and
- at the same time send the regulator copies of the notice and documents.

The documents are—

- a statement of the grounds of appeal;
- a copy of any relevant application;
- a copy of any relevant environmental permit;
- a copy of any relevant correspondence between the appellant and the regulator;
- a copy of any decision or notice which is the subject matter of the appeal; and
- a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or dealt with by way of written representations.

An appellant may withdraw an appeal by notifying the appropriate authority in writing and must send a copy of that notification to the regulator.

Appeals should be sent to:

The Planning Inspectorate
 Environment Team, Major & Specialist Casework
 Room 4/04 Kite Wing
 Temple Quay House
 2 The Square
 Temple Quay
 Bristol BS1 6PN
 Tel: 0117 272 8726
 Fax: 0117 372 8139

Appeal form can be downloaded:

<http://www.planning-inspectorate.gov.uk/pins/environment/environment/index.htm>

The operator and local authority will normally be expected to pay their own expenses during an appeal. Where a hearing or inquiry is held as part of the appeal process, by virtue of paragraph 5(6) of Schedule 6, either the appellant or the authority can

apply for costs. Applications for costs are normally heard towards the end of the proceedings and will only be considered if the party claiming them can show that the other side behaved unreasonably and put them to unnecessary expense. There is no provision for costs to be awarded where appeals are dealt with by written representation.

REQUEST FOR INFORMATION BY NOTICE

To obtain more information, authorities can serve a further information notice under Paragraph 4 of Schedule 5 of the EP Regulations. The notice must specify what further information is required and when it must be provided.

If the applicant fails to provide the further information in accordance with the notice, the regulator may serve a further notice on the applicant stating that the application is deemed to be withdrawn, upon which the application is deemed to be withdrawn.

If an application is deemed to be withdrawn, the applicant is not entitled to the return of any fee which accompanied it.

PUBLIC REGISTER

Local authorities are required by EP regulation 46 to maintain a public register containing information on all the LA-IPPC and LAPPC installations and mobile plant they are responsible for. A register can be held in any form, which includes electronically.

The Public Register shall contain particulars of applications, notices for further information, representations from the public consultations, Permits, notifications of changes, applications for variations, transfers or surrender of permits, variations, transfers and surrenders, enforcement, suspension notices and revocation notices, notices withdrawing enforcement, suspensions or revocation notices, notice of appeal, representation in response to appeal, appeal decisions, convictions for offences, monitoring data, and other information. Also, information obtained or furnished in pursuance of the conditions of Permits, directions given by the Secretary of State and such other matters relating to the carrying on of prescribed processes. Where commercially confidential information of any description is excluded from the register, a statement shall be entered into register indicating the existence of that exclusion.

The register maintained by a local authority Regulator shall also contain any particulars contained in any register maintained by the Environment Agency relating to the operation of a Part A installation or mobile plant in the area of the local authority Regulator in relation to which the Environment Agency has functions under these PPC Regulations.

NATIONAL SECURITY

EP regulation 47 allows for information to be kept from public registers for reasons of national security. For this to happen, the Secretary of State must determine that placing the information on the register would be contrary to the interests of national security.

COMMERCIAL CONFIDENTIALITY

The possible exclusion of confidential information from the register can be triggered where a local authority makes a determination that the information may be commercially or industrially confidential (EP regulation 51) or if anyone objects to the inclusion of information on the grounds of commercial confidentiality. This is called an “objection notice.” (EP regulation 49)

If an operator wants confidential information to be excluded from the register he or she should make a request at the time of the information is submitted, whether as part of an application, as monitoring information, or any other purpose. The operator should supply clear justification for reasons to keep information confidential.

OFFENCES

EP regulation 38 lists offences under the Act;

- (1) It is an offence for a person—
 - (a) to contravene, or knowingly cause or knowingly permit the contravention of, regulation 12;
 - (b) to fail to comply with or to contravene an environmental permit condition;
 - (c) to fail to comply with the requirements of an enforcement notice, a suspension notice or a landfill closure notice;
 - (d) to fail to comply with a notice under regulation 60(2) requiring the provision of information, without reasonable excuse;
 - (e) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to provide information imposed by or under a provision of these Regulations, or
 - (ii) for the purpose of obtaining the grant of an environmental permit to himself or another person, or the variation, transfer in whole or in part, or surrender in whole or in part of an environmental permit;
 - (f) intentionally to make a false entry in a record required to be kept under an environmental permit condition;
 - (g) with intent to deceive—

- (i) to forge or use a document issued or authorised to be issued or required for any purpose under an environmental permit condition, or
- (ii) to make or have in his possession a document so closely resembling such a document as to be likely to deceive.

(2) It is an offence for an establishment or undertaking to—

- (a) fail to comply with paragraph 9 or 12(3) of Schedule 2; or
- (b) intentionally make a false entry in a record required to be kept under paragraph 12(3) of Schedule 2.

If an offence committed by a person under this regulation is due to the act or default of some other person, that other person is also guilty of the offence and liable to be proceeded against and punished accordingly.

PENALTIES

EP 39 lays out the penalties for offences:

(1) A person guilty of an offence under regulation 38(1) (a), (b) or (c) is liable—

- (a) on summary conviction to a fine not exceeding £50,000 or imprisonment for a term not exceeding 12 months, or to both; or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years, or to both.

(2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003(25), paragraph (1) (a) has effect as if—

- (a) for “£50,000” there were substituted “£20,000”; and
- (b) for “12 months” there were substituted “6 months”.

(3) A person guilty of an offence under regulation 38(1) (d), (e), (f) or (g) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to a fine or imprisonment for a term not exceeding 2 years, or to both.

(4) An establishment or undertaking guilty of an offence under regulation 38(2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

ENFORCEMENT BY THE HIGH COURT

If the regulator considers that proceedings against a person for an offence under regulation 38(1)(c) would afford an ineffectual remedy against the person, the regulator may take proceedings in the High Court for the purpose of securing compliance with the enforcement notice, suspension notice or landfill closure notice.

ADMISSIBILITY OF EVIDENCE

Where, pursuant to an environmental permit granted by a local authority, an entry is required to be made in any record as to the observance of a condition of the environmental permit and the entry has not been made, that fact is admissible as evidence that the condition has not been observed.

Any Queries Please Contact:

Environmental Protection Team
Environmental Health
North Norfolk District Council
Holt Road
Cromer
Norfolk
NR27 9EN

Phone 01263 516085
Fax 01263 514627
Email ep@north-norfolk.gov.uk