

Notes

These notes do not form part of the Permit, but are issued for the guidance of the Operator

Best Available Techniques

“Best Available Techniques” means 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 designed to prevent and, where that is not practicable, generally to reduce emissions and their impact on the environment as a whole; and for the purpose of this definition:

- a) “available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;
- b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;
- c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

The following is an extract from Schedule 2 of the Pollution Prevention and Control (England and Wales) Regulations 2000, so far as it applies to Part B installations and mobile plant:

“In determining the best available techniques special consideration shall be given to the following matters, bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention:

“... ”

- (4) comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
- (5) technological advances and changes in scientific knowledge and understanding;
- (6) the nature, effects and volume of the emissions concerned;
- (7) the commissioning dates for new or existing installations or mobile plant;
- (8) the length of time needed to introduce the best available techniques;

...”

The Department for Food, Environment and Rural Affairs (DEFRA) has issued Process Guidance Notes for the different industrial sectors that are subject to control under the Pollution Prevention and Control (England and Wales) Regulation 2000. Isle of Wight Council has considered the Process Guidance Note(s) that are relevant to your particular process(es) in drafting this Permit.

You should note that Regulation 12(10) of the Pollution Prevention and Control (England and Wales) Regulations 2000 provides that there is implied in every Permit a condition that, in operating the installation, the Operator shall use the Best Available Techniques (BAT) for preventing, or, where that is not practicable, reducing emissions from the installation.

Isle of Wight Council are therefore of the opinion that the Conditions of this Permit, together with the “Implied BAT Condition” referred to in the previous paragraph, represent BAT for your installation.

Changes in operation

If you propose to make changes to the Permitted installation, you are advised to consider carefully the requirements of Regulations 16 and 17.

Regulation 16 requires you to notify the Regulator in writing at least 14 days before making any change in the operation of the installation, unless Regulation 17 applies to the change.

Regulation 17(2) and Schedule 7 allows the Operator to apply for a Variation to the Permit. This procedure, rather than the notification procedure in Regulation 16, applies where there is a “substantial change” to the installation, or where the operation of the installation as changed would result in a contravention of any of the Conditions of the Permit, unless those Conditions were varied.

“Change in operation” is defined in Regulation 2(1) as: “a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment;” and “substantial change” means “a change in operation which, in the opinion of the regulator, may have significant negative effects on human beings or the environment.”

Further guidance on what constitutes “substantial change” is available at <http://www.environment-agency.gov.uk/commondata/105385/ippcsub.pdf>

Failure to apply for a Variation under certain circumstances could mean that the installation would be operated otherwise than in accordance with the Permit Conditions, in contravention of Regulation 9.

There is a fee payable for an application for a Variation under Regulation 17. The application must be made on a form available from the Regulator. There is no fee for a notification under Regulation 16.

Transfer of Permit

Where the Operator proposes to transfer the Permit to another Operator, both the transferor and the transferee are required to apply jointly to the Regulator for that transfer to be effected. This applies also to the situation where the name of the Operator changes as a result of a Company merger or reorganisation. Application must be made on forms available from the Regulator. Failure to make such application is an offence. There is a fee payable for an application to transfer a Permit.

Surrender of Permit

Regulation 19 requires that the Operator of a Part A2 installation who proposes to cease operating that installation apply to the Regulator to surrender the Permit. The application must be made on a form available from the Regulator, and must be accompanied by the prescribed fee.

The application must also be accompanied by a site plan; a site report describing the condition of the site; and a description of any steps that have been taken to avoid any pollution risk on the site resulting from the operation of the installation.

Regulation 20 requires that the Operator of a Part B installation who proposes to cease operating that installation notify the Regulator of that fact. The application is to be made on a form available from the Regulator. There is no fee involved in this case.

Fees and Charges

In addition to the various application fees referred to above, the Operator is required to pay to the Regulator an annual subsistence charge. The amount of that charge is set by the Secretary of State in the LAPC and LA-IPPC Fees and Charges Scheme. This is updated annually.

You will be invoiced each year for the required fee.

Appeals

Regulation 27(1) allows the appeals under the following circumstances:

- Refusal to grant a Permit under Regulation 10;
- Refusal to vary conditions of a Permit on application under Regulation 17(2);
- An Operator may appeal against Conditions he is aggrieved by, following Application under Regulation 10 or Variation under Regulation 17;
- Refusal by the Regulator to effect the transfer of a Permit after application under Regulation 18(1), or against any variation in conditions to take account of such transfer;
- Refusal by the Regulator to accept surrender of a Permit, or against any conditions imposed to take account of that surrender;

In addition, persons served with any of the following Notices may appeal, under Regulation 27(2), against the Notice:

- A Variation Notice, other than once served in response to a Regulation 17(2) application;;
- A Revocation Notice;
- An Enforcement Notice;
- A Prohibition Notice.

Notice of Appeal should be sent to:

The Planning Inspectorate,
Environment Appeals Administration,
Room 4/19 Eagle Wing,
Temple Quay House,
2 The Square,
Temple Quay,
Bristol BS1 6PN

Tel: 0117 372 8235 / 8254
Fax: 0117 372 6093

More information about appeals can be found on the Planning Inspectorate's website: <http://www.planning-inspectorate.gov.uk>.

However, if you feel aggrieved about anything, please discuss the matter first with the Isle of Wight Council Officer who has inspected your installation. It may be possible to resolve the matter to your satisfaction without the expense of an appeal. However, you should note the following time limits for appeals:

- An appeal against a Variation Notice must be brought within 2 months of the date of the Notice;
- An appeal against a Revocation Notice must be made before the date on which the Notice becomes effective;
- In other cases, the appeal must be made within 6 months of the decision.

Public Register

Regulation 29 requires the Regulator to maintain a Register containing certain particulars of the installation. The Register is made available for inspection by any member of the public who wishes to view it.

The particulars required to be kept in the public Register are listed in Schedule 9 to the Regulation.

Regulation 30 allows for the exclusion from the Register of certain information if, in the opinion of the Secretary of State, the keeping of that information would be contrary to the interests of national security.

Regulation 31 allows for the exclusion from the Register of certain information that is commercially confidential. You can apply to the Regulator if you want to have any information excluded from the Register. There is provision for appeal to the Secretary of State against any decision by the Regulator.

Offences

It is an offence:

- To operate a prescribed process without a Permit;
- To fail to comply with or contravene a condition of a Permit;
- To fail to notify the Regulator of a change in operation under Regulation 16(1);
- To fail to comply with the provisions of an enforcement notice, or of a suspension or closure notice under Regulation 16 of the Landfill (England and Wales) Regulation 2002;
- To fail, without reasonable excuse, to comply with any requirement of a notice of request for information under Regulation 28;
- Knowingly to make a statement which is false or misleading, where the statement is made either in response to a requirement to provide information under Regulation 28, or for the purpose of obtaining a Permit, or the variation etc. of a Permit;
- Intentionally to make a false entry in any record required to be kept under a condition of the Permit;
- With intent to deceive, to forge or use a document issued or authorised etc. in connection with any condition of a Permit;
- To fail to comply with any order made by a court under Regulation 35 (Power of Court to order cause of offence to be remedied).

The maximum penalties on conviction for offences are set out in Regulation 32.

Inspections and powers of inspectors

Duly authorised officers of Isle of Wight Council will make regular visits to your installation, to assess your compliance with the Conditions of your Permit. You should be aware that the powers of such officers are extensive, and that obstruction of those officers in the execution of their duties is an offence.

The powers of Inspectors are laid out in Section 108(4) of the Environment Act 1995. They are as follows:

- “ (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of paragraph (a) above, to take with him—
 - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;

(e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;

(f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;

(g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);

(h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—

(i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;

(ii) to ensure that it is not tampered with before examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;

(j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers;

(k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—

(i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or

(ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,

and to inspect and take copies of, or of any entry in, the records;

(l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section;

(m) any other power for—

(i) a purpose falling within any paragraph of subsection (1) above, or

(ii) any such purpose as is mentioned in subsection (2) above,

which is conferred by regulations made by the Secretary of State.”

Officers of the Isle of Wight Council carry written proof of their Authority to undertake the above duties. They will expect you to ask to see their Authority. You are within your rights to turn away any person claiming to be an Inspector who does not show his or her written Authority when requested.

Isle of Wight Council is concerned about the safety of their employees while they are on your premises. Therefore, officers of Isle of Wight Council expect to comply with any safety requirements you have established for your site. This includes, but is not restricted to, the wearing of personal protective equipment, such as safety shoes and hard hats. They also expect you to tell them about any such requirements, and the hazards they are likely to encounter during their inspections.

At intervals of not more than 6 years, Isle of Wight Council is required to review the Conditions of your permit. This to take account of any changes in operation; changes in legal requirements; changes in national guidance to regulators; and developments in techniques that affect what constitutes BAT. Review inspections are likely to be more extensive than routine inspections.