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20 June 2014

RE: Ibec submission to EPA public consultation on Draft Guidance for licensees for alteration to the operation of installations/facilities

Dear Frank,

Ibec appreciates the EPA's drafting of Guidance for licencees for alteration to the operation of installations/facilities. We recognize the initiative and hard work that the Agency have put in so far to the production of this draft.

Although public consultation on the Draft Guidance is greatly welcomed, the time allowed for submissions – less than two working weeks – is insufficient to allow for a complete gathering of views on the Guidance's numerous substantive provisions, particularly where an otherwise positive collaboration between Ibec, EPA and DECLG has finally begun after more than two years of industry voicing concerns over the significant delays that typify the Agency's reviews of proposed alternations to activities or licences.

The need for sufficient consultation time is even greater where the concern regarding many of the substantive points in the Guidance has been noted, in particular, in Ibec's earlier, limited consultation submission on 8 May 2014. Our members simply have been unable to undertake a complete review of these many critical points in such a short period of time.

As such, Ibec, on behalf of its members, reserves the right to make further submissions both within and outside the tri-partite collaboration.

The short consultation period has nevertheless allowed members to formulate a certain number of specific concerns with regard to the substantive points in the Guidance. The following are short summaries of the main concerns brought to our attention by members thus far.

Examples of vagueness or poorly worded provisions

The Draft Guidance contains numerous provisions that are vaguely written or otherwise unclear.

For example, Defining parameter 1.6 would require a Full License Review where a proposed alternation "involve[s] any screening for Appropriate Assessment report

and Natura Impact Statement (NIS) that was prepared for consideration by any planning/public authority.”

As worded, this provision would mean that if a *screening* for Appropriate Assessment (AA) is required, then a Full Licence Review must be performed. It is our view that the trigger in such cases is the need for AA, and not the need for a screening.

Additionally, it is unreasonable that a change to a site requiring planning permission and subsequently a screening for AA – *which change is immaterial to the activity under licence* (e.g. the installation of a bicycle shed or new on-site roadway) – require a Full Review of that licence. The Agency should clarify whether this is legally required and, if so, provide the legal rationale for same.

A similar instance of vagueness can be found in Defining parameter 1.9 which would hold that if a proposed alteration conflicts with the requirement to use energy efficiently, a Full Licence Review is required. This, as with all the provisions in the Guidance should be carefully reviewed for over-vagueness, over-breadth and potential for misinterpretation.

Confusing or contradictory legal interpretations

The Draft Guidance contains numerous provisions that, when applied as written, would seem to contradict licensee experience and understanding of the applicable law or customary practice.

For example, the requirement to use energy efficiently for purposes of determining whether a Technical Amendment is allowed in favour of a Full Licence Review has no apparent legislative basis.

Defining parameter 1.11, which understandably would require a Full Licence Review where the total amount of waste to be accepted above the specified limit in the licence increases, nevertheless seems overbroad in the context of certain wastes used as resources, such as alternative fuels. Exemptions or exclusions for such activities that form part of the daily operation of a site should be established so as to avoid the requirement for a Full Licence Review on a regular basis.

Defining parameter 1.12 which would require a Full Licence Review for any alteration that in itself requires an extension of operating hours for a waste facility where the public is likely to have an interest in such an extension, does not seem to have a sound legislative basis, particularly where planning permission requirements may already address the parameter’s underlying concern. The wording of this parameter may also suffer from vagueness.

General observations on substantive provisions

Generally, to the extent legally permissible, Full Licence Reviews should only be required where the proposed alteration would have a negative environmental consequence.

In this vein, the significance test function of the proposed alteration review process is critical. "Significance" should be determined in relation to the current license activity and to the currently allowed envelope of environmental impact of that activity. Moreover, a uniform application of "significance" throughout the Guidance would greatly ease the Agency's burden of interpretation.

Likewise, where planning permission has already subjected a proposed alteration to public consideration, we would hold that a Full License Review is neither required nor beneficial.

We appreciate, as previously discussed in the tri-partite consultation process, that the law underpinning assertions such as these may require amendment or reinterpretation to give them effect. Ibec remains committed to the consultation's thorough review of the applicable law.

As such, Ibec strongly urges the Agency to identify and publish the legal rationale (statutory or case-law basis or professional opinion) for each substantive provision in the Draft Guidance as well as for any language that could reasonably form the basis of a rule to be applied when reviewing whether a proposed alteration is suitable for Technical Amendment, OEE Approval or Full License Review.

Procedural concerns

In addition to the above examples of concern on the substantive provisions, our members remain eager to further understand how OEE and OCLRU procedures come together in the context of approving proposed alterations. As such we look forward to OEE's attendance at the next meeting of the tri-partite consultation group.

Likewise, we also look forward to further understanding of the Agency's plan to deliver the Guidance in an on-line format and how the triage of proposed alternations is to be automated.

Should you have any comments or questions regarding this submission, please do not hesitate to contact me.

Yours sincerely,



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Environment Policy Executive

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