

16 MAY 2011

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13 May 2011

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Dear Sirs

Planning Act 2008
Covanta Brig y Cwm Limited
The Proposed Brig y Cwm (Energy from Waste Facility) Order

Further to our meeting with Mark Wilson and others on 9 May, we are writing to confirm the matters we raised at the meeting.

Environmental information concerning up to date off-site proposals

The environmental statement which was submitted with the DCO application (the "DCO ES") included an assessment of various off-site developments which are linked to the main Energy from Waste facility, but which were not included with the DCO application because they are associated development.

Since the date of the application, the position in relation to some of these off-site developments has changed. In order to ensure that the Examining Authority is able to take account of the effects of these in its consideration of the DCO application, Covanta is preparing an addendum to the environmental statement (the "ES Addendum"), and other application documents, to reflect these changes.

In particular:

1) Heat Pipes

The detail of the proposed route and arrangements for the heat pipes to serve the Goatmill Industrial Estate have changed. The planning application for the heat pipes proposal is being finalised, and will be submitted shortly to Merthyr Tydfil County Borough Council. This will also include construction laydown arrangements for the heat pipes and an update as to the likely heat users at and in the vicinity of the Goatmill Road Industrial Estate. Because of its relation to the main EfW facility the heat pipes will be treated as EIA development and be supported by an environmental statement. This environmental statement will consider the main EfW facility in cumulative impact terms.

The ES Addendum will include an updated cumulative assessment of the heat pipes proposal. It will also include a copy of the environmental statement supporting the heat pipes planning application as an appendix. It is necessary to put in this update since the Examining Authority will have to consider the cumulative effects of this proposal through the EIA process and this is simply an update of the position having regard to changing circumstances.

2) Construction parking and laydown arrangements

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The off-site construction parking and laydown arrangements for the main EfW facility have also developed further. The ES Addendum will explain the up to date proposals, although a planning application is not intended to be made in the immediate future. The ES Addendum will contain environmental information relating to the up to date proposals.

3) Grid connection

In the light of further discussions with the Distribution Network Operator two further underground grid connection alternatives have been identified, which are the subject of formal applications to Western Power Distribution. The first is an underground cable connection to Rassau, which is expected to be within public highway for all or almost all of its length. The second is an underground cable to a substation on Goatmill Road, known as Merthyr East. Again, apart from a short section along the route of the disused railway this is expected to be entirely within public highway.

The consenting of whichever of this grid connection options is ultimately taken forward will be the responsibility of Western Power Distribution. For the purposes of the DCO application, the ES Addendum will contain environmental information concerning both of these alternative options.

Revised Plans

Since submission of the DCO application Covanta has taken the opportunity to respond to the general concerns raised regarding the sustainability of taking up to 240,000m³ (480,000 tonnes) of spoil from the site, potentially to landfill, in order to construct the EfW facility. Design improvements have been identified that would reduce the quantity of material that would need to be removed by up to 90%.

This would involve the raising of ground levels within certain parts of the site by up to 3m from those shown in the current application documents. The effect of this is to reduce the volume of excess material that requires removal to approximately 24,000m³.

Within the central part of the site the ground level would increase up to 378m AOD. This will cause the level of the top of the main building to increase to 428m AOD, although the maximum height of the building will remain at 50 metres. In addition, there will be no increase in the AOD level of the top of the stack which will remain at 490m.

The effects of raising the ground level of the site will be included within the ES Addendum. Overall, it is not likely that the conclusions of the DCO ES will change although, given the potential to avoid hundreds of thousands of tonnes of spoil being taken to landfill, reduction in traffic movements and consequential benefits to the EU Waste Hierarchy, the overall impacts of the Brig y Cwm proposal would be reduced. Any updates to other DCO application documents, such as the Transport Assessment (Document 8.9) would also be provided and a full set of revised application plans produced. The revised plans would clearly describe any changes to the submitted plans. All elements of the scheme will remain the same, as will the overall layout.

The revised plans would be provided to the Examining Authority by 27 May 2011 and a copy of the draft ES Addendum supplied to the Examining Authority at the preliminary meeting.

Procedure

It is Covanta's view, which is supported by Leading Counsel David Elvin QC, that the ES Addendum should be formally submitted to the Examining Authority and publicised in the same manner as the original environmental statement was, so as to ensure that the Examining Authority has up to date environmental information before it when considering the application. Whilst the IPC EIA Regulations are silent on the ability of the applicant to voluntarily provide additional environmental information, the Examining Authority is under a duty to take all the environmental information relating to the proposal into account - and this includes "any other information" as defined by those Regulations and provided by the applicant.


If the ES Addendum was to be provided in respect of an application to which either the Electricity Works (EIA) Regulations or the Town and Country Planning (EIA) Regulations applied, the obligation would be on Covanta to make that material available, advertise it and invite the public and other consultation bodies to make representations to the decision-maker upon it.

Covanta will therefore notify and provide copies of the ES Addendum in accordance with Regulation 13 of the IPC EIA Regulations and comply with both the notification and publication requirements of Regulations 8 and 9 of the Applications: Prescribed Forms and Procedures Regulations. A response date will be set of not less than 28 days from the date of the second advertisement and representations should be made to the IPC. It is anticipated that this consultation will run concurrently with the period given for Covanta's response to the Examining Authority's first questions, the Local Authorities' Local Impact Reports and the 3rd Parties' Written Representations, ie the response date will not be later than the end of this period.

Leading Counsel has advised that the additional information can be lawfully considered by the IPC provided that the public are given an opportunity to express their views on the additional information - which can easily be achieved within existing timescales. Moreover, the information would not introduce any changes in principle to the substance of the proposals or the information currently before the IPC and could not be said to be material which should not properly be considered. Indeed, the purpose is to provide environmental benefits and no substantive element of the project is changed. The principle in *Wheatcroft v Secretary of State* (1982) 43 P. & C.R. 233 (see p. 241 "the true test is, I feel sure" and following) makes it clear that changes can be considered provided that those interested in the application are not deprived of the opportunity to express a view on the changes. This is assured here as a result of the consultation that will be carried out on the ES Addendum.

The preparation of the heat pipes application and ES Addendum is already underway and it is our intention to raise these matters with the Examining Authority at the preliminary meeting on 7 June. We should therefore appreciate an early response from the IPC if it has any issues with the approach set out above or requires further information.

Yours faithfully



BURGESS SALMON LLP

Enc.