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Environment Agency

Planning Inspectorate
National Infrastructure Planning
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Our ref: SL/2023/122661/06-L01
Your ref: EN010128

Date: 14 February 2025

Dear Examining Authority

The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rule 17

Application by Cory Environmental Holdings Limited (CEHL) for an Order Granting Development Consent for the Cory Decarbonisation Project Request for further information relating to the Water Framework Directive assessment, compliance and timescales

Thank you for you rule 17 letter which we received on the 31 January 2025. Please see our response the Water Framework Directive (WFD) assessment, compliance and timescales questions in the table below.

I hope you find this response helpful, if you have any questions please contact me.

Yours sincerely

[redacted]
Planning Specialist

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R17Q1.1	The Applicant	What are the specific dates that the additional sediment samples have been, or will be, taken?
R17Q1.2	The Applicant	If, as the EA indicate, sampling is not planned to be undertaken until March 2025, it has not been explicitly stated why samples cannot be taken earlier; please can the reason be explained?
R17Q1.3	The Applicant and the EA	Are these samples the only relevant data outstanding to inform a thorough WFD assessment? **EA response** No. As we have previously stated, the applicant has not used information concerning the pre-existing baseline concentrations of regulated substances in the relevant waterbody. The sediment samples, when taken,will only enable the applicant to characterise whether WFD/EQSD regulated substances are present in the sediment likely to be “disturbed” . Within the WFD assessment scoping stage the applicant is required to identify if CEFAS- list chemicals at levels above Action level 1 are present, or if EQSD chemicals are present. If either are present the fact that they are present, combined with the fact that the sediment will be disturbed, provides an a priori reason for continuing to a further (more detailed) “impact assessment” stage, as a pathway for a potential effect on water quality has been identified. Assuming the sediment does contain one or other (or possibly both) qualifying criteria for impact assessment to be required, then the impact assessment basically needs to demonstrate that the additional chemical loads imparted to the waterbody by disturbance of the sediment will not endanger compliance of WFD objectives; chemicals which currently “pass” should not be caused to fail, and chemicals which currently “fail “ should not be caused to “fail worse”(since that would constitute WFD deterioration). Therefore, the applicant one must have an understanding of what the baseline concentrations are in order to predict how much uplift to water column concentrations will be caused by tranferences of regulated substances from the

		sediment to the water column. As compliance is based on meeting annual average Environmental Quality Standard limits, the fact that the uplift effects may be temporary does not necessarily guarantee compliance, and the duration of the effect does need to be taken into account. The longer an effect persists in the water column, the larger the proportion of monitoring data (used for classification) may be affected by an uplift. The size of the uplift and its duration are factors which will influence the degree of uplift of the annual average, as will the size of the waterbody (which influences the dilution available). Once the sediment sample analyses are known the applicant needs then to be used in the impact assessment process in a transparent way. Whilst it is probably foreseeable that the uplifts in concentration generated will be quite small in annual average terms, are they small enough to conclude compliance? It is not possible to answer these question without prior knowledge of the baseline concentration before the addition is made. The current WFD assessment gives no indication the applicant is aware how much headroom for further uplifts (for each regulated chemical) the waterbody has, nor is it able to say how big the annual average uplift might be, so it cannot logically conclude compliance. The arguments for compliance are essentially numerical ones requiring a more detailed numerical treatment of the available information. The applicant could seek further information on baseline concentrations from the EA national classification team who undertook the classifications and thus have already used monitoring data to decide if the baseline is a pass or a fail. This team should be best placed to provide annual average concentration information. The raw monitoring data is already in the public domain (and could have been used) published via Open Data as the water quality archive on .gov.uk We would however recommend that the national team provide the monitoring dataset so that there is no disagreement on what the baselines are. Strict WFD data quality rules are applied at classification, meaning that not all published data are necessarily included for the calculation of baseline annual average; it is simpler to

		use EA baselines than attempt to construct a baseline from raw data where mistakes could easily be made.
R17Q1.4	The Applicant and the EA	The Applicant refers to the preparation of a Technical Note and the EA to a revised WFD Assessment. Is the intention for the Technical Note to inform a revised WFD Assessment? Please can the Applicant clarify the documentation in which the data and analysis will be presented? For the avoidance of doubt, please can the EA confirm what documentation they are expecting? **EA response** We required a revised WFD assessment. We have no knowledge of what the applicant means by a technical note nor do we anticipate it would be adequate to replace a revised WFD assessment. Following the published guidance for WFD assessment "Clearing the Waters for All" , the only way that the applicant could justify not providing a full (revised) WFD assessment (including an impact assessment stage) would be if the sediment samples obtained showed , upon analysis, that they contained no EQSD list chemicals (at all) and all CEFAS- list chemicals were present at levels below Action-Level 1. In such a case, then a Technical Note would be permissible, to state that there were grounds for "scoping out" water quality from the further impact assessment stage, and then the activity would be considered WFD compliant for water chemistry by default. We consider this unlikely that this will be the case, the waterbody does fail for PDBE's which may also be present in sediments too. We are not, however, anticipating the samples will show high levels of contamination, we anticipate that it will be quite possible to provide a proper impact assessment stage, within a revised WFD assessment, that will likely conclude the activity is compliant for the water quality element. Such an impact assessment is not possible to write until the necessary facts (relating to the waterbody itself, and to the sediment quality) are marshalled.

R17Q1.5	The Applicant	What is the specific timescale for analysing samples and presenting the findings and Technical Note/revised WFD Assessment to the EA?
R17Q1.6	The Applicant and the EA	What arrangements have been made between the Applicant and the EA to ensure the timely consideration of the Technical Note/revised WFD Assessment that is presented to the EA? Can the EA confirm how long its review is likely to take? **EA response** Unless the sediment samples are so clean that "scoping out" of water quality elements from impact assessment can be justified, then timescales for WFD assessment review are largely determined by the quality of the WFD assessment. Review of a WFD assessment is not a long process. We provide our technical team with 10 day consultation period under our standard panning process (for standard licence consultations) to respond internally. This team however seldom take more than 48hours to review a WFD assessment once we receive it and begin reviewing it. What can delay the licensing process is if the supplied WFD assessment is inadequate, and has not justified its claims for compliance by providing transparent, convincing arguments for water quality compliance. We will often encourage an applicant to have a dialogue with us at the start of an "impact assessment" stage in order that we can discuss our expectations, clarify technical matters that might arise, and provide a steer, such that neither party has any "nasty surprises" when the final assessment is submitted. We this , since it helps to overcome some of the shortcomings in the published WFD assessment guidance (which is rather reticent on what an "impact assessment" should look like ..and thus leads to very variable quality in what we receive). Rejections of WFD assessments cause delays to licensing. Intervention in the early stages of impact assessment can assist an applicant's consultant address issues we consider important to the prediction of the effect of a licensed activity on WFD water quality.

		We have an meeting arranged with the applicant consultant for the 19th February 2025 to discuss WFD.
R17Q1.7	The Applicant and the EA	When is it anticipated that the Technical Note/ revised WFD Assessment, and the EA's commentary on its acceptability, would be submitted into the Examination? **EA response** We are aware from the Applicants response to this rule 17 constitution that the Applicant intends to submit the Technical Note to the Environment Agency by the 7 March asking us to responded by the 14th March 2025. This deadline should be achievable The Applicant then intend to submit the updated version of the Technical Note into the Examination at Deadline 5 in March 2025. However as previously stated a technical note may not be sufficient and we may require a revised WFD assessment for the reasons outlined above.