

**SABIC UK PETROCHEMICALS LIMITED AND SABIC PETROCHEMICALS BV (URN 20053908)**

**APPLICATION BY MORGAN OFFSHORE WIND LIMITED AND MORECAMBE OFFSHORE WINDFARM LIMITED FOR**

**THE MORGAN OFFSHORE WIND PROJECT AND MORECAMBE OFFSHORE WINDFARM: TRANSMISSION ASSETS DEVELOPMENT CONSENT ORDER(EN020028)**

**DEADLINE 1**

### **SABIC'S SUMMARY WRITTEN REPRESENTATION**

## **1. SABIC'S OPERATIONS**

- 1.1.1 SABIC operates from two primary sites at Wilton International and the North Tees Site. These facilities are linked together via pipeline corridors known as Link Line Corridors.
- 1.1.2 In addition SABIC operates two cross-country pipelines: the Trans-Pennine Ethylene Pipeline (**TPEP**) and the Wilton to Grangemouth Ethylene Pipeline (**WGEP**) which form part of the national ethylene production and distribution network.
- 1.1.3 The TPEP and WGEP should be properly understood as two links in the larger national ethylene pipeline production and supply network. The WGEP provides a critical link between SABIC's operations on Teesside and the only other two UK ethylene Crackers, and supply routes to end-users of ethylene.
- 1.1.4 This Application affects the TPEP:
  - (a) The TPEP is a high pressure buried pipeline through which ethylene manufactured at the Cracker at Wilton is transported to Runcorn for use by Vynova. It can also be used to transport ethylene manufactured at Grangemouth (where INEOS has a cracker) and Mossmorran (where ExxonMobil has a cracker).
  - (b) As a major accident hazard pipeline the TPEP is likely to present engineering challenges to the proposed development. Development in the vicinity of the TPEP could present serious operational difficulties to SABIC and would not usually be allowed.
  - (c) The potentially nationally significant serious detriment to the UK ethylene production and distribution system, other sectors of the chemical industry – and to end users of ethylene – is a factor which should be borne clearly in mind by the Examining Authority when considering which version of the protective provisions to include in their final recommended Order.
  - (d) In particular, it is only right that the highest and most rigorous standards are applied in the Order to make sure that compulsory acquisition powers are only used when there is no other option.

## **2. THE OPERATIONAL AND SAFETY CONTEXT OF SABIC'S BUSINESS**

### **2.1 Overview**

- 2.1.1 SABIC's operations at Wilton and North Tees Sites fall within the ambit of the Control of Major Accident Hazards Regulations 2015 (**COMAH**), whilst the WGEP and TPEP

fall under the Pipelines Safety Regulations 1996 (**PSR**). The TPEP is a major accident hazard pipeline (**MAHP**) under PSR.

- 2.1.2 Both COMAH and PSR place SABIC under a duty to take all necessary measures to prevent major accidents involving dangerous substances, and to limit the consequences to people and the environment of any major accidents which do occur.

## **2.2 PSR**

- 2.2.1 Under the PSR SABIC as operator of the TPEP must ensure that no fluid is conveyed in a pipeline unless adequate arrangements have been made for dealing with an accidental loss of fluid from, discovery of a defect in or damage to or other emergency affecting the pipeline.
- 2.2.2 The PSR also places a duty on SABIC as pipeline operator to prepare a major accident prevention document (**MAPD**). In respect of any health and safety arrangements or procedures described in the MAPD, SABIC must "ensure that those arrangements or procedures are followed". Protective provisions are required for SABIC to ensure that it is able to continue to comply with this duty.
- 2.2.3 When planning any new works in close proximity to the pipelines, SABIC requires as much advance notice as possible, so that they can agree safe working conditions and ensure that they comply with their duties. SABIC requires that it is notified of any works within 50 metres either side of the pipeline. Cases where it is not notified are pipeline infringements and are considered to be a "near miss".
- 2.2.4 It follows that protective provisions are needed so that SABIC can approve works details and also to ensure that the Applicant monitors for damage during the works and that both parties are able to discharge their duties under the PSR.

## **2.3 Diversion**

- 2.3.1 There are technical and engineering difficulties of carrying out any works which might require the diversion of even a short section of the TPEP.
- 2.3.2 In the event that the undertaker sought to divert the pipeline it would be likely that SABIC would have to isolate a section of the TPEP over 10 miles in length. This section would then need to be purged of inventory before any work could be carried out.
- 2.3.3 Such works would be likely to take 5-6 weeks to complete, and that its losses would run into the millions of pounds during such an interruption.
- 2.3.4 In addition, such works would cut off supply to the Runcorn site affecting ethylene dichloride (**EDC**) manufacturing there. This could also affect the chlorine manufacturing processes which take place there. A diversion could therefore have consequences for chemical production and supply beyond the ethylene industry.
- 2.3.5 These effects would be difficult to minimise or mitigate.
- 2.3.6 For this reason, SABIC is seeking to impose strong controls in the protective provisions against the use of powers of compulsory acquisition under the Order.

## **2.4 Split Ownership**

- 2.4.1 One important feature of SABIC's operations is that:
  - (a) The apparatus is operated by one group company, SABIC UK Petrochemicals Limited; but

- (b) The inventory (ie the contents of the pipelines) is owned by a different group company (SABIC Petrochemicals BV).

- 2.4.2 It is SABIC Petrochemicals BV who would be likely to suffer consequential loss as a result of the authorised development.
- 2.4.3 It is a well-established principle that protective provisions have a role in protecting the financial position of the person affected, because otherwise the authorised development could cause a third party to suffer significant financial losses, thereby putting their future operations at risk.
- 2.4.4 SABIC's protective provisions therefore provide for the benefit of the indemnity and the insurance policy to include SABIC Petrochemicals BV. This is to place SABIC and the undertaker in the same position they would be in if SABIC's business was not an international one.

## **2.5 Employment**

- 2.5.1 SABIC is a major employer in the UK, and contributes hundreds of millions of pounds to the economy in the North East of England. In recent years SABIC has made significant investments at Wilton International.
- 2.5.2 As such it is very strongly in the public interest to protect SABIC's interests and assets in the areas of the proposed DCO Application. Businesses and investors into the UK need to know that their established operations will be properly protected and that they can invest in them with confidence.

## **3. SABIC'S ADDITIONAL SITE SPECIFIC CONCERNS**

### **3.1 Laying of Underground Cables**

- 3.1.1 Schedule 1 of the dDCO describes Works 25A and 25B, which cross the TPEP as works to install cable circuits and associated cable ducts either by open cut trenching or trenchless installation.
- 3.1.2 SABIC has a number of safety requirements where works are undertaken in the vicinity of the TPEP, including relating to undertaking excavations, piling, backfilling, compaction, horizontal directional drilling and superintendence.
- 3.1.3 The UK's Institution of Gas Engineers (IGEM) guidance (IGEM/TD/1) should be adhered to.
- 3.1.4 The TPEP is protected by a cathodic protection system and extreme care must be exercised during all construction work to avoid damage to cables, connections and test stations. As the proposed cables will carry high voltage electricity, interaction tests will have to be carried out to ensure the TPEP cathodic protection system is not impacted.
- 3.1.5 SABIC would also be concerned about construction traffic passing over the TPEP otherwise than on public highways. SABIC would need to approve temporary crossing points and relevant protection.

### **3.2 Permanent Environmental Mitigation Works**

- 3.2.1 The dDCO provides for Works Nos. 49A and 49B as "permanent environmental mitigation works" over a 30 hectare site. The works are identified in the Outline Ecological Management Plan ("OEMP") as "Permanent mitigation area south of Newton-with-Scales".
- 3.2.2 SABIC has two concerns about the scheme in this location:

- (a) The proposed wader scrapes (shallow depressions created in fields to benefit wading birds). The making of these depressions by the Applicant would be of concern to SABIC if they are in the vicinity of the TPEP, as they would constitute excavations which could damage the TPEP. Additionally, any loss of cover above a pipeline increases the risk of third party interference with it.
- (b) The thickening of existing hedgerows and gapping of hedgerows with new native planting. SABIC maintains certain rules in relation to planting of trees and shrubs in the vicinity of the TPEP, as their roots would be likely to cause damage. For example, hawthorn should be planted not less than 3 metres away from the TPEP.

3.2.3 In light of these difficulties and constraints, SABIC does not believe that it is appropriate for the scheme to use this land and is very concerned that the Applicant has not given due consideration to possible alternatives.

## **4. SABIC'S GENERAL CONCERNS**

### **4.1 DCO Powers**

- 4.1.1 SABIC is concerned about powers of compulsory acquisition, in particular the right to take exclusive temporary possession and to create rights which are not compatible with SABIC's existing rights (including the power to override SABIC's existing rights).
- 4.1.2 The Applicant has not confirmed whether it needs to extinguish SABIC's rights or divert the TPEP. This creates an unacceptable level of uncertainty for SABIC in terms of the project. If the Applicant is unable to say that it needs to extinguish SABIC's rights then it is difficult to see how they can satisfy the Secretary of State that the powers being sought are no more than is reasonably required for the purposes of the development.

### **4.2 Article 33**

- 4.2.1 SABIC supports the principle of guarantees and securities being provided before compulsory acquisition takes place, as contained in Article 33 of the dDCO, however the Applicant has not made adequate provision in the article to ensure that the Secretary of State is able to determine if the level of security is adequate.
- 4.2.2 In the absence of protective provisions to the contrary, the only cogent way to make this assessment would be to assume that the Applicant will exercise such powers to their fullest extent to extinguish SABIC's rights and remove SABIC's apparatus such as to prevent its continued operations and to place this outcome into the balance against the benefits of the scheme.
- 4.2.3 It is unclear whether the Applicant has taken into account this "worst case" assessment in its Funding Statement [APP- 008]. However its estimate of £19,967,103 in paragraph 1.7.1.3 would not seem to take into account compensation payable to SABIC in the event of the extinguishment of its rights in respect of the TPEP.
- 4.2.4 Although the quantum of compensation is not a matter for the ExA, the proper and adequate assessment of potential compensation in the context of the Funding Statement and the adequacy and securing of the funding to sufficiently meet that liability, are (in the case of a private company) matters which the ExA should properly consider.

### **4.3 Article 16**

- 4.3.1 SABIC is concerned about the traffic regulation powers provided in Article 13 of the dDCO which does not include a geographical limit, and is not limited to the specific roads identified on the street works plan. This seems too broad for a project of this nature.

## **5. PROTECTIVE PROVISIONS**

- 5.1 SABIC does consider that its concerns can be allayed by protective provisions. However such protections must be both suitable and adequate.
- 5.2 SABIC provided the Applicant with its standard protective provisions for its pipelines on 1 April 2025. These are contained at Annex 2 of this document.
- 5.3 At Deadline 1 SABIC awaits the Applicant's comments on this document and the extent of any agreement and disagreement between the parties is not known.
- 5.4 SABIC will engage with the Examination to seek to ensure the protect its position in particular in relation to the following key concerns:
  - 5.4.1 To adequately protect its assets from the authorised works, compulsory acquisition, temporary possession and diversion.
  - 5.4.2 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.
  - 5.4.3 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.

Womble Bond Dickinson (UK) LLP

19 May 2025

**SABIC UK PETROCHEMICALS LIMITED AND SABIC PETROCHEMICALS BV (URN 20053908)**

**APPLICATION BY MORGAN OFFSHORE WIND LIMITED AND MORECAMBE OFFSHORE WINDFARM LIMITED FOR**

**THE MORGAN OFFSHORE WIND PROJECT AND MORECAMBE OFFSHORE WINDFARM:  
TRANSMISSION ASSETS DEVELOPMENT CONSENT ORDER(EN020028)**

**DEADLINE 1**

**SABIC'S WRITTEN REPRESENTATION**

**1. DEFINITIONS**

The following definitions apply in this document:

<b>Word of Phrase</b>	<b>Meaning</b>
COMAH	means the Control of Major Accident Hazards Regulations 2015
dDCO	means the version of the draft development consent order submitted in response to the Section 51 advice [AS-004]
MAPD	means a major accident prevention document under the PSR
MAHP	means major accident hazard pipeline under the PSR
Order	means the proposed development consent order
PSR	means the Pipelines Safety Regulations 1996
SABIC	means the two affected SABIC companies together, namely SABIC UK and SABIC BV
SABIC BV	means SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands.
SABIC UK	means SABIC UK Petrochemicals Limited (Company No 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF
TPEP	means the Trans Pennine Ethylene Pipeline
UKPOA	UK Onshore Pipeline Operators' Association

## 2. SUMMARY OF SABIC'S POSITION

- 2.1 SABIC made a relevant representation in relation to the Application to protect its position in relation to the following key concerns:
- 2.1.1 To adequately protect its assets from the authorised works, compulsory acquisition, temporary possession and diversion.
  - 2.1.2 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.
  - 2.1.3 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.
- 2.2 More details about SABIC's operations and concerns are set out below.
- 2.3 SABIC does consider that its concerns are capable of being allayed by protective provisions. However such protections must be both suitable and adequate.
- 2.4 SABIC provided the Applicant with its standard protective provisions for its pipelines on 1 April 2025.
- 2.5 SABIC presently awaits the Applicant's comments on this document and the extent of any agreement and disagreement between the parties is therefore not currently known.
- 2.6 In light of the above, SABIC does not consider that it is possible at present to submit a meaningful Statement of Common Ground, as requested by the ExA.

## 3. SABIC'S OPERATIONS

### 3.1 Overview

- 3.1.1 SABIC operates from two primary sites at **Wilton International** and the **North Tees Site**. These facilities are linked together via pipeline corridors known as **Link Line Corridors**.
- 3.1.2 In addition SABIC operates two cross-country pipelines: the **Trans-Pennine Ethylene Pipeline** and the **Wilton to Grangemouth Ethylene Pipeline** which form part of the national ethylene production and distribution network.
- 3.1.3 This Application affects the Trans-Pennine Ethylene Pipeline.

### 3.2 Wilton International

- 3.2.1 Wilton International is an industrial area between Eston and Redar in North Yorkshire bounded by the A174 to the south, the A1053 Greystone Road to the west, the A1085 and the Mains Dike to the east.
- 3.2.2 SABIC operates a facility at Wilton International, known as the **Cracker**, which is used to manufacture ethylene.

### 3.3 North Tees Site

- 3.3.1 The **North Tees Site** is situated at Seal Sands on the north bank of the River Tees.
- 3.3.2 It is the site of substantial storage, distribution and shipping services including three shipping terminals. Ethane is imported into the North Tees Site via the River Tees and, once processed by the Cracker, ethylene is exported.

### 3.4 Pipelines: TPEP and WGEP

#### 3.4.1 National Ethylene Pipeline Network

- (a) The UK's ethylene production relies on only three crackers: SABIC's Cracker at Wilton, INEOS' at Grangemouth and ExxonMobil's at Mossmorran.
- (b) These three crackers are linked together and linked to various ethylene consumers across Grangemouth, Wilton, Stanlow, Runcorn, Carrington and Saltend (Hull) via a series of interconnected pipelines
- (c) A UK Onshore Pipeline Operators' Association document, providing some information about this system is copied at Annex 1 in order to aid the ExA's understanding of SABIC's operations and the national scale of the ethylene circuit. This document is a little out of date, but provides helpful background information.

#### 3.4.2 SABIC's National Operations

- (a) SABIC's operations include two major pipelines:
  - (i) the Trans Pennine Ethylene Pipeline (**TPEP**); and
  - (ii) the Wilton to Grangemouth Ethylene Pipeline (**WGEP**).
- (b) The TPEP and WGEP should be properly understood as two links in the larger national ethylene pipeline production and supply network. This provides a critical link between SABIC's operations on Teesside and the other two UK ethylene Crackers, and supply routes to end-users of ethylene.
- (c) SABIC's own operations are therefore fundamentally connected with other manufacturers of ethylene. A diversion of SABIC's apparatus may have significant effects across all three operations.
- (d) The Examining Authority is asked to keep firmly in mind that these three facilities – Wilton, Grangemouth and Mossmorran – comprise the totality of the UK's ethylene manufacturing industry. The protection of SABIC's facilities and apparatus from compulsory acquisition is therefore important not just as a protection for SABIC, but also for the protection of INEOS and Exxonmobil whose businesses utilise the TPEP to supply customers, and therefore the future of the UK's ethylene manufacturing industry.
- (e) In short, any operational problems experienced by SABIC on Teesside as a result of the authorised development would be likely to cause operational problems to the ethylene production and distribution system at a national level.

#### 3.4.3 TPEP

- (a) The TPEP is a high pressure buried pipeline through which ethylene manufactured at the Cracker at Wilton is transported to Runcorn for use by Vynova. It can also be used to transport ethylene manufactured at Grangemouth (where INEOS has a cracker) and Mossmorran (where ExxonMobil has a cracker).
- (b) As a major accident hazard pipeline the TPEP is likely to present engineering challenges to the proposed development. Development in the vicinity of the TPEP could present serious operational difficulties to SABIC and would not usually be allowed.



- (c) The potentially nationally significant serious detriment to the UK ethylene production and distribution system – and to end users of ethylene – is a factor which should be borne clearly in mind by the Examining Authority when considering which version of the protective provisions to include in their final recommended Order.
- (d) In particular, it is only right that the highest and most rigorous standards are applied in the Order to make sure that compulsory acquisition powers are only used when there is no other option.

## **4. THE OPERATIONAL AND SAFETY CONTEXT OF SABIC'S BUSINESS**

### **4.1 COMAH**

- 4.1.1 SABIC's operations at Wilton and North Tees Sites fall within the ambit of the Control of Major Accident Hazards Regulations 2015 (**COMAH**), whilst the WGEF and TPEP fall under the Pipelines Safety Regulations 1996 (**PSR**). The TPEP is a major accident hazard pipeline (**MAHP**) under PSR.
- 4.1.2 Both COMAH and PSR place SABIC under a duty to take all necessary measures to prevent major accidents involving dangerous substances, and to limit the consequences to people and the environment of any major accidents which do occur.

### **4.2 PSR**

- 4.2.1 Under regulation 12 of the Pipelines Safety Regulations 1996 (**PSR**) SABIC as operator of the TPEP must ensure that no fluid is conveyed in a pipeline unless adequate arrangements have been made for dealing with an accidental loss of fluid from, discovery of a defect in or damage to or other emergency affecting the pipeline.
- 4.2.2 Regulation 23 of the PSR places a duty on SABIC as pipeline operator to prepare a major accident prevention document (**MAPD**). In respect of any health and safety arrangements or procedures described in the MAPD, SABIC must "ensure that those arrangements or procedures are followed". Protective provisions are required for SABIC to ensure that it is able to continue to comply with this duty.
- 4.2.3 Regulation 25 PSR also places a duty on the local authority to prepare an emergency plan in respect of MAHPs.
- 4.2.4 Regulation 15 of PSR provides that no person should cause damage to a pipeline and is aimed at third parties carrying out work around pipelines.
- 4.2.5 Because it is an underground pipeline the TPEP is protected by a coating as well as cathodic protection which can be affected by electrical interference.
- 4.2.6 When planning any new works in close proximity to the pipelines, SABIC requires as much advance notice as possible, so that they can agree safe working conditions and ensure that they comply with their duties. SABIC requires that it is notified of any works within 50 metres either side of the pipeline. Cases where it is not notified are pipeline infringements and are considered to be a "near miss".
- 4.2.7 It follows that protective provisions are needed so that SABIC can approve works details and also to ensure that the Applicant monitors for damage during the works and that both parties are able to discharge their duties under the PSR.

### **4.3 Diversion**

- 4.3.1 It is important to understand the technical and engineering difficulties of carrying out any works which might require the diversion of even a short section of the TPEP.

- 4.3.2 The TPEP is designed to transmit ethylene directly and swiftly over a long distance. Although it is periodically joined to other links and spurs to Holford and Carrington, those links are infrequent.
- 4.3.3 Equally the design of the TPEP does not incorporate valve chambers at short intervals which would allow parts of the pipeline to be isolated so that work can be carried out. This means that in the event that the undertaker sought to divert the pipeline it would be likely that SABIC would have to isolate a section of the TPEP over 10 miles in length. This section would then need to be purged of inventory before any work could be carried out.
- 4.3.4 SABIC estimates that such works would be likely to take 5-6 weeks to complete, and that its losses would run into the millions of pounds during such an interruption.
- 4.3.5 In addition, such works would cut off supply to the Runcorn site affecting the manufacturing processes which take place there. The Runcorn site includes a facility for manufacturing chlorine operated by Runcorn MPC Limited (a joint venture between INEOS Inovyn and Vynova). Some of this chlorine is supplied to a second plant, operated by Vynova, which manufactures ethylene dichloride (**EDC**): it is this plant which uses the ethylene from the TPEP.
- 4.3.6 SABIC cannot comment in any detail on the scale of operational difficulties or losses that would be suffered by the businesses operating from Runcorn as a result of an interruption to supply from the TPEP. However logically the following concerns need to be considered:
- (a) An interruption in ethylene supply to Vynova would be likely to affect or prevent the production of EDC at that plant.
  - (b) If and to the extent that EDC is not being manufactured, that might also impact the production of the chlorine use to supply that plant.
  - (c) This might impact on the supply of the chlorine used elsewhere in industry and/or public life, as it is understood that not all of the chlorine produced is used to manufacture EDC.
  - (d) SABIC understands that Runcorn is the only large-scale chlorine manufacturing site in the UK.
  - (e) Given the scale of operations at Runcorn, it is likely that their losses are also likely to be very significant and run into millions if not tens of millions of pounds.
- 4.3.7 It is therefore difficult to predict the consequences of an interruption to ethylene supply across the chemical sector.
- 4.3.8 These effects would be difficult to minimise or mitigate. There may potentially be a technical work-around using the WGEP to transport ethylene to Grangemouth and then the North West Ethylene Pipeline (**NWEP**) to transport ethylene down to Runcorn, however the NWEP is not a SABIC asset and is not under SABIC's control and it is far from guaranteed that this solution would be available.
- 4.3.9 For this reason, SABIC is seeking to impose strong controls in the protective provisions against the use of powers of compulsory acquisition under the Order.

#### **4.4 Split Ownership**

- 4.4.1 One important feature of SABIC's operations is that:
- (a) The apparatus is operated by one group company, SABIC UK Petrochemicals Limited; but

- (b) The inventory (ie the contents of the pipelines) is owned by a different group company (SABIC Petrochemicals BV).

- 4.4.2 This arrangement reflects the international, transcontinental nature of SABIC's ethylene production and supply business, a feature which is not present in the same way in the domestic operations of, say, National Grid Electricity Transmission Plc or National Gas Transmission.
- 4.4.3 There is therefore a split of ownership between SABIC UK Petrochemicals Limited which owns the fixed, physical, apparatus in the UK, and SABIC Petrochemicals BV, who owns and continues to own the inventory as it passes across international borders to be processed and distributed or, in this case, is distributed through the TPEP.
- 4.4.4 It is SABIC Petrochemicals BV who would be likely to suffer consequential loss as a result of the authorised development.
- 4.4.5 It is a well-established principle that protective provisions have a role in protecting the financial position of the person affected, because otherwise the authorised development could cause a third party to suffer significant financial losses, thereby putting their future operations at risk.
- 4.4.6 SABIC's protective provisions therefore provide for the benefit of the indemnity and the insurance policy to include SABIC Petrochemicals BV. This is to place SABIC and the undertaker in the same position they would be in if SABIC's business was not an international one.

## **4.5 Employment**

- 4.5.1 SABIC is a major employer in the UK, employing approximately 400 full time employees (with an additional 400 contractors), and 31,000 persons globally.<sup>1</sup>

## **4.6 Financial Benefits and Investment**

- 4.6.1 SABIC's operations contribute £400 million to the economy in the North East of England.
- 4.6.2 In recent years SABIC has made significant investments at Wilton International, including around £250 million on its Low Density Polyethylene plant and around £850 million on a fuel conversion project for the Cracker.
- 4.6.3 As such it is very strongly in the public interest to protect SABIC's interests and assets in the areas of the proposed DCO Application. Businesses and investors into the UK need to know that their established operations will be properly protected and that they can invest in them with confidence.

## **5. SABIC'S ADDITIONAL SITE SPECIFIC CONCERNS**

### **5.1 Laying of Underground Cables**

- 5.1.1 Schedule 1 of the dDCO describes Works 25A and 25B, which cross the TPEP as works to install cable circuits and associated cable ducts either by open cut trenching or trenchless installation.
- 5.1.2 SABIC has a number of safety requirements where works are undertaken in the vicinity of the TPEP, including relating to undertaking excavations, piling, backfilling, compaction, horizontal directional drilling and superintendence. It also prohibits certain activities such as storage, lifting and hydraulic testing over the TPEP.

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<sup>1</sup> Figures from 2023.

- 5.1.3 It also requires that drawings of underground services are approved. A minimum distance of 300 mm must be maintained and the angle of crossing must not be less than 60 degrees. Concrete raft protection must be provided above the pipeline (or above and below the pipeline if the new apparatus is to be installed under it).
- 5.1.4 The UK's Institution of Gas Engineers (IGEM) guidance (IGEM/TD/1) should be adhered to. This recommends minimum separation of 300cm (3,000mm) for parallel pipes (or even greater, dependent on soil-type and pipeline pressure), and 60cm (600mm) for vertical separation.
- 5.1.5 The TPEP is protected by a cathodic protection system and extreme care must be exercised during all construction work to avoid damage to cables, connections and test stations. As the proposed cables will carry high voltage electricity, interaction tests will have to be carried out to ensure the TPEP cathodic protection system is not impacted.
- 5.1.6 SABIC would also be concerned about construction traffic passing over the TPEP otherwise than on public highways. SABIC would need to approve temporary crossing points and relevant protection.

## **5.2 Permanent Environmental Mitigation Works**

- 5.2.1 The dDCO provides for Works Nos. 49A and 49B as "permanent environmental mitigation works" over a 30 hectare site. The works are identified in the Outline Ecological Management Plan ("OEMP") as "Permanent mitigation area south of Newton-with-Scales".
- 5.2.2 SABIC has two concerns about the scheme in this location:
  - (a) The proposed wader scrapes (shallow depressions created in fields to benefit wading birds). The making of these depressions by the Application would be of concern to SABIC if they are in the vicinity of the TPEP, as they would constitute excavations which could damage the TPEP. Additionally, any loss of cover above a pipeline increases the risk of third party interference with it.
  - (b) The thickening of existing hedgerows and gapping of hedgerows with new native planting. SABIC maintains certain rules in relation to planting of trees and shrubs in the vicinity of the TPEP, as their roots would be likely to cause damage. For example, hawthorn should be planted not less than 3 metres away from the TPEP.
- 5.2.3 In light of these difficulties and constraints, SABIC does not believe that it is appropriate for the scheme to use this land and is very concerned that the Applicant has not given due consideration to possible alternatives.

## **6. SABIC'S GENERAL CONCERNS**

### **6.1 DCO Powers**

- 6.1.1 SABIC is concerned about powers of compulsory acquisition, in particular the right to take exclusive temporary possession and to create rights which are not compatible with SABIC's existing rights (including the power to override SABIC's existing rights).
- 6.1.2 The Applicant has not confirmed whether it needs to extinguish SABIC's rights or divert the TPEP. This creates an unacceptable level of uncertainty for SABIC in terms of the project. If the Applicant is unable to say that it needs to extinguish SABIC's rights then it is difficult to see how they can satisfy the Secretary of State that the powers being sought are no more than is reasonably required for the purposes of the development.

## **6.2 Article 33**

- 6.2.1 SABIC supports the principle of guarantees and securities being provided before compulsory acquisition takes place, as contained in Article 33 of the dDCO, however the Applicant has not made adequate provision in the article to ensure that the Secretary of State is able to determine if the level of security is adequate.
- 6.2.2 SABIC is particularly concerned about the incidental suspension or extinguishment of an inconsistent right under Article 22 or 29 and how the effect of the extinguishment or suspension of its rights would be taken into account under to ensure that an adequate security is obtained. Article 33 does not provide a mechanism under which information is to be provided to the Secretary of State to allow them to make an objective assessment regarding the level of compensation to be provided.
- 6.2.3 In the absence of protective provisions to the contrary, the only cogent way to make this assessment would be to assume that the Applicant will exercise such powers to their fullest extent to extinguish SABIC's rights and remove SABIC's apparatus such as to prevent its continued operations and to place this outcome into the balance against the benefits of the scheme.
- 6.2.4 It is unclear whether the Applicant has taken into account this "worst case" assessment in its Funding Statement [APP- 008]. However its estimate of £19,967,103 in paragraph 1.7.1.3 would not seem to take into account compensation payable to SABIC in the event of the extinguishment of its rights in respect of the TPEP.
- 6.2.5 Although the quantum of compensation is not a matter for the ExA, the proper and adequate assessment of potential compensation in the context of the Funding Statement and the adequacy and securing of the funding to sufficiently meet that liability, are (in the case of a private company) matters which the ExA should properly consider.

## **6.3 Article 16**

- 6.3.1 SABIC is concerned about the traffic regulation powers provided in Article 13 of the dDCO. These relate to streets, which includes but is not limited to highways and could include access routes to SABIC's assets.
- 6.3.2 The power to regulate traffic under Article does not include a geographical limit, and is not limited to the specific roads identified on the street works plan. This seems too broad for a project of this nature.

## **7. PROTECTIVE PROVISIONS**

- 7.1 SABIC does consider that its concerns can be allayed by protective provisions. However such protections must be both suitable and adequate.
- 7.2 SABIC provided the Applicant with its standard protective provisions for its pipelines on 1 April 2025. These are contained at Annex 2 of this document.
- 7.3 At Deadline 1 SABIC awaits the Applicant's comments on this document and the extent of any agreement and disagreement between the parties is not known.
- 7.4 SABIC will engage with the Examination to seek to ensure the protect its position in particular in relation to the following key concerns:
  - 7.4.1 To adequately protect its assets from the authorised works, compulsory acquisition, temporary possession and diversion.
  - 7.4.2 To ensure that suitable and adequate indemnity and insurance provisions are included in the Order.

- 7.4.3 To ensure that SABIC Petrochemicals BV benefits from the protection of that indemnity and those insurance provisions.

Womble Bond Dickinson (UK) LLP

19 May 2025

## **Annex 1**

### **UKPOA**

# UK Ethylene System

UKOPA Meeting  
25<sup>th</sup>/26<sup>th</sup> February 2009

**UKOPA/09/0016**



# Development of a Network

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- Export facilities at North Tees & Mossmorran

# What's in a name?

- The ethylene industry loves acronyms!

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- The ethylene industry loves acronyms!
- The UK ethylene pipeline network has comprised the following ...

(FSEP	Fawley – Severnside)
TPEP	Trans-Pennine
SCEP	Stanlow - Carrington
WGEP	Wilton - Grangemouth
RSEP	Runcorn - Stanlow
MGEP	Mossmorran - Grangemouth
NWEP	North West
TSEP	Teesside - Saltend





# History - TPEP

- Constructed by ICI in 1966/67 to transport from Wilton to Runcorn, with a spur NE of Preston to Hillhouse

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- Connection to SCEP for supply to consumers at Carrington
- Upgraded in 1981 with the installation of booster stations and Holford storage

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- This allowed Shell to move ethylene from Mossmorran to Stanlow/Carrington
- At this point the main ethylene production and consumption centres were linked
- Booster station capability installed in 1997

# History - NWEF

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- In response to capacity issues, Shell constructed the NWEF in 1992
- This provides a direct link between Grangemouth and Stanlow and forms the third leg of the network triangle

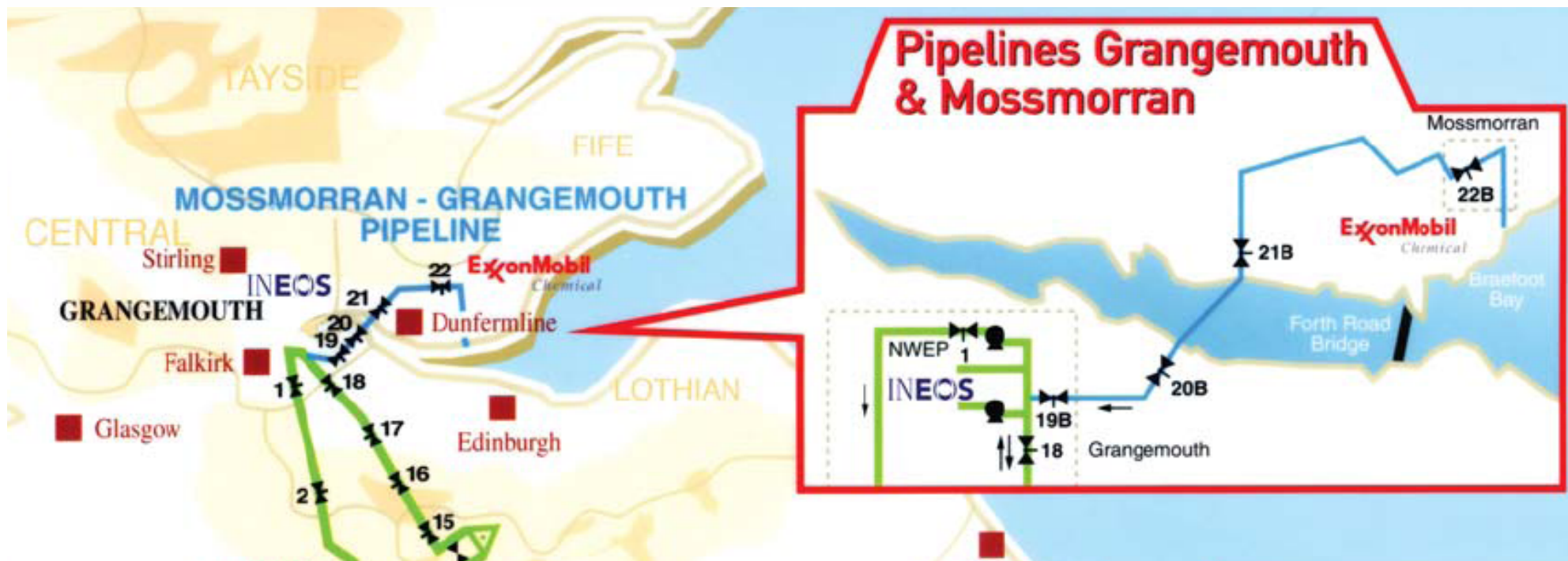
# History - TSEP

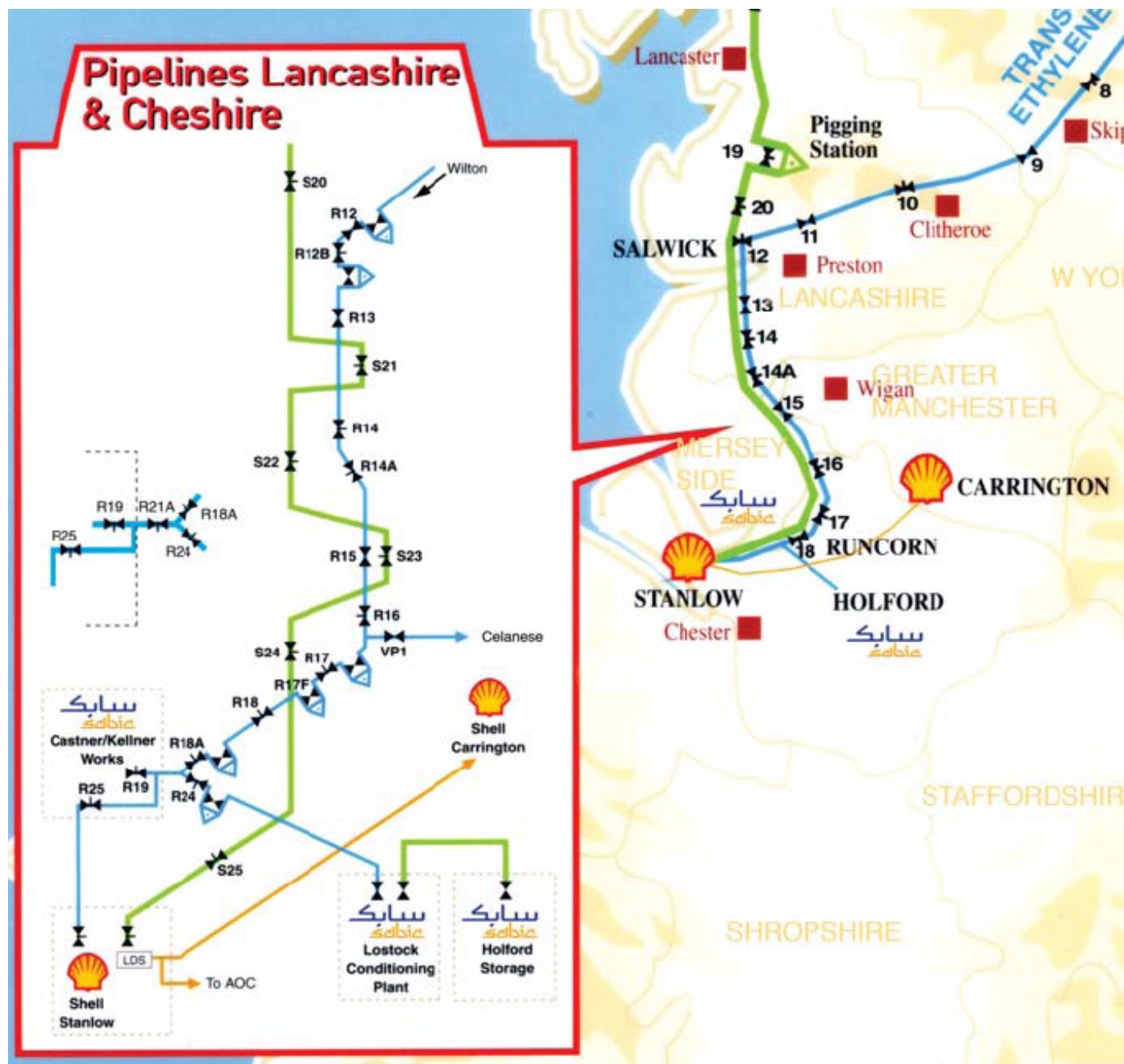
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# History - TSEP

- To support new ethylene consumption at Saltend, BP constructed the TSEP in 1999/2000
- This new link was connected to the WGEP, providing an extended ethylene reservoir and connection of BP's production and consumption assets









# The Ethylene Network – SH&E Benefits

- The alternative to the bulk transport of high pressure ethylene via pipeline is as a liquid (-103°C)
- Environmental penalties
  - liquefaction energy
  - road transport
- Safety risks
  - mobile major hazard
  - loading/offloading hazards

# The Ethylene Network – Commercial Benefits

- With increasing production and consumption plant scale, plant outages create major impact
- The UK network provides the means to link production and consumption to bulk storage
- This allows quite large swings in supply and demand to be balanced
- Most plants on maintenance intervals of 3-6 years
- Network enables swaps within and outside the UK to manage these intervals
- Concept of virtual flows



## **Annex 2**

### **SABIC's Standard Protective Provisions**

## SCHEDULE 34

Article [●]

### FOR THE PROTECTION OF SABIC

#### Benefit of protective provisions

1.—(1) The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and SABIC, where the benefit of this Order is transferred or granted to another person under article [●] (consent to transfer benefit of this Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between SABIC and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to SABIC on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the SABIC Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

(4) Article [●] (procedure in relation to certain approvals) does not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

#### Interpretation

2. —(1) In this Schedule—

“access roads” means the roads and other access routes within the Order limits (whether or not they are defined topographical features) giving access to pipeline;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) in relation to the exercise of an identified power, any apparatus which would be affected by the exercise of that power.

“alternative apparatus” means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

“apparatus” means pipelines and cables owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“construction access plan” means a plan identifying how access will be maintained to apparatus during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and

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<sup>a</sup> 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), paragraph 7 of Schedule 1 of the Gas (Third Party Access and Accounts) Regulations 2000 (S.I. 2000/1937) and regulation 22 and paragraph 5 of the Schedule to the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305).

requirements in relation to any major works as at the date when the plan is published) have been taken into account in preparing the plan;

- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and
- (e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an independent engineer appointed by SABIC for the purposes of this Order;

“identified powers” means the powers conferred by the following—

- (a) article [●] (street works);
- (b) article [●] (construction and maintenance of new or altered means of access)
- (c) article [●] (temporary closure of streets and public rights of way);
- (d) article [●] (access to works);
- (e) article [●] (discharge of water);
- (f) article [●] (authority to survey and investigate the land);
- (g) article [●] (compulsory acquisition of land);
- (h) article [●] (power to override easements and other rights);
- (i) article [●] (compulsory acquisition of rights etc.);
- (j) article [●] (private rights);
- (k) article [●] (acquisition of subsoil or airspace only);
- (l) article [●] (rights under or over streets);
- (m) article [●] (temporary use of land for carrying out the authorised development); and
- (n) article [●] (temporary use of land for maintaining the authorised development).

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus;

“owner” means, in relation to the access roads, any person—

- (a) with an interest in the access roads; or
- (b) with private rights of way on or over the access roads;

“pipeline corridor” means :the corridor of land in which SABIC has rights relating to the pipelines (including but not limited to right to install, operate, repair, maintain and renew the pipelines or a right to take access to the pipelines);

“pipeline” means the following pipelines:

- [(a) the Trans Pennine Ethylene Pipeline;
- (b) the Lostock Spur; and
- (c) the Holford Link],

and any associated apparatus owned or operated by SABIC located in the pipeline corridor at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions have been notified to the undertaker;

“pipeline survey” means a survey of the pipeline corridor to establish—

- (a) the precise location of the pipeline;
- (b) the specification of the pipeline including composition, diameter and pressure;
- (c) any special requirements or conditions relating to the pipeline which differ from the requirements or conditions applying to standard pipelines of that type;

(d) the precise location of any easement widths or rights (where it is possible to establish this).

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any apparatus;

“SABIC ” means:

(a) SABIC UK Petrochemicals Limited (Company Number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF and any successor in title to SABIC's rights and interests in the protected land; and

(b) in respect of paragraphs 1, 22 to 28, 30 and 31 also includes SABIC Petrochemicals BV (registered in the Netherlands with Company No 14033495) whose registered office is at Europaboulevard 1, Sittard, 6135 LD, Netherlands;

“specified person” means the Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF or such other person or address within the United Kingdom as they may notify to the undertaker in writing.

“temporary crossing point ” means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points;
- (c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;
- (d) details of methods and locations of any piling proposed to be undertaken under paragraph 11;
- (e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;
- (f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;
- (g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;
- (h) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (i) details of the undertaker and their principal contractors’ management of change procedures;
- (j) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;
- (l) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (n) details of the emergency response plan as prepared by SABIC in consultation with local



- emergency services;
  - (o) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to the pipeline cathodic protection system and the proposed remedial works; and
  - (p) any further particulars provided in accordance with paragraph 4(2).
- (2) Except in relation to paragraphs 1, where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified person is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction)—
- (a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and
  - (b) the grant or issue of such acknowledgement, approval, agreement, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC as defined in sub-paragraph (1) shall constitute approval, agreement, consent or authorisation on behalf of all of them except in paragraph 22 where an consent must be received from the SABIC company who owns the land, right or interest.

### **Pipeline survey**

**3.—**(1) Before commencing any part of the authorised development in the pipeline corridor the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys and carried out in accordance with all relevant national standards and codes (including those of the United Kingdom Onshore Pipeline Operators' Association and the American Petroleum Institute).

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

### **Authorisation of works details affecting the pipeline**

**4.—**(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified person shall as soon as reasonably practicable provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

**5.** No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(3); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

**6.—**(1) Any authorisation by SABIC required under paragraph 5(a) may be given subject to such



reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to an arbitrator in accordance with paragraph 7(2) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 7(3).

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) If the undertaker considers that—

- (a) any further particulars requested by SABIC under paragraph 4(2) are not reasonably required;
- (b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (c) SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions, the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

(3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—

- (a) the arbitrator is to determine whether or not the further particulars must be provided by the undertaker; and
  - (b) the undertaker is not required to provide them unless directed so to do by the arbitrator.
- (4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under paragraphs 6(1)(a) and 6(1)(b).

## **Notice of works**

8. The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

## **Further provisions about works**

9.—(1) Before carrying out a relevant work the undertaker must—

- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

(2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 3 metres of the centreline of a pipeline may be dug by mechanical means.

10. No explosives are to be used within the protected land.

11.—(1) All piling within 3 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

12.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

13.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter to an arbitrator for determination under paragraph 31.

14.—(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) In the event that works details approved in respect of a relevant work under paragraph 4 do not comply with SABIC's standard designs for the protection which must be installed between the relevant work and buried apparatus the minimum clearance of 600 millimetres referred to in sub-paragraph (1) shall not apply and a minimum clearance of 1500 millimetres will apply instead.

(3) No manholes or chambers are to be built over or round the pipelines.

### **Monitoring for damage to affected assets**

15.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing

the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**16.—**(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform SABIC;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

#### **Compliance with requirements, etc. applying to the protected land**

**17.—**(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 8 ; or
- (b) determined by the arbitrator following a determination under paragraph 31 to unreasonably—
  - (i) create significant engineering, technical or programming difficulties; or
  - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

#### **Access for construction and maintenance**

**18.—**(1) Before carrying out any construction or maintenance works affecting SABIC's rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

**19.—**(1) In preparing a construction access plan under paragraph 18 the undertaker must—

- (a) establish the programme for SABIC's major works in the pipeline corridor and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

- (b) where it proposes to restrict or extinguish SABIC's access to the protected land, first provide an alternative or replacement means of access together with facilities and rights which are not materially less advantageous to SABIC.

(2) Where a reference is made to an arbitrator under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(5) the appointed arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, “programmed”, in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

**20.—**(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC refers the construction access plan to an arbitrator for determination under paragraph 31, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

### **Restriction on exercising powers**

**21.—**(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

**22.—**(1) The undertaker must not exercise the identified powers in respect of SABIC's land, rights and interests unless one of the following consents has been given—

- (a) written consent by SABIC;
- (b) consent by an arbitrator appointed under paragraph 31; or
- (c) deemed consent in accordance with sub-paragraph (5).

(2) Where an identified power provides for the undertaker to automatically extinguish or override a right or interest of SABIC, the restriction in sub-paragraph (1) is to operate so that the extinguishment or override of the right or interest does not apply unless SABIC has given its consent or consent has been given by an arbitrator appointed under paragraph 31 or is deemed to be given under sub-paragraph (5).

(3) Where SABIC's consent is required under sub-paragraph (1) or (2) the undertaker must serve

a notice on SABIC requesting that consent.

(4) If the undertaker considers that consent under sub-paragraph (3) has been unreasonably withheld, the undertaker may refer the request for consent to an arbitrator appointed under paragraph 31 for determination.

(5) If SABIC fails to respond to a request for consent within 30 days of the undertaker serving that request on the specified person in full accordance with sub-paragraph (3) and article [●] (service of notices) as amended by paragraph 30, the consent of SABIC is deemed to be given.

(6) In the event that consent is given or deemed to be given under paragraph (1), SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(7) Where alternative apparatus is to be provided under paragraph (6):

- (a) the undertaker must give to SABIC written notice, with specification of the proposed alternative apparatus, together with plans and sections showing its situation and location;
- (b) paragraphs 4 to 20 shall apply to the alternative apparatus as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus constituted the carrying out of a relevant work, subject to the following amendments:

- (i) in paragraph 8 the notice period of "not less than 28 days" will be replaced with a period of "not less than 3 calendar months unless otherwise agreed with SABIC"; and

- (ii) in paragraph 6(1) there shall be added immediately before paragraph (a) a new paragraph (aa) as follows:

- "(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as possible the detrimental effects on SABIC's operations;"

- (c) the undertaker will have special regard to its obligations under paragraph 21(2).

(8) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(9) Where under paragraph (6) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(10) Subject always to paragraph (9) if the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

## **Insurance**

**23.—**(1) Before carrying out any part of the authorised development on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer against the undertaker's liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.



(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 31.

**24.**—If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 23—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 31 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

### **Costs and indemnification**

**25.**—(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 11;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of affected assets under paragraph 15;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 19 and providing details of their programme for major works to the undertaker under paragraph 19;
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep SABIC indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the them—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

(3) The fact that any act or thing may have been done by SABIC on behalf of the undertaker or in accordance with plans approved by or on behalf of SABIC or in accordance with any requirement of the engineer appointed by SABIC or under his supervision does not excuse the undertaker from any liability under the provisions of this sub-paragraph (2).

(4) Nothing in the preceding provisions of this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents.

(5) SABIC must give the undertaker reasonable notice of any claim or demand under sub-

paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(6) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Schedule.

(7) In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

(8) SABIC must use its reasonable endeavours to mitigate any costs, expenses, loss, demands, and penalties to which this paragraph applies.

(9) If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to this paragraph.

(10) The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

#### **Further protection in relation to the exercise of powers under the Order**

26. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article [●] (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

27.—The undertaker must give written notice to SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article [●] (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

28. The undertaker must, when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article [●] (certification of plans etc.) in electronic form.

29. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

30. Where SABIC has provided an e-mail address for service in respect of the specified person, sub-paragraph (1)(a) of article [●] (service of notices) will not apply to the service of the said notice, which must be effected by electronic means.

#### **Arbitration**

31.—(1) Article [●] (arbitration) applies to this Schedule subject to the following provisions of this paragraph.

(2) The fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of their appointment;
  - (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
  - (c) issue a decision within 42 days of receipt of the submissions under sub-paragraph (b) or, if no comments are received, the expiry of the 21 day period specified in sub-paragraph (b); and
  - (d) give reasons for the decision.
- (4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—
- (a) the arbitrator is not entitled to any payment in respect of their fees; and
  - (b) the matter in question shall immediately be referred to a new arbitrator in which case—
    - (i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);
    - (ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and
    - (iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).
- (5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—
- (a) the development outcome sought by the undertaker;
  - (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
  - (c) the nature of the power sought to be exercised by the undertaker;
  - (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
  - (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
  - (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;
  - (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
  - (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
  - (i) any other important and relevant consideration.