

The Planning Inspectorate  
Temple Quay House  
Bristol  
BS1 6PN

**Project ref:** Southampton to London Pipeline  
Project – EN070005

**Your ref:** 20022740

**Date:** 30 January 2020

Dear Sir/Madam,

**Application by Esso Petroleum Company Limited for an Order Granting Development Consent for the Southampton to London Pipeline Project**

Please find enclosed our comments for 'deadline 4' submissions for the Southampton to London Pipeline Project Development Consent Order application. I apologise that we were not able to provide a substantive response to the previous 'deadline 3' and for any inconvenience this has caused.

**The Role of the Environment Agency**

The Environment Agency has a responsibility for protecting and improving the Environment as well as contributing to sustainable development.

Our work helps to support a greener economy through protecting and improving the natural environment for beneficial uses, working with business to reduce waste and save money, and helping to ensure that the UK economy is ready to cope with climate change. We will facilitate, as appropriate, the development of low carbon sources of energy ensuring people and the environment are properly protected.

**We have three main roles:**

We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve Environmental standards and to minimize unnecessary burdens on business. We issue a range of permits and consents.

We are an **environmental operator** – we are a national organization that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.

We are an **environmental advisor** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.

One of specific functions is as a Flood Risk Management Authority. We have a general supervisory duty relating to specific flood risk management matters in respect of flood risk arising from Main Rivers or the sea.

**Incorporation of 'deadline 3' comments**

As stated in our e-mail to you dated 18 December 2019, we were unable to provide a substantive response for deadline 3 (18 December) due to a major flooding incident response. We apologise again for any inconvenience that this has caused.

We have therefore incorporated any comments that we may have had for deadline 3 into this

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response.

**Ongoing engagement with the applicant**

Our ongoing engagement with the applicant is listed in the Statement of Common Ground (SoCG) that we have produced with the applicant, and that we understand the applicant will submit at the next deadline on 13 February. We have also included a summary in our written representation in Appendix A.

We continue to engage with the applicant on the outstanding matters and will continue to liaise with the applicant to update the SoCG to reflect our latest position.

Please do not hesitate to contact me if you require any further information. We look forward to continuing to work with the applicant to resolve any ongoing matters contained within our written representation, and to ensure the best environmental outcome for this project.

Yours faithfully,

**Clark Gordon**  
**Strategic Planning Specialist**  
**Environment Agency, Thames area**

Att     Appendix A – Written Representations on behalf of the Environment Agency

Appendix B – Environment Agency responses to ExA Further Written Questions

November 2019 Standard protective provisions for DCO – EM amends 17.01.20 (attached to e-mail with letter)

RE: Southampton to London Pipeline DCO: Protective Provisions (additional amendment to protective provisions from applicant) (attached to e-mail with letter)

## **Appendix A**

### **Written Representations on behalf of the Environment Agency**

#### **1.0 Summary of further engagement with applicant**

1.1 Since we sent our previous written representation (REP2-065) for this application on 14 November 2019, we have undertaken further engagement with the applicant (or their agents) as set out below:

- 29 November: Calls with applicant's agent to discuss flood risk and biodiversity issues.
- 12 December: Call with applicant's agent to discuss WFD issues.
- 22 & 23 January: Receipt of latest draft protective provisions from the applicant.
- 23 January: Receipt of minutes from November & December calls and draft Statement of Common Ground (SoCG).
- 27 January: Submission of Water Framework Directive data (specifically non-heavily modified waterbody mitigation measures) to the applicant's agent.
- 30 January: Site visits with applicant's agent to watercourses subject to timing restrictions.

1.2 We understand that the applicant intends to submit the latest SoCG at 'deadline 5' on 13 February. We will work with the applicant to ensure this reflects our latest position.

#### **2.0 Summary of outstanding issues**

2.1 A number of the issues that we raised in our previous response have now been satisfactorily addressed by the applicant, either through clarifications made to us through meetings and/or written communications, or via submissions made to you directly as part of the examination.

2.2 We are now satisfied that the following matters have been addressed satisfactorily: crossing of the Cove Brook Flood Storage Area, some flood risk issues, some Water Framework Directive issues and biodiversity net gain. For the latter issue, we note that the applicant has now published the Environmental Investment Programme Report on their website, and we will comment on this separately, outside of the DCO process, accepting that the applicant is committed to this voluntarily.

2.3 We now consider there to be six outstanding issues for matters within our remit. We address these issues below:

#### **3.0 Protective Provisions**

3.1 Following updates to the Protective Provisions that we submitted to the applicant's legal representative in November, we received the applicant's response to these updates on 22 January. We are yet to agree on acceptable terms for the protective provisions, although some matters have now been addressed. For your information, we have attached the latest draft of the provisions that we received from the applicant earlier this month.

3.2 We had asked for compounds located in Flood Zones 2 or 3 to be included in the protective provisions, such that we would be provided detailed designs for those compounds at a later stage. We requested this because we were not satisfied (at the time) that the Flood Risk Assessment (APP-134) or commitments made in for example the Outline CEMP (APP-129) or CoCP (APP-128) were sufficient to ensure that the sites would be safe for users and would not increase flood risk elsewhere. This addition is being challenged by the applicant. We intend to clarify with the applicant's agent what flood risk information is

outstanding, and whether we now have sufficient commitments about the remaining compounds to remove this requirement from the protective provisions.

- 3.3 We also made some changes to paragraph 5 related to the temporary nature of the works. It is important that during the construction of the scheme, any drainage works that are present are not compromised. This is all this clause now seeks to achieve and we advise that it is not imposing any long-term liability upon the applicant. The applicant is challenging this paragraph. We will clarify our position on this matter with the applicant to see if we can reach a resolution.
- 3.4 We substantially amended paragraph 10 (indemnity) following previous concerns raised by the applicant. However, the applicant is still challenging this paragraph. We believe that the applicant is concerned that we are seeking to impose long-term liabilities in respect of the operation of the pipeline. This not the case - we are only seeking indemnity in respect of activity during the construction stage. Again, we will clarify our position on this matter with the applicant to see if we can reach a resolution.

#### **4.0 Groundwater, hydrology and contaminated land**

- 4.1 We have responded to your Further Written Questions (PD-013) related to groundwater, hydrology and contaminated land matters in Appendix B.
- 4.2 Our only outstanding concern for this matter continues to relate to works through active landfill sites in the Littleton/Laleham area. In particular, these sites operate under Environmental Permits from us, which will need to be varied as a result of the scheme. It is for the site operator (Brett Aggregates) to submit a Permit variation application to us, working with the applicant. To date, we have not yet received any pre-application or application documents.
- 4.3 We note that Brett Aggregates have also responded at 'deadline 2' (REP2-133) and currently object to the scheme going through landfill caps until a permit pre-application has been agreed with us.
- 4.4 The applicant's agent has sent us some dates for a meeting between us, the applicant and Brett Aggregates to understand what information needs to be submitted for the Permit variation (pre-)application. We hope to hold this meeting in the next couple of weeks.

#### **5.0 Water Framework Directive (WFD)**

- 5.1 Since our previous response, we have held a call between the applicant's agent and our WFD specialist. As a result of this call, we are satisfied that WFD issues raised in our response have been satisfactorily addressed in the WFD Compliance Assessment (APP-107), with the exception of one matter.
- 5.2 We now understand that the applicant has only reviewed WFD mitigation measures for 'heavily modified waterbodies' (HMWBs) as part of their assessment and had not considered mitigation measures for non-HMWBs. We acknowledge that we only sent the applicant data for HMWBs as part of their original data request, but after reviewing this request, this was the only data that we were asked for.
- 5.3 On 27 January, we sent the applicant the WFD mitigation measures for non-HMWBs and have asked them to assess this data for the scheme, possibly by way of a technical note. As there are very few above ground structures as part of this scheme, we do not anticipate that the scheme will detrimentally impact on mitigation measures for non-HMWBs, but this needs to be confirmed by the applicant.

- 5.4 The applicant's agent has requested a further call or meeting with us to discuss how to resolve this matter. We hope to hold this meeting next week.

## **6.0 Watercourse timing restrictions**

- 6.1 Following the applicant's challenge to the watercourse timing restrictions that we proposed for five open-cut crossings (WCX006, WCX007, WCX012, WCX021 and WCX047), we have attended site visits with the applicant's agents today (30 January) to assess the watercourses and clarify our position on timing restrictions.
- 6.2 All of the watercourses visited were showing high winter flows, as opposed to the survey data from the applicant, which was undertaken last summer at the end of a period of prolonged dry weather. The current state of the watercourses are likely to be more representative of flows in the winter months (some of which are in negotiation for timing restrictions) and overall provide fair to good habitats for fish, including trout and coarse species.
- 6.3 The timing restrictions that we would seek were discussed with the applicant's agents on site, but we would like to discuss these internally before we finalise our position on timing restrictions. We will send our final proposals for timing restrictions at 'deadline 5' (13 February), and will discuss these with the applicant to see if we can reach agreement.
- 6.4 The applicant's agents have tentatively challenged some of the timings discussed on site, but have advised that they require further internal deliberations. We would like to make clear that we consider our final position on timings to be critical for the protection of relevant fish species, and will consider the use of other powers (such as through the protective provisions) to ensure that our interests are protected.

## **7.0 Flood risk**

- 7.1 Since our previous response, we have held a call between our flood risk officers and the applicant's agents to discuss our flood risk issues and queries. A large number of our issues that we raised in our response have been satisfactorily addressed and we are satisfied that much of the detail we need to see will be provided through the protective provisions.
- 7.2 As of today, we have not yet had the opportunity to review all of the flood risk details and updates provided by the applicant, and cannot therefore state that all of our flood risk issues have been resolved.
- 7.3 We maintain some concerns about works in high risk flood areas (Flood Zone 3) for which we will not receive further details, such as the storage of material. However, we acknowledge that the applicant has submitted a number of new commitments or updates since our previous response which may have allayed these concerns to some degree. We do however feel that some further assessment may be required before this matter is fully resolved.
- 7.4 We are pleased that the applicant has reduced the number of compounds (both construction compounds and logistics hubs) required by the scheme, including the removal of some from areas at medium or high risk of fluvial flooding (i.e. Flood Zones 2 and 3). The removal of the M3 New Road Logistics Hub also allays our concerns around assessment of climate change allowances, as we understand that this was the only compound that would be in place for longer than 18 months and that the smaller construction compounds will be in place for less time than this.

## **8.0 River Thames Scheme (RTS)**

- 8.1 Following a meeting between our RTS team and representatives of the applicant in August 2019, we have requested further details from the applicant about the costs for diverting the pipeline at a later date (i.e. during the construction of RTS), and for the applicant to agree a pipeline location with us and Brett Aggregates (site owner).
- 8.2 The latest communications that we received from the applicant's agent on 17 December indicates that there has been a delay in providing cost details to us, resulting from insufficient ground investigation information at the time to enable an accurate costing. We understand that the applicant is working with Brett Aggregates to obtain relevant ground investigation data.
- 8.3 Clearly it would be preferable for us for the pipeline to be laid such that we would not have to divert it as part of our construction of the RTS scheme. However, we acknowledge that this may not be feasible depending on ground conditions and other matters, which is why we are also requesting cost details for such a diversion.

## Appendix B

### Environment Agency responses to Examining Authority's further written questions (ExQ2)

#### 1.0 Questions from the Examining Authority (ExA) to the Environment Agency (EA)

1.1 **Question CA.2.5** – *“Paragraph 6.3.2 of the Statement of Reasons [AS-010a] states that Class 2 i) would allow the erection and maintenance of stiles, gates, bridges and culverts for the facilitation of access to the pipeline. Set out concerns if any regarding this power. If yes what are your concerns and what measures would be required to address your concerns.”*

1.1.1 We would have particular concerns with the maintenance or erection of bridges or culverts (and potentially gates) either in areas of fluvial flood risk or affecting Main Rivers. It is unclear whether these powers would override any requirement on the applicant to obtain a Flood Risk Activity Permit (or exemption as appropriate) for such activities. If this were the case, we would have major concerns with this broad power. If not - and a Permit would need to be applied for – we would be generally satisfied that we could control these activities through permitting.

1.1.2 For bridges, we would have concerns that structures could be built in flood risk areas without providing appropriate floodplain compensation or appropriate freeboard above flood levels and may impact on river habitats, such as through shading. In the most extreme case in theory, a new bridge could be built over the River Thames, which would also have separate requirements for issues such as navigable heights.

1.1.3 For culverts, we would be concerned in particular about new culverts being constructed on Main Rivers. Our general position is to avoid new culverts on Main Rivers and we also seek to remove existing Main River culverts where this is feasible. Culverts can have a devastating impact on river ecology and can also lead to increased flood risk issues if not appropriately designed. Again, thinking about a worst-case scenario, this power could theoretically allow the applicant to culvert an entire stretch of Main River through any land where they are seeking permanent acquisition rights.

1.1.4 If the applicant can confirm that such powers do not override any requirement to obtain a Flood Risk Activity Permit from us, this should be sufficient to address our concerns above.

1.2 **Question FR.2.1** – *“In response to ExA WQ FR.1.5 (ii) [REP2-043] it was confirmed that winter highs have been taken into account. Provide a response as to whether this is agreed with.”*

1.2.1 We are satisfied with and agree with the approach applied as described in the applicant's response, comprising the use of long-term EA data, use of the EA groundwater model and application of British Geological Survey groundwater flooding potential data.

1.3 **Question FR.2.5** – *In response [REP2-043] to ExA WQ FR.1.21 [PD-008] the Applicant sets out the approach to monitoring of well water in the event of a significant spill. Comment on the Applicant's approach to monitoring and managing well water in the event of a significant spill.”*

1.3.1 We agree with the proposal to take up to 5 water samples and compare with drinking water standards, and the use of EA software to determine travel times.

1.3.2 We have some concerns with the vagueness of the statement that *“a sample will be taken as soon as practicable”*. We would recommend that a firmer commitment should be made

about how quickly samples will be taken. We suggest that within 2-3 working days would be a reasonable requirement.

- 1.3.3 We also have some concerns about the applicant's statement on what they will do if they detected an impact. The applicant states that if there is no evidence of impact (after an appropriate timescale) they will cease testing. We would agree with this. However, they also state that if there is a "need to cease" the abstraction due to impact they will consider remediation and/or further monitoring. We advise that the applicant would need to consider remediation and further sampling if there is evidence of impact, not just a need to cease abstracting.
- 1.4 **Question FR.2.6** – *"Climate effects - Provide comment on the Applicant's response to ExA WQ FR.1.23 in [REP2-042]."*
- 1.4.1 As we have noted in Appendix A (paragraph 7.4), we understand that the M3 New Road Logistics Hub has now been removed from the scheme. As this was the only 'compound' that was to be in place for upto 2 years and that the other, smaller construction compounds will be in place for less time (upto 6 months we understand), we are satisfied that this matter is adequately addressed.
- 1.5 **Question FR.2.7** – *"In response [REP2-043] to ExA WQ FR.1.24 [PD-008] the Applicant sets out the construction and detailed design methods with respect to Flood Zone 3. Confirm whether the response provided is acceptable."*
- 1.5.1 As we have noted in Appendix A (paragraphs 7.2 and 7.3), we have not yet had the opportunity to review all of the latest flood risk information provided by the applicant, but we believe there are still some outstanding matters (e.g. stockpiling) where we require further clarity and/or assessment.
- 1.5.2 We are however pleased with the progress that has been made to date with regards to fluvial flood risk issues and agree with the commitments that the applicant has made, including those set out in the applicant's response (REP2-043) to ExA WQ FR.1.24 (PD-008).
- 1.5.3 We do not foresee any 'showstopper' issues regarding fluvial flood risk, acknowledging that the applicant has no choice but to undertake some works in areas of high fluvial flood risk. We just need to ensure that all of those works can be undertaken whilst keeping site users safe and not increasing flood risk to others, particularly where we do not have additional control through the protective provisions.
- 1.6 **Question FR.2.9** – *"In ExA WQ ALT.1.8 [PD-008] the ExA requested details of the discussions that have taken place between the Applicant, the EA and the landowner regarding potential conflict with the Thames Flood Defence Scheme. In its response [REP2-038], the Applicant stated, amongst other things, that discussions are ongoing but that it has a good degree of confidence that matters will be agreed before the end of Examination. Provide an update."*
- 1.6.1 Please refer to our comments provided in Appendix A, section 8.
- 1.7 **Question FR.2.10** – *"Provide comments on the Applicant's response to ExA WQ FR.1.3 [REP3-020] regarding the adequacy of the baseline data."*
- 1.7.1 We acknowledge and agree with the applicant's comments on baseline data related to Strategic Flood Risk Assessments, hydraulic modelling data and WFD chemical data. In



all cases, the applicant has confirmed or demonstrated to us that the correct data has been used, albeit it was not always clear in some of the submitted documents.

- 1.7.2 The only new baseline data issue that we have relates to the use of WFD data for non-HMWB mitigation measures. Please refer to our comments in Appendix A, section 5 for full details of this matter.
- 1.8 **Question TH.2.9** – *“In response [REP2-049] to ExA WQ TH.1.13 (ii) the Applicant refers in paragraph 1.4 to Rainfall Runoff Management for Developments (Environment Agency, 2013) and states that run-off rates do not depend on vegetation types and goes on in paragraph 1.5 to say that removal of trees would not change surface water run-off rates in Turf Hill. Could the EA advise on: i) The appropriateness of the quoted best practice guidance in this context and ii) The general conclusion about there being no change to surface water runoff if trees are removed.”*
  - 1.8.1 This matter relates to surface water flooding which is no longer within the remit of the EA. We recommend that you refer this question to the relevant Lead Local Flood Authority (LLFA), who we understand would be Surrey County Council in this case.
  - 1.8.2 Similarly, we cannot confirm whether the quoted best practice guidance is the most current and/or relevant. It may be that the LLFA uses this or other national guidance, or they may have their own local best practice guidance that should be used.