

From: [Gordon, Clark](#)
To: [Southampton to London Pipeline Project](#)
Cc: [Boyden, Adam](#); [Lines, Charlotte](#); [Rabone, Anna](#)
Subject: Environment Agency (20022740) Representation for Southampton to London Pipeline Project (EN070005)
Date: 30 January 2020 19:40:25
Attachments: [image006.png](#)
[Environment Agency \(20022740\) Representation for Southampton to London Pipeline Project \(EN070005\).pdf](#)
[November 2019 Standard protective provisions for DCOs - EM amends 17.01.....doc](#)
[RE Southampton to London Pipeline DCO Protective Provisions.msg](#)

Dear Sir/Madam,

Environment Agency Representation for Southampton to London Pipeline Project (EN070005)

PINS Registration identification number: 20022740

Please find attached our representation for the Southampton to London Pipeline Project Development Consent Order application. The other attachments are relevant to and referenced within our response letter.

If you have any queries about this response, please do not hesitate to contact me.

Kind regards,

Clark Gordon

Strategic Planning Specialist, Strategic Planning & Engagement (Thames)

Environment Agency | Red Kite House, Howbery Park, Wallingford, Oxon, OX10 8BD

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From: [Taylor, James M /C](#)
To: [Patterson, Jeremy](#)
Cc: [Gordon, Clark](#); [Rabone, Anna](#); [Lines, Charlotte](#)
Subject: RE: Southampton to London Pipeline DCO: Protective Provisions
Date: 23 January 2020 19:01:29
Attachments: [image006.png](#)

Thanks Jeremy

I had one further amendment that I failed to insert (and which would bring it into alignment with language proposed by the Lead Local Flood Authorities in their schedule).

Can we modify Para 5(6) so it reads:

- (6) This paragraph does not apply to –
- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; **and**
 - (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part provided that any obstruction is removed as soon as reasonably practicable.**

Many thanks

James

From: Patterson, Jeremy [mailto:Jeremy.Patterson@environment-agency.gov.uk]
Sent: 23 January 2020 11:30
To: Taylor, James M /C <james.m.taylor@exxonmobil.com>
Cc: Gordon, Clark <clark.gordon@environment-agency.gov.uk>; Rabone, Anna <Anna.Rabone@environment-agency.gov.uk>; Lines, Charlotte <charlotte.lines@environment-agency.gov.uk>
Subject: RE: Southampton to London Pipeline DCO: Protective Provisions

Hi James

Thanks for getting in touch. I will discuss your comments on our amendments to the PPs with Clark and his team and get back to you shortly.

Kind regards.

Jeremy

Jeremy Patterson

Senior Lawyer

National Legal Services – FCRM & Planning

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From: Taylor, James M /C [<mailto:james.m.taylor@exxonmobil.com>]

Sent: 22 January 2020 21:14

To: Patterson, Jeremy <Jeremy.Patterson@environment-agency.gov.uk>

Cc: Gordon, Clark <clark.gordon@environment-agency.gov.uk>; Rabone, Anna <Anna.Rabone@environment-agency.gov.uk>; Lines, Charlotte <charlotte.lines@environment-agency.gov.uk>

Subject: RE: Southampton to London Pipeline DCO: Protective Provisions

Hi Jeremy

Apologies for the delay. The DCO process has proved somewhat all consuming. I think we are almost there and I have accepted all the edits save where we are still at odds. I have highlighted green and added comments in these outstanding areas. Any remaining concerns over methodology will hopefully be alleviated when you see the revised COCP and outline CEMP that are pulling together and securing our commitments on river crossings and working in the flood zone.

Kind regards

James

From: Patterson, Jeremy [<mailto:Jeremy.Patterson@environment-agency.gov.uk>]

Sent: 13 November 2019 16:57

To: Taylor, James M /C <james.m.taylor@exxonmobil.com>

Cc: Gordon, Clark <clark.gordon@environment-agency.gov.uk>; Rabone, Anna <Anna.Rabone@environment-agency.gov.uk>; Lines, Charlotte <charlotte.lines@environment-agency.gov.uk>

Subject: Southampton to London Pipeline DCO: Protective Provisions

Hi James

Following our recent telephone conference I have attached a revised draft of the PPs which contain the Environment Agency's suggested amendments following our discussions together with an additional amendment.

The additional amendment relates to an issue of flood risk which has been raised in respect of some of the proposed construction compounds. My instructions are that the flood risk assessments produced thus far for a number of compounds which will be situated within Flood Zone 3 are currently unsuitable. Clearly, the Environment Agency would not want the presence of these compounds to increase flood risk without appropriate protective measures. At this stage we have sought to address this issue via the PPs; and I would reiterate that this only relates to compounds which are within Flood Zone 3. If your clients can produce suitable flood risk assessments then there will be no need for this additional provision.

Turning back to the issues we discussed the PPs have the following amendments:

1. The reference to the availability of standard terms permits has been deleted because although we acknowledge what Esso are trying to achieve we believe it will add complexity and could be unworkable.
2. Paragraph 5 has been amended to reflect your concerns; the wording now acknowledges the temporary nature of Esso's presence.
3. Paragraphs 9 and 10 have been amended to remove the claim for full indemnity in respect of costs and claims and to replace it with the right to claim reasonable costs. We have recently agreed this form of wording on a number of other DCOs.

Please let me know if you require any clarification on the above points and I look forward to receiving your comments in due course.

Kind regards.

Jeremy

Jeremy Patterson

Senior Lawyer

National Legal Services – FRCM & Planning

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STANDARD PROTECTIVE PROVISIONS

FOR USE IN DCOs

PART 4

FOR THE PROTECTION FOR THE ENVIRONMENT AGENCY

1.—(1) The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” shall be construed accordingly;

“Cove Brook Flood Storage Area” means

“Construction Compound” means any provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of the works or operations authorised by this order and located within Flood Zone 3;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“Flood Zone 3” means land within Zone 3 as shown on the Environment Agency’s flood map for planning (Rivers and Sea);

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the channel;

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within [8] [16] metres of a main river or the Cove Brook Flood Storage Area or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, river basins, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work or establish a construction compound on any land which is situated within Flood Zone 3, the undertaker must submit to the Agency plans of the specified work or construction compounds and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work or establishment of a construction compound must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 11.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed and the Agency will provide regular updates on its consideration of the requested approval and including timely notice of any potential refusal or delay to its determination;
- (b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval in which case the Agency shall provide a statement of the grounds of refusal or delay as soon as possible after such deemed refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may have (taking account of the terms of this Order) and which are for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(a)

3. Without limiting paragraph 2 and subject to paragraph 3, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary (taking account of the terms of this Order)—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule or, as the case may be, the standard rules, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6), if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 11.

5. (1) Subject to sub-paragraph (6) the undertaker must from the commencement of the construction of the specified works ensure that any drainage work which is situated within the limits of deviation and on land held or occupied by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence, is maintained in good repair and condition and free from obstruction, for the duration of the specified works.

(2) If any such drainage work which the undertaker is liable to maintain, by virtue of paragraph 5(1) above, is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (5) and paragraph 9, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) If there is any failure by the Applicant to obtain consent or comply with conditions imposed by the Agency in accordance with these Protective Provisions the Agency may serve written notice requiring the Applicant to cease all or part of the specified works and the Applicant must cease the specified works or part thereof until it has obtained the consent or complied with the condition unless the cessation of the specified works or part thereof would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency shall not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 11.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so.

6. Subject to paragraph 9, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the Applicant to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure reasonably incurred by the Agency in so doing from the undertaker.

7. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the Applicant must provide such alternative means of access (having regard to the terms of this Order and the nature of the undertaker's interest in land) that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 24 hours of the Applicant becoming aware of such obstruction.

8.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Applicant requiring it to take such steps as may be reasonably practicable (taking account of the terms of this Order) to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Applicant fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and any expenditure reasonably incurred by the Agency in so doing shall be recoverable from the Applicant.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Applicant any expenditure reasonably incurred in so doing provided that notice specifying those steps is served on the Applicant as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

9. The undertaker must repay to the Agency all reasonable costs, charges and expenses which the Agency may reasonably incur —

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.



10.—(1) the undertaker must make reasonable compensation for costs and losses which may be reasonably incurred or suffered by the Agency by reason of—

- (a) the construction of any specified works comprised within the works authorised by this Order; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads;

(c) legal costs;

“losses” includes physical damage.

(3) The undertaker must make reasonable compensation for liabilities, claims and demands arising out of or in connection with the authorised works or otherwise out of the matters referred to in sub-paragraph (1)(a) and (b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

(a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand;

(b) any interest element of sums claimed or demanded;

“liabilities” includes—

(c) contractual liabilities;

(d) tortious liabilities (including liabilities for negligence or nuisance);

(e) liabilities to pay statutory compensation or for breach of statutory duty; and

(f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand.

(6) The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

(7) The Agency must not compromise or settle any such claim or make any admission which might be prejudicial to the claim without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(8) The Agency must, at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(9) The Agency must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid its reasonably expenses reasonably incurred in so doing.

(10) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

11. Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 47 (arbitration).

November 2019

