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Signed: *Frank Clinton* Date: 08/01/2016

Office of Environmental Sustainability



Office of Environmental Enforcement

MEMORANDUM

TO: DIRECTORS

C.C: Frank Clinton, Mary Gurrie, Programme Managers

FROM: Brian Meaney, Senior Inspector,
Environmental Licensing Programme
Mary Frances Rochford, Senior Inspector,
Office of Environmental Enforcement

DATE: 7 January 2016

RE: Request for a Technical Amendment to IE Licence Register Number **W0184-01** held by **Enva Ireland Limited** for a facility at Clonminam Industrial Estate, Portlaoise.

ISSUE/TOPIC

The purpose of this memo is to present certain information sought by the Board on a number of matters regarding licence register number W0184-01 and its enforcement, including the licensee's request to technically amend the licence and whether it is appropriate to review the licence.

Introduction

The Agency received a request on 27 November 2015 to amend Industrial Emissions licence register number W0184-01.

A memo dated 23 December 2015 recommending refusal of the request was considered by the Board of the Agency on 6 January 2016. A decision on the matter was deferred pending preparation of a supplementary memo that:

- elaborates further on reasons why the technical amendment request should be rejected;
- sets out grounds why the Agency should or could consider initiating a review of Industrial Emissions licence register number W0184-01;
- states how the Agency will engage and communicate with:
 - the licensee, and
 - third parties,

regarding any refusal of the technical amendment request and pending any review of the licence initiated by the Agency.

Reasons for refusal of the technical amendment request

The memo dated 23 December 2015 states that it is inappropriate to consider technical amendment of a licence in circumstances where:

- a considerable amount of environmental assessment is required in order to provide the assurances to the Agency that the proposed new emission will not cause environmental pollution, including nuisance; and
- there is no opportunity for public participation in the process.

Section 96(1) of the Environmental Protection Agency Act 1992 as amended allows the Agency to amend a licence for the purposes of facilitating the doing of any thing pursuant to a condition of the licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or the licence taken as a whole. In this instance, the licence requires that the licensee take steps to ensure that there are no odorous emissions from the installation (see condition 7.2 of the licence). So the installation of equipment (a regenerative thermal oxidiser) to prevent the emission of odorous gases in this instance arguably satisfies the basic requirement of condition 7.2, i.e. not to cause an nuisance odour emission. However, condition 7.2 also states that methods used by the licensee to control any such nuisance shall not cause environmental pollution. It is not clear from available information whether the operation of a regenerative thermal oxidiser at the installation will cause environmental pollution. The nature of the emissions from the thermal oxidiser need to be set out in more detail than is currently presented and their potential environmental impacts assessed through air dispersion modelling. This remains to be done, and will require detailed information from the licensee.

On the other hand it would appear to be a fact that the proposed regenerative thermal oxidiser was never contemplated by the licensee or the Agency at the time the licence was granted. Its installation cannot therefore be authorised by way of technical amendment.

The participation of the public and interested third parties is a fundamental aspect of the licensing process. The technical amendment process does not provide for public participation and therefore can be used only in instances where there is no public interest in the change being considered for technical amendment. Notwithstanding the public and media interest in the Agency's interaction with the operators of this installation, the proposed technical amendment (being the installation of a major piece of equipment and the generation of a new emission to air) does not meet the criterion of no public interest.

Reasons to consider initiating a review of the licence

The Agency is entitled, in accordance with section 90 of the Environmental Protection Agency Act 1992 as amended to review a licence. There are a number of circumstances under which a licence can or should be reviewed. The circumstances set out in sub-section 4 appear the most relevant in this case, as follows:

S90 (4) Notwithstanding anything in subsection (1), a licence or revised licence-

(a) shall be reviewed by the Agency if the Agency considers-

- (i) that emissions from the activity to which the licence or revised licence relates are, or are likely to be, of such significance that the existing emission limit values, or equivalent parameters or technical measures specified in the licence or revised licence need to be reviewed or new such values,

parameters or measures, as the case may be, need to be specified in the licence or revised licence,

- (ii) that substantial changes in best available techniques make it possible to reduce emissions significantly from the said activity without imposing excessive costs,
- (iia) in the case of an industrial emissions directive activity to which no BAT conclusions apply, that developments in best available techniques make it possible to significantly reduce emissions from the activity,
- (iib) in the case of an industrial emissions directive activity, that a new or revised environmental quality standard requires new or revised conditions to be attached to the licence or revised licence under section 83(5)(b),
- (iii) that the operational safety of the said activity requires techniques, other than those currently being used in respect of it, to be used, or
- (iv) that such a review is required by virtue of any act adopted by an institution of the European Communities or any agreement entered into by the State, or any enactment passed or made after the licence or revised licence was granted or last reviewed under this section,

(b) may be reviewed by the Agency if-

- (i) there is a proposal to make a substantial change to the nature or extent of an emission,
- (ii) there has been a substantial change, which could not have reasonably been foreseen when the licence or revised licence was granted, in the condition of the environment or an environmental medium in the area in which the activity to which the licence or revised licence relates is situated,
- (iii) evidence, which was not available when the licence or revised licence was granted, has become available, or a new standard is prescribed relating to the contents or nature of the emission concerned or the effects of the emission on the environment.

Section 90(4)(a)(i) would appear to be engaged in this instance due to the fact that proposed emissions from the activity are, or are likely to be, of such significance that technical measures need to be specified in a revised licence.

Section 90(4)(b)(iii) would also appear to have some relevance to the case in hand in that the Agency now has evidence relating to the nature of an emission or its effects on the environment.

Section 98A of the Environmental Protection Agency Act 1992 as amended (extract appended below) directs the Agency to review a licence in circumstances where the Agency receives notice or becomes aware of an alteration in the nature or functioning of an installation where such alteration will increase or change emissions from the activity or cause significant new emissions or constitute a substantial change. The Agency is now aware and has been notified of a proposed alteration in the nature or functioning of the installation (being the installation of a regenerative thermal oxidiser to treat the vent gases from the three drying tanks). In accordance with section 98A(3) of the Act, it is open to the Agency to form the opinion that the proposed alteration will (i) increase or (ii) change emissions or (iii) cause significant new emissions or (iv) constitute substantial change. Dealing with these four factors, it would appear that:

- (i) there is no data at this time to suggest that the alteration will increase emissions from the installation;

- (ii) the proposed alteration will change emissions from the installation in that the current emission of water vapour- and VOC-laden off-gases will become an emission of the combustion products of these off-gases;
- (iii) the proposed alteration will cause new emissions (there will be a new emission point) but there is no data at this time to suggest that the new emissions will be significant new emissions;
- (iv) there is no data to suggest that the proposed alteration will constitute substantial change which is defined in the Act as (paraphrased) a change in the nature or functioning of an installation which may have significant adverse effects on human health or the environment.

In light of the proposed alteration to the installation and the fact that given that the proposed alteration will result in a change to emissions and potentially cause significant new emissions, section 98A of the Environmental Protection Agency Act 1992 as amended could be engaged. If it is, the Agency is obliged to review the licence under section 90 of the Act or direct the licensee to apply for a new licence.

Engagement and communication with the licensee

Any notice to the licensee that initiates a review of the licence will emanate from the Environmental Licensing Programme on foot of a decision by the Agency to review the licence. Pending a review of the licence, it will be necessary to continue to enforce the existing licence and to ensure, to the extent possible, that the licensee operates within the conditions of the existing licence and odorous emissions are prevented.

The OEE's compliance investigation on this matter remains open. Further to the Agency's successful prosecution of ENVA Ireland Ltd on 18th December, the OEE requested details of further actions, measures and operational controls that are to be implemented to prevent off-site nuisance odours arising from current site activities and infrastructure.

The OEE anticipates that the submission will include a continuation of existing measures i.e. the use of odour neutraliser to mitigate odours and the undertaking of odour assessments during the process which triggers a termination of air sparging if nuisance odours are identified. ENVA Ireland Ltd. has indicated previously that it is not feasible to omit the air sparging stage of the drying process however other measures for consideration include segregation of the more odorous oil types and alterations to the emissions stack to increase dispersion.

The OEE intends to issue a warning letter to the Directors and Company Secretary of ENVA Ireland Ltd bringing to their attention, in the strongest terms, the requirement to comply with the conditions of the licence, with particular reference to preventing off-site nuisance odours arising from its onsite activities for which it was prosecuted.

Enforcement and legal options available to the OEE in the event of further odour nuisance arising from the activities of this facility include serving legal notices for the taking of measures to prevent off site odour nuisance, further district court proceedings to include the company and directors, circuit court prosecution of the company and directors. Injunction and suspension/revocation of licence are available subject to consideration of the evidence available and circumstances pertaining.

The Agency will communicate in a transparent manner with the licensee regarding the Agency's decision making process and procedural actions and be clear as to what is expected from it during this process and what they can expect from the Agency in terms of

enforcement actions in the event of non-compliance and the Agency's licence review process.

Engagement and communication with third parties

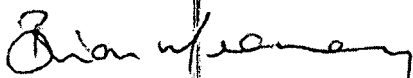
In the event that a decision is made to refuse the licensee's request for technical amendment, interested parties will be informed through publication of documents to the Agency's website that a request for technical amendment was made by the licensee and refused by the Agency.

In the event that a decision is made to initiate a review of the licence, interested parties will know through publication of public notices and information on the Agency's website that a licence review has been initiated. All correspondence between the Agency, the licensee and third parties during the licence review period will be published to the Agency's website.

There is an opportunity to communicate directly with any and all of the known interested third parties on these matters. The OEE aims to build trust and respect between the local community and the Agency following its prosecution of the licensee and to address issues raised in the national and local media. The Agency will establish a communications channel with local residents and interested parties that will advise the status of the review and anticipated timeframe for each stage and opportunities for participation in the process. The OEE will provide regular updates on the ambient air quality monitoring results and details of any enforcement matters of importance to the local community. This may take the form of an update on the EPA website and/or a meeting with the chairperson of the residents association and interested parties.

The Agency will also encourage the licensee to communicate openly with local residents to listen and identify their concerns and to operate the facility in a manner that does not impinge on the surrounding environment.

Signed:



Brian Meaney



Mary Frances Rochford

Section 98A of the Environmental Protection Agency Act 1992, as amended

98A. _

- (1) The person in charge of an industrial emissions directive activity shall give notice in writing to the Agency of any proposal to effect any alteration in the nature or functioning, or a reconstruction or extension of the installation if such alteration, reconstruction or extension would, or is likely to, change or increase emissions from the activity or cause new emissions therefrom in a manner which would have consequences for the environment.
- (2) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in subsection (1) which would not, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity, cause significant new emissions therefrom, or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, may –
 - (a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it,
 - (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence, or
 - (c) determine that no further action is necessary in relation to the matter,

and, save in a case falling within paragraph (c), the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows the alteration, reconstruction or extension to be effected.

- (3) Whenever the Agency receives a notice under this section or otherwise becomes aware of an alteration, reconstruction or extension referred to in subsection (1) which would, in the opinion of the Agency, increase or change emissions from the industrial emissions directive activity or cause significant new emissions therefrom or otherwise constitute a substantial change, the Agency, notwithstanding any other provision of this Act, shall –
 - (a) if there is a licence or revised licence in force in respect of the industrial emissions directive activity concerned, either review that licence under section 90 and exercise the powers under paragraph (a) or (b) of subsection (2) of that section in relation to it or direct the person in charge to apply for a new licence in substitution for that licence, or
 - (b) if there is no such licence in force, direct, by notice served on the person, the person in charge to apply for a licence,

and the person in charge shall not effect the alteration, reconstruction or extension unless and until the powers under paragraph (a) or (b) of that subsection (2) have been exercised in a way that allows or, as the case may be, a new licence or licence has been granted that allows, the alteration, reconstruction or extension to be effected.

- (4) Where the Agency decides pursuant to subsection (2) or (3) to review a licence or revised licence, or to direct a person to apply for a new licence or, as the case may be, a licence, the Agency shall –

(a) within 1 month of the receipt by it of the notice under this section, or the date on which the Agency otherwise becomes aware of the matters referred to at subsection (1), inform the person accordingly, and

(b) proceed to complete the review of the licence or revised licence and exercise the appropriate powers under subsection (2) of section 90 in relation to it, or determine the application for a new licence or licence, as the case may be.

(5)

(a) In this section "substantial change" means a change in the nature or functioning, or an extension, of an installation or combustion plant, waste incineration plant or waste co-incineration plant which may have significant adverse effects on human health or the environment.

(b) In determining what is a substantial change for the purposes of subsection (3) the Agency shall deem any change in the nature or functioning or an extension of an installation concerned to be substantial if the change or extension in itself reaches the capacity thresholds specified in the First Schedule that relate to the industrial emissions directive activity carried out in that installation.