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Environment Agency

Mr R Latimer
Shell Hill
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Whitburn
Tyne & Wear
SR6 7NT

Our ref:
Your ref:

Date: 13 October 2006

Dear Mr Latimer

TYNE DREDGING TRIAL

I write further to the letter to you from Dr Paul Leinster, Acting Chief Executive, dated 27th September, which informed you that I would be dealing with your recent complaint against the Environment Agency relating to the Tyne Dredging Trial. I have consulted with officers in the Regional Legal Department in the preparation of this response.

Your complaint, as I understand it from your e-mail to Ms Ruane dated 4th September, is that the Agency failed to look after the public interest and sided with the "applicants" (by whom I presume you mean the Port of Tyne Authority) and DEFRA in their decision to allow the Tyne Dredging Trial to go ahead. You consider that the Agency wrongly regarded the dredging as "normal" dredging carried out by the Port of Tyne. You also state that the Agency has a legal duty to ensure environmental assessments are carried out.

As has been previously explained to you, in the e-mail from Ms Bolt dated 3rd August, the Agency took the view that the proposed dredging works were within the Port of Tyne's statutory powers (see, in particular, Tyne Improvement Act, 1908) as a port authority to dredge the River Tyne. The operations were therefore not restricted by the Agency's byelaws (under the Water Resources Act, 1991) which normally prohibit dredging in a designated Main River without the Agency's consent. I explained to you in my letter of 7th February 2005 that the Agency does not make a distinction between capital and maintenance dredging by the Port of Tyne. My understanding is that this classification, which is one made by DEFRA, only becomes relevant at the stage where a Food and Environment Protection Act 1985 (FEPA) licence is sought to allow disposal of dredgings at sea.

I consider that previous correspondence from both myself and the Agency's Legal Department (e.g. the e-mail from Ms Bolt dated 3rd August) has fully explained to you the reasons why the situation and procedure concerning the dredging proposed as part of the Second Tyne Tunnel scheme was quite different. As we have explained, there was no opportunity for the Agency to object under a statutory procedure to the proposed Tyne Dredging Trial. However, we were, consulted about the proposals by the Marine Consents & Environment Unit ('Marine Consents Unit') of DEFRA, as explained in my letter of 15th August. This led to the arrangement whereby we reviewed monitoring data collected during the dredging operation; this data showed that the previously agreed thresholds for turbidity

and dissolved oxygen concentrations were not exceeded. You were sent copies of all of the notes, data and correspondence we have on this matter on 15th August.

Turning to the disposal of the dredgings, the Port of Tyne required a FEPA licence for this and, as I have previously stated, the issue of consent for a disposal under the FEPA is a matter administered by the Marine Consents Unit. I understand you have already had detailed correspondence with them regarding this matter. I explained to you in my letter of 15thAugust the extent of the Agency's involvement in the FEPA licence application process.

In relation to your concerns about a formal environmental assessment (under EC Directive 85/337/EEC), I would point out that unless we are the permitting authority the Agency does not have a statutory duty to ensure that such an assessment is carried out where one is legally required. It is the responsibility of the authority to which an application is made to decide whether or not an environmental assessment is required. A decision that an assessment is not required is potentially challengeable by any individual or organisation, with sufficient legal interest, by way of a judicial review action in the High Court.

The Agency's understanding is that, in relation to the Tyne Dredging Trial, there was no statutory requirement for an environmental assessment, either in relation to the dredging or the disposal operation. However, I understand that it is the practice of the Marine Consents Unit to require such an assessment to support an application for a licence to dispose of capital dredgings under the FEPA 1985 (although this is not a specific legal requirement under that legislation). Plainly, as the regulatory authority, it is a matter for DEFRA to specify the nature of the information it requires to support the application.

I consider that all other matters raised in your email of 4th September have been dealt with in previous correspondence.

In conclusion, having again reviewed the role of the Environment Agency in respect of the Tyne Dredging Trial, I do not consider that there is any evidence to support your claim that the Agency has "sided" with the Port of Tyne or with DEFRA. I therefore do not uphold your complaint.

Should you not be satisfied with this response you may wish to raise your concerns with the Ombudsman, the procedure for which is set out in the leaflet forwarded to you with Ms Ruane's letter of 29 August.

Yours sincerely

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Environment Manager

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