Mike Smith
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11 January 2005

Dear Mike,

FEPA Act 1985 - Port of Tyne Authority Disposal Licence 31995/04/1 - Disposal of Contaminated Dredgings from River Tyne to the Sea

Many thanks for your email, and for the information that the MCEU sent through to MCS with regard to the licence consent, monitoring programme and Port of Tyne Authority work plan.

The explanation as to what exactly happened with the EIA, and the information that is currently held in confidence by the Port of Tyne, is also much appreciated. It was my understanding from the North Eastern Sea Fisheries Committee that an Environmental Assessment was completed with the original licence application, and that the Sea Fisheries Committee subsequently requested a full Environmental Impact Assessment (EIA).

MCS appreciate that a formal EIA was not required for this trial under the EIA Directive, but one could have been requested under FEPA. We are therefore curious as to why Defra did not do so, given the specific request from the North Eastern Sea Fisheries Committee, and the proximity of the dumping site to a commercial shellfishery. As things stand, there is presently no public information as to likely environmental impact of this trial.

MCS would still be most interested to see the supporting documents currently held in confidence by the Port of Tyne Authority, and we very much appreciate your offer to keep us informed of any progress in this regard.

Having looked through the licence consent and supporting paper work, MCS feels that the following are points of concern.

1. The polluter is not defined. The Port of Tyne Authority Work Plan under Management Responsibilities (page 35) states that, ‘ The Port of Tyne Authority and the owners of the three priority docks/quays are not responsible for the TBT contamination in the sediments utilised in the trial, therefore it is considered that they will not be responsible for providing funding for monitoring at the Souter Point (Outer) disposal ground.’

Not withstanding the above, MCS feels that the European Directive on Environmental Liability (2004/35/EC) may have some relevance in this regard. The Directive states that; ‘According to the ‘polluter-pays' principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures.’

Although this Directive will not be transposed until 2007, the disposal licence does not expire until 2009. Further, the contaminated dredge material (CDM) contains acute toxins with very long residence times. It is conceivable that the CDM cap may deteriorate at some point well after 2007, and toxic material escape into the water column with environmentally destructive consequences.

Does Defra consider that the Port of Tyne Authority may become liable under the European Directive on Environmental Liability, and who do you presently consider to be the operator for the purposes of environmental liability?

2. There is a question mark over who will fund monitoring following CDM disposal, and the structure and longevity of the programme. The Port Of Tyne Authority's refusal to accept responsibility for monitoring at Souter Point (see point 1) directly conflicts with Envirocentre's Monitoring Programme, which forms part of the documentation supporting the licence consent. EnviroCentre's Monitoring Program states that almost the entire cost of monitoring during and post CDM placement will be met by Port of Tyne Authority regeneration funds.

I understood from our phone conversation on Friday 7th January that this question of who will fund post-placement monitoring has since been resolved.

If this is the case, MCS would appreciate copies of documentation to show that the Port of Tyne Authority has now explicitly accepted financial responsibility for post-placement monitoring and maintenance of the cap, and the duration of their responsibility.

The Work Plan also states that a Memorandum of Understanding would be produced, detailing the responsibilities of key organisations for elements of the monitoring, including cap maintenance. MCS would like to request a copy of this Memorandum.

3. Can you provide details of supportive research studies or trials for this method of disposal, further to the limited references given in the Monitoring Programme and Work Plan? We understand that the Souter Point disposal ground is characterised as a non-dispersive site. In this regard we share the concerns of the North Eastern Sea Fisheries Committee in that we believe there exist significant risks in adopting this kind of procedure in the shallow highly energetic North Sea, notwithstanding trials in the United States and Europe.

4. Could Defra provide MCS with details of the alternative dumping methods considered, and the evidence presented to Defra to support the licensed procedure as the best possible environmental option? The North Eastern Sea Fisheries Committee repeatedly presented written objections to the scheme on ecological and environmental grounds, and MCS is curious to know why these objections were over-ruled?

Overall, MCS is particularly keen to obtain further details and clarification of this trial because we understand that it is intended to develop a UK wide best practice for the sea disposal of CDM. MCS accepts that dredging is necessary to maintain the commercial viability of the Port of Tyne. However, we have serious reservations about the licensed method of disposal. In particular, we have concerns that the Port of Tyne's liabilities as the operator are not sufficiently specified, and over whether the approved disposal procedure represents the best possible environmental option.

Once again, many thanks for your help and advice in this matter. I look forward to any clarification that you can give on the above points of concern.

Yours sincerely,

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