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Marine Environment Division
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cc: Dr Hubert Rees (Cefas), Dr Mike Waldock (Cefas), Mr Roger Morris (Natural England)

20th December 2006

Dear Andy,

Re: FEPA 1985 – Port of Tyne Authority Licence 31995/04/1 – Confined Disposal Of Contaminated Dredge Material

Many thanks for your letter of 2nd November 2006 regarding the above disposal licence, and also for the attached monitoring report and disposal summary, all of which is much appreciated.

Reviewing the material that you've supplied here, the documentation surrounding the original licence application in October 2004, and other information derived from Defra and Cefas, a number of questions occur.

1: MCS would appreciate clarification from Defra as to whether or not Souter Point (Outer) has a dispersive hydrography, and whether the CDM (contaminated dredge material) dumped under the provisions of this licence can be contained within the boundaries of the site?

In the Defra licence consent and attendant Port of Tyne (PoT) Authority Work Plan (August 2004), Souter Point is described as a non-dispersive site. I quote from the PoT Work Plan section 8.2, Site Selection For Sea Disposal Trials:

'This site …has already been characterised as a non-dispersive site…the CDM will be placed in a low energy environment where there is little potential erosion of the cap.'

The PoT's Summary Of Capping Project, included with your letter of 2nd November 2006, now describes Souter Point (Outer) as a dispersive dumping ground where 'dispersed fine silts may be transported out of the site'. This point is reiterated in a letter from the MCEU to Mr Robert Latimer, dated 30th August 2006 and subsequently copied to MCS, which says:

'We (*Defra*) are unable to provide information on the amounts of material that remain at the Souter site as a result of disposal as it is a dispersive site and the intention is to avoid long term accumulation of material.'

It was MCS' understanding that the CDM dumped at Souter Point under the provisions of this licence would be retained within this area. Indeed, it was the non-dispersive characteristics of Souter Point that defined its suitability for this trial.

MCS also understands it to be the opinion of Chris Vivian and Jon Rees at Cefas, as minuted at the stakeholders' review meeting on 10th May 2006, that the net movement of unconsolidated silt material will be away from the site. This view is supported by the PoT October 2006 Tier 2 annual monitoring report (October 2006) which states that CDM appears to be spreading from its point of initial placement.

2: MCS requests a copy of EnviroCentre 2005 Report 2034, and would like to know how much of the CDM Defra believes to be currently retained within the designated placement area?

The PoT's Summary of Capping Project states that post placement monitoring could only account for 20-30% of the silt cap material deposited in April 2005, following placement of the CDM. A further 152,000 m^3 of capping material was deposited in late June 2006 with the intent of increasing the total thickness of the cap to 1.5 metres, as required under the licence. Post placement monitoring of this new capping material could only account for 64,000 m^3.

Such a signifcant loss of capping material begs the question as to what percentage of the 66,000 m^3 of CDM was lost during placement in the winter of 2004/05, and how much is now retained in the designated dumping area?

The PoT's October 2006 Tier 2 annual monitoring report cites another report (EnviroCentre 2005 Report 2034) in stating that the majority of CDM had been correctly placed in the designated area. However, there is no data to support this statement in the October 2006 monitoring report, and MCS would appreciate a copy of the report(s) with this supporting data.

3: Can Defra please confirm to MCS that the Government is insisting that the Port of Tyne Authority maintain the depth of the cap to 1.5 metres, as required under the FEPA licence of October 2004?

As of November 2006, the mean depth of the capping material is given as 0.85 metres in PoT's Summary Of Capping Project. This is just over half the depth required under the FEPA licence. Of even greater concern, the Tier 2 annual monitoring report (October 2006) states that:

"Close to the more significant CDM deposits there is a minimum of ***0.17 cm*** of cap which quickly increases to **>0.35m**."

This is clearly a breach of the licence conditions. MCS also understands it to be both Cefas and Defra's opinion that one major or three moderate storms would remove up to **0.65** metres of capping material.

The PoT's Summary further states that 'agreement was reached… that future maintenance will be used to 'top up' the cap when required as informed by monitoring results.'

This tends to suggest that remediation of the cap has presently ceased. In February 2005, John Maslin at Defra wrote to MCS that:

'Condition 9.15 of the licence requires the licence holder to maintain the cap and if monitoring shows the cap integrity to be under threat to consult with the Licensing Authority immediately to agree a course of action. Any maintenance required will be secured as a condition of future PTA disposal licences or emergency licences as required.'

Defra will be well aware of the international conventions that prevent the introduction of contaminated dredge material to the marine environment. Areas of the cap are clearly in imminent danger of being stripped off during winter storms, where after it is highly likely that this extremely toxic CDM will be dispersed beyond the licensed bounds of this dump site.

MCS therefore very much hopes that Defra is still holding the Port of Tyne Authority to the 2004 licence conditions regarding capping.

Since this is also a trial to establish UK best practice, any agreement to reduce the depth of the capping material mid-way through the trial would presumably require a sound scientific and environmental rationale, since such an action would run counter to the precautionary principle. Cefas' own risk assessment for this trial states that:

"Placement of contaminated material and subsequent capping of contaminated material in open water on this scale is almost unique, as even in the US most capping has been in shallower and more sheltered waters. This is the first in the UK and there are a number of uncertainties with regards to the potential long term effects as a result of the placement of contaminated dredged material in this area."

It is MCS' opinion that the cap must be maintained at least to the 1.5 metre thickness prescribed at the start of the trial. Otherwise, we believe there to be a serious risk of environmental damage from the CDM to areas outside the dumping grounds.

4: **Does Defra have a contingency plan if maintenance of the cap proves unsustainable?**

In this I draw you back to our letter to Defra of 11th January 2005, in which MCS said:

'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.'

These reservations still stand. MCS is not convinced that this trial represented the best possible environmental option for disposal of this material. When we originally put this as a question to Defra in January 2005, John Maslin's reply of 3rd February stated that the relevant EnviroCentre Reports, 1314 (risk assessment framework) and 1549 (Disposal and remediation options), were being withheld by the Port of Tyne Authority to protect intellectual property and commercial confidentiality.

Nevertheless, MCS attended a FEPA review of capital and maintenance dredging on 23rd June 2005, hosted by Defra, at which Dr Mike Waldock, Science Director at Cefas, stated that in regard to this Port of Tyne disposal operation, capping was not the best scientific option. Interestingly, the FEPA review was also told that the Port of Tyne Authority had estimated the cost of land remediation at £25million, whereas the cost of sea dumping was £2.5million.

MCS understands that questions of disproportionate cost can have a legitimate bearing on disposal licence decisions, but we still do not understand why a full Environmental Impact Assessment was not ordered by Defra under the provisions of FEPA before the trial started.

5: In light of the problems associated with this trial, can Defra please confirm to MCS that no future application for the sea disposal of CDM from capital or maintenance dredging will be considered by Defra without a full Environmental Impact Assessment?

In this regard, we note that the European Commission began infringement proceedings against the UK in December 2005 for its failure to implement the Environmental Impact Assessment Directive (85/337/EEC as amended) in relation to marine dredging projects listed in Annex II of the Directive, and that further related proceedings may follow.

Overall, MCS remains extremely concerned by this trial. However, we welcome John Maslin's commitment of February 2005 to an open review process involving all stakeholders, and wonder when this might commence? MCS represents the NGO umbrella group WCL on Defra's steering group for managing contaminated marine sediments in the UK, and hopes that the lessons learned from the trial will become available to the group in due course.

Many thanks again for your time and attention in this matter. We look forward to your response to the above questions,

Yours sincerely,

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