

Date 5 February 2015
Our Ref CLG.49901-1
Your Ref Roc5057



Brabners

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Dear Sirs

Befesa Salt Slags Ltd – Warning Letter

Further to the above matter and our previous correspondence, we are now in receipt of the CAR Form sent to (but not received by) our Client on 7 November 2014.

Also at Liverpool
and Preston

Notwithstanding the content of the Warning Letter and the CAR Form, we reiterate and state on record that the Warning Letter is not accepted by our client, and we would request that this letter (as well our previous communications) are retained on your file together with a copy of the Warning Letter. We set out below, in detail, the reasons for this.

Our client is understandably confused by the NRW's decision to issue the Warning Letter. Notwithstanding the fact that the CAR Form was never received by our Client before the Warning Letter was issued, it would appear that the NRW has failed to follow its own Guidance on Enforcement and Sanctions. NRW did not follow-up on the actions from the CAR form until the meeting with our client on the 17 December, when the original CAR report (dated 7 November 2014), required the actions to be complete by 7 December 2014 and yet, our client has been informed that the NRW made time to call a local resident located nearby the site to ascertain whether or not they had any further complaints.

Given our client's excellent working relationship with its previous permitting officers and the NRW (and previous the Environment Agency) as a whole, it is difficult to see why some of the alleged minor issues were not raised on site with a manager on the day of the NRW's site visit or even at a formal meeting. The main issue identified by your permitting officer, appears to be that BAT is not being met by our client – an issue that would not require an immediate response by the NRW to protect the environment. No advice or guidance was provided on how exactly NRW considered our client was not meeting BAT, indeed no formal conversations or other correspondence had taken place with any of the senior staff at our client. The only meeting that has taken place is the meeting that our client requested on 17 December to discuss the issues raised within the Warning Letter.

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Our client has always had a very open and honest relationship with the NRW and has an excellent history of compliance. The management team at the company publishes an improvement action plan at the start of each year, to ensure that the site is always improving it's environmental standards and ensuring a high level of BAT compliance. This improvement plan is fully supported by the company providing substantial

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funding each year to ensure that the company always operates to BAT. It must be noted that these improvements have always been generated by the company and not at the request of NRW. This is a company that takes the protection of the environment very seriously. Indeed, it has been said by the NRW's predecessor in Wales, the Environment Agency that Befesa operates to BAT and can be seen as a bench mark for the hazardous waste treatment industry in the UK.

Given that the current NRW officer had only been our client's permitting officer for a very short period of time, it might perhaps have been sensible for him to engage with our client and understand the business and how it operates, the way it works and improvements that have been completed over the last ten years before deciding after a very small amount of time that a warning letter was necessary and the appropriate method of enforcement. Further, the warning letter was issued without any discussion with senior management as to the alleged breaches of permit.

We would also point out that our client has never restricted access to site from the NRW (or any other statutory body) and in fact has actively encouraged visits from NRW, the EA and their associated legal and technical teams. The company has always showed initiative in enhancing its operating processes in order to offer better protection of the environment. It does not need to be asked by the NRW to make any changes or improvements; it ensures that these are done as a priority – indeed it prioritises the allocation of resources to ensure this. As the NRW is aware, the company has many examples of such resource spend, including the new upgraded gas scrubbing system, at a cost of over £300,000, which has just been completed.

Turning to the issues raised in the Warning Letter and CAR Form, we use the numbering of the CAR Form.

1.0 Fugitive Odour Emissions

As a whole, our client rejects the allegation that it is not operating best available techniques (BAT) for controlling odorous emissions from its permitted installation. Indeed, by reference to the BREF document that is applicable to certain processes on site, it is operating to BAT.

With regard to the alleged breach of condition 2.2.6.1, Befesa cannot limit the use of odorous material it uses – it is the nature of its business to handle and process such materials. However, in very simple terms, it operates BAT in that it uses a liquid scrubbing medium and sulphuric acid for dealing with use of ammonia on site. It already restricts odorous activities and this is set out in its various operating procedures; it controls the storage conditions of odorous materials; it controls processing parameters to minimize odour; it optimises the performance of the abatement systems; it always ensures that there is timely monitoring, inspection and maintenance; and has always had in place an odour management plan albeit that these were separate documents by reference to each processing/operating area. These area odour management plans have now been consolidated and put into one plan for the entire installation (and the plan has been externally produced by a third party expert on the instruction of Befesa). The NRW should note, however, that this has not implemented any changes to Befesa's operating procedures as regards odour management, other than a walk around rated sniff test – the way in which the company manages odour has not changed as a result of the consolidation paper exercise. Befesa has always ensured that it operates to BAT, if not a higher standard, with regard to the management of odour. We attach a copy of the consolidated OMP for your records.

1.1 Wardall Befesa Fine Aggregate (BFA) Storage Building

The NRW allege that on 19 August, 13 October and 21 October 2014 the door on the Wardall Befesa Fine Aggregate (BFA) storage shed was left open, at the same time tipping of BFA into lorries was evident. In particular on the 13 October 2014 fume could be seen leaving the lorry whilst tipping. The alleged breach being that there is potential for fugitive emissions leaving shed.

In those circumstances, the shed door had been left open contrary to Befesa's own operating procedure. The usual operator employee was off a long term sick leave with a serious medical condition and had been replaced by a temporary operator who had been appropriately trained on the site procedures. Following the issue of the CAR Form and Warning Letter, the company investigated this allegation and spoke to the temporary employee involved and discovered that he had been

deviating from company procedures as he considered it too time consuming to close the shed door properly at all times. This role is now being covered by a full time employee. If NRW had raised this as an issue with management while they were onsite, on the first occasion, it would have been dealt with immediately, rather than waiting until a third visit.

This door has also now been fitted with an electronic system, to ensure that the operator can easily and remotely close the door.

CCTV has also been fitted to ensure this remote area can be further monitored by site management.

1.2 Raw Materials / Milling Area

It is alleged that during the inspections on 13 October and 21 October 2014, doors were left open on the raw materials/milling area when loading was not taking place. The NRW consider that leaving doors open on this building has the potential to contribute to fugitive odour emissions.

It is the company's policy that if a truck is being loaded or unloaded and/or while the materials are being moved around the various storage areas in the building for the doors to remain open to allow for this access. The policy on the opening/closing of doors is an operational control, not for emissions control. The doors are closed to prevent wind blowing into the building and causing dust inside the building. This method of operation was agreed with NRW several years ago after assessing the risk of ammonia from this area. The dust itself does not give rise to fugitive emissions as the dry material does not give off an ammonia odour in either dust or block form. The dust will only emit ammonia vapours when wet, and even when wet the reaction with water is extremely slow at ambient temperature. The reaction of the dust to form ammonia vapours has to occur at over 60°C before noticeable ammonia is generated. The company would be happy to explain in more detail the process chemistry to its new permitting officer if he felt this would assist going forward.

It should also be noted that the building area concerned was never designed to have vehicles tipping with the doors closed as the risk of ammonia vapours from the dry material is negligible.

1.3 BFA Interim Storage Building

The NRW allege that on 19 August, 13 October and 21 October 2014 the door on the BFA interim storage building was left partially open (approximately 600mm) and that there was a strong smell of Ammonia next to this building.

First, it should be noted that while the environmental permit for the site requires odour to be managed, the requirement with regard to offensive odour relates to odour being detected beyond the site boundary. The fact that the officer alleges he smelt ammonia at the building is not unusual nor a breach of permit. As we have previously stated in correspondence, ammonia can be detected at 0.2ppm. It should also be noted that safe working limits for occupational exposure of ammonia are in excess of 20ppm. It should be further noted that the site permit (which uses the current BREF guidance) allows an emission limit from the scrubber exhaust stacks of approximately 12ppm.

The 600mm gap in the door was part of the design of the original building door / gas scrubbing system and the environmental permit was granted on this basis. It was designed in this way to allow sufficient airflow to the building, so as to ensure good flow to the gas scrubber. The efficiency of this system can easily be monitored by assessing the quantity of ammonia sulphate generated, which the company does on a daily basis to ensure optimum performance. Given the NRW's recent objection to this, the company have acted immediately and have obtained quotations for the scrubbing system to be rebalanced so that the door is fully closed at all times. This first phase of this work has already been completed and the remaining work to ensure that the door is fully closed will be carried out in the next two months. Until that time, a temporary measure has been put in place to reduce the gap to 150mm and it is hoped that these temporary measures can be extended to ensure the gap is reduced to less than 10mm within the next two weeks.

1.4 Vehicle Loading

NRW officers observed the loading of BFA outside the interim storage area while on site and alleged that fumes were evident when material is tipped into the trailer as they are loaded. Additionally the door on this area has to be opened throughout the loading process to allow a low loader to enter and exit the building.

The NRW then go on to quote from Befesa's report titled 'Review of Fugitive Emissions from Befesa Slags Ltd 2012/13' *'that oxides are generally loaded in a covered building and only when material is cool. However interim storage of the material at times loaded outside the building'*.

The report referred to above does not relate to the interim storage shed; it relates to the Wardall Befesa Fine Aggregate (BFA) Storage Building mentioned in section 1.1 above. The principle set out in the report does not therefore cover the interim storage shed. The original design and build of this building does not allow for vehicles to be loaded internally and this method of vehicle loading has already been assessed and accepted by previous NRW officers. However, given the current NRW officer's concerns, Befesa are reviewing arrangements and are prepared to discuss the various options with NRW, if NRW would like to discuss further.

Compliance/ action

NRW alleged that the issues set out above do not constitute BAT. As we have previously set out, our client operates to BAT as set out in the BREF reference documents in order to mitigate/minimise fugitive emissions of ammonia and consequently offsite odour. To this end, we should be grateful if you confirm to us exactly how you consider Befesa is operating in breach of the BREF reference documents with regard to BAT.

We would remind you that BAT means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole. Practical suitability must be taken into account and this inevitably requires some form of cost benefit analysis of the proposed measures to be implemented.

Notwithstanding that Befesa operates to BAT, it is always looking to enhance its procedures in terms of operational excellence and the protection of the environment and therefore in terms of the specific actions set out in the CAR Form, we would comment as follows:

- Befesa had already investigated the use of CCTV and this will be installed by mid- February.
- There is now an electronic roller shutter door to the Wardall BFA storage shed. There has been no change in policy in its use but it helps to police employees not following company procedures.
- The electronic fobs to close the salt slag storage/milling area doors are to be improved to ensure greater reliability, enabling the door to be closed for longer and this will be completed by the end of February. The doors have also been modified so as to enable manual and automatic use.
- As set out in 1.3 above, Befesa will rebalance the scrubbers so that neither the door is required be left open in the BFA storage shed nor another air intake method investigated. These works will be complete within two months.

We note that the NRW originally asked for these actions to be included within a designated action plan to be provided by 7 December 2014 but as our client did not receive a copy of the CAR Form until after that date, it was agreed that these would be provided by 5 February 2014.

Permit Requirement and 3.0 Odour Management Plan

We note that the NRW considers that the alleged permit breach attracts one consolidated CCS category 2 score, due to it allegedly being an on-going odour issue. Our client refutes this and would invite the NRW to reconsider the category score, not least because it contends that BAT is and was being met and without prejudice to that position, the points raised are minor issues that on the whole

could have been resolved if the permitting officer had discussed the issues with onsite management on the day of his visit, or indeed, that the requirements stipulated by the officer go beyond BAT within the meaning of the BREF reference document.

We should be grateful if you would set out how exactly you consider the alleged breaches would have the potential to have a significant environmental impact given that no odour was detected beyond the site boundary. At the time of the issue of the CAR Form, NRW had not undertaken and obtained any monitoring results for odour beyond the site boundary. Had it done so, again, Befesa would expect that any such issues to be discussed first so that an investigation could be undertaken to verify the findings and if attributable to the company, any corrective action to be taken. In any event, if odour had been detected beyond the site boundary, this at most would have been intermittent. Further our client has an open and on-going engagement with the local community, and had this odour been offensive, it would have received complaints. It didn't. It is our client's view therefore that the allegations made by the NRW could not have been offensive and persistent enough to cause significant effect on human senses. Indeed, if it had been detected beyond the site boundary, this would have at worst been mildly offensive, short-term and/or intermittent odour.

Notwithstanding that Befesa refutes the allegation that it has failed to employ best available techniques across site for odour control, in order to continue its good relationship with the NRW and add enhancement to its current procedures, it has reviewed its environmental management system comprising:

- Odour control from receipt and processing of raw materials
- Odour control from the containment and storage of BFA both on main plant and Wardall storage shed
- Loading of BFA before further transportation on and offsite

and consolidated its existing odour management procedures into one document that applies across the installation (rather than area specific). Please note that both the area specific plans and the consolidated plan take into account the Guidance: H4 Odour Management, Environment Agency (March 2011).

We note that the NRW originally asked for the procedural review to be submitted in writing by 7 December 2014 but as our client did not receive a copy of the CAR Form until after that date, it was agreed that this would be provided by 5 February 2014. We enclose a copy of the consolidated odour management plan with this letter.

4.0 Advice and Guidance

The NRW has requested that all complaints forwarded by NRW to Befesa are investigated and an investigation report sent back to the permitting officer. We reiterate that our client cannot investigate a complaint if it is not informed of one. The NRW must adhere to its own obligations here and ensure that Befesa is kept informed on a timely and consistent basis of any complaints made to NRW. If there is any suggestion that Befesa does not investigate complaints, this is also strongly refuted. It takes all complaints seriously and liaises accordingly with the NRW. With the previous permitting officer, Befesa QSH Manager would always call and speak to the officer in question first but if the current new NRW officer now requires everything to be sent in writing, perhaps the NRW could confirm this change in approach so that both parties are working to the same policy.

We note the offer of suspending the future CCS scores while the action plan is being carried out and while our client does not accept that there has been a breach of permit condition, it requests that this be done but would ask the NRW to reconsider its classification as per our comments in the section above.

Should you have any questions or would like to discuss the above, please do not hesitate to contact Claire Gregory of these offices.

Brabners

Yours faithfully

For and on behalf of Brabners LLP

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