



Brabners

Date 15 December 2014
Our Ref Roc5057
Your Ref CLG.49901.4

FAO: Mr Matthew Kelk
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By post and email to: matthew.kelk@naturalresourceswales.gov.uk

Dear Sirs

Befesa Salt Slags Limited - Warning Letter

We are in receipt of your letter dated 7 November 2014 addressed to our client, Befesa Salt Slags Limited, in which you set out a number of alleged breaches of environmental permit.

We write to confirm and state on record that the Warning Letter dated 7 November 2014 is not accepted by our client.

We understand that a Warning Letter cannot be appealed and therefore our client would like this letter to be placed on the NRW's file together with a copy of the Warning Letter to ensure that it is clear that Befesa strongly disputes its contents. We would also ask that NRW considers withdrawing the letter on the following basis:

1. The Warning Letter states that Befesa has committed breaches of its environmental permit pursuant to Regulation 38(2) of the Environmental Permitting Regulations 2010 "between August and October 2014". This is not sufficiently clear or precise to identify those alleged breaches. You also refer to a 'failure to follow management procedures and employing appropriate measures to control odour on site' in the title of the letter and yet at no point do you provide any detail as to the specific date, location, or time of any alleged odour complaint, nor do you provide any evidence to confirm that the odour complaint has been verified by NRW.
2. You allege that Befesa operated during that period in breach of condition 1.3, i.e. *'the operator shall implement and maintain a management system, organisational structure and allocate resources that are sufficient to achieve compliance with the limits and conditions of this permit'*. At no stage have you set out how you believe an offence to have been committed, nor have you discussed the same with our client. Aside from the fact that our client refutes your allegations, it is unclear exactly what outcome you are seeking by issuing a warning letter which contains no detail about the alleged breaches, and simply states that a breach has been committed and sets out the relevant condition. Given that you operate an outcome focused enforcement policy, it is difficult to see what outcome could ever be achieved in these circumstances. For example, how can a warning letter either aim to stop offending, aim to

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restore/remediate, aim to bring the operator under regulatory control or punish the operator and/or deter future offending when neither the alleged breaches nor the alleged impact are described in any detail in the Warning Letter. This is not a case where adequate avoiding and/or preventative measures were not taken. Indeed, it is our client's position that it operates best available technology to the highest level.

3. You also allege that Befesa is operating in breach of condition 2.2.6.1 in that it is not using best available technology (BAT) to prevent, or where that is not practicable, to reduce odorous emissions from the permitted installation. This allegation is completely unfounded and is not supported by any detail of the alleged breach or indeed evidence of the alleged breach. All stages of the operation at the permitted installation are considered as best available technology and we would therefore ask you to set out, with specific reference to the Reference Documents (BREF) on Best Available Techniques in the Non-Ferrous Metals Industries and in Large Volume Inorganic Chemicals (Ammonia, Acids and Fertilisers) Industries, the areas in which you consider that Befesa is not operating to BAT.
4. We would also query the need for a Warning Letter when our client has a long history of working together with the NRW and has demonstrated on numerous occasions that it is a prudent and responsible operator. Befesa has always had a very proactive approach to compliance and has never been asked by the NRW to carry out remedial or corrective works. It does any such improvement works as part of its ongoing commitment to the protection of the environment and best practice. You allege breaches of permit condition during a period August to October and yet you only contacted our client on 13 October following a site visit to query these alleged breaches. Our client had an excellent working relationship with its previous permitting officer, Ms Soper, and has always co-operated fully with NRW. Our client is therefore surprised to have received a warning letter without any form of discussion between the parties beforehand. This approach would appear to be disproportionate given our client's excellent compliance history and the good working relationship it has previously had with NRW.
5. Had your investigating officer taken the time to speak with our client, he would have been made aware of a persistent complainant adjacent to the Befesa site with whom our client has been liaising for a long period of time. Much work has been undertaken by Befesa to ensure that this complainant is properly engaged with the company despite him appearing to be extremely sensitive to certain odours. We understand that NRW has installed a monitoring station at the complainant's property and we should be grateful if you would provide, by return, copies of all data from the monitoring station for the period in question – August-October 2014. When our client has canvassed the wider local community to ensure that they are happy with both onsite operations and any potential offsite impact, it has not received any other complaints. Our client cannot be held to a higher standard to take into account complainants who are particularly sensitive. Our client will always take complaints seriously but if it carried out its own monitoring on site – at the site boundary and at the complainant's property – and the alleged odour cannot be verified, one must consider whether or not the complainant is being unreasonable or vexatious, or is just extremely sensitive to certain odours.
6. We would also point out that while Befesa's environmental permit provides for 15mg/m³ of ammonia to be emitted through the stack (which equates to approximately 12ppm), that ammonia is detectable at 0.2ppm. However, the permitted installation is also located in an area with high background ammonia levels due to the significant amount of farmland surrounding the site, therefore if ammonia is detected beyond the site boundary, an assumption must not be made that the source is Befesa. This is of particular concern as the company is aware of complaints having been made by the complainant in question when the wind direction has been in the opposite direction of the installation. This would seem to suggest a vexatious complainant or that there are other sources in the area which are causing the alleged odour problems. We should be grateful if you would provide details of your investigations into the potential for other sources of odour in the area.

7. As set out above, Befesa takes complaints very seriously and has always taken the initiative to improve its environmental performance. This has included several site screening projects, A6 installation and extraction to the oxide storage building and the installation of roller doors to the plant areas. Befesa has also completed two site tours as well as holding several meetings with the local residents to ensure that any offsite impacts are addressed and managed to the satisfaction of the same.

We understand that a meeting between both parties will take place on 17 December and we consider that it would be beneficial to discuss and ascertain on what basis (if any) the Warning Letter has been properly issued. Our client is keen to maintain a good relationship with NRW but it cannot accept enforcement that is based upon little or no reliable evidence. We would hope that a meeting could perhaps resolve any ongoing issues but it will still be our client's position that the Warning Letter should be withdrawn.

If you have any queries as a result of this letter, please do not hesitate to contact Claire Gregory of these offices.

Yours faithfully



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