



United Kingdom Without Incineration Network (UKWIN)

Correspondence address: coordinator@ukwin.org.uk

To: pscpublicresponse@environment-agency.gov.uk

CC: psc@environment-agency.gov.uk and Tom.Fuller@defra.gov.uk

2nd September 2026

**Request for consultation on approvals under pre-operational permit conditions
for carbon capture facilities associated with waste incinerators in England**

Dear Environment Agency Permitting Team and UK National Focal Point for the Aarhus Convention,

UKWIN is writing to you following the issuance of the Riverside Decarbonisation Project permit (EPR/JP3020LL) and our review of the carbon capture permits issued for the Runcorn Carbon Capture Facility (EPR/QP3724SE) and the Protos Energy Recovery Facility (carbon capture variation EPR/LP3132FX/V009 and its V0010 amendment)

All three of these permits leave some matters affecting environmental impacts or controls to later submission and written approval by the Environment Agency, often after final design.

At Runcorn, the Environment Agency stated in response to a consultation representation that "*Consultation on responses to pre-operational conditions is not part of our process*", although the PO10 noise information would be placed on the public register.ⁱ

We ask the Environment Agency to review that approach in light of Article 6(10) of the Aarhus Convention. Article 6(10) applies when a public authority "*reconsiders or updates the operating conditions*" for an activity falling within Article 6 and requires the public participation provisions in Article 6(2)-(9) to be applied "*mutatis mutandis, and where appropriate*".

Annex I includes installations for the incineration of municipal waste with a capacity exceeding 3 tonnes per hour. The waste incinerators associated with all three carbon capture projects fall within that category.

The Aarhus Convention Compliance Committee has explained how the words "*where appropriate*" should be applied. Where a reconsideration or update is capable of significantly changing the basic parameters of the activity or will address significant environmental aspects of the activity, "*public participation meeting the requirements of article 6 (2)-(9) is 'appropriate' and thus required*" (as found in findings concerning the Industrial Emissions Directive).ⁱⁱ

To provide a more substantive quote from the findings of ACCC/C/2014/121 European Union (**with emphasis added**) we offer the following:

“102. The Committee’s findings on communication ACCC/C/2014/104 (Netherlands) provide further guidance as to how the words “as appropriate” in article 6 (10) should be applied in practice. In those findings, which concerned a reconsideration and update of the duration of a nuclear power plant, the Committee found that *“except in cases where a change to the permitted duration is for a minimal time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6.”* **The Committee considers that a similar test should be applied whenever a public authority reconsiders or updates an activity’s operating conditions.**

103. Accordingly, **when a public authority reconsiders or updates the operating conditions for an activity subject to article 6 of the Convention**, except in cases where the reconsideration or update is not capable of significantly changing the basic parameters of the activity and will not address significant environmental aspects of the activity, **public participation meeting the requirements of article 6 (2)-(9) is “appropriate” and thus required.** It would be for a Party to demonstrate to the Committee that any possible change in the activity’s parameters would not be capable of significantly changing the basic parameters of the activity and would not address significant environmental aspects of the activity.

104. The Committee emphasises that **it is not the actual outcome of the reconsideration or the update that is determinative of whether public participation should be carried out.** Rather, in line with the Committee’s findings on communication ACCC/C/2006/17 (European Community), the key criterion is whether the reconsideration or update is “capable of” changing the activity’s basic parameters or will “address” significant environmental aspects of the activity. In this regard, the scope of what is to be considered “appropriate” must be even more limited if the update of the operating conditions may itself have a significant effect on the environment. However, it is not decisive whether the operating conditions of the activity will indeed ultimately be updated or will in fact have significant environmental effects. Likewise, it is immaterial that, if the operating conditions are updated, the updated conditions could in some respects have a beneficial effect on the environment, human health and safety. The crucial point is whether the reconsideration or update is “capable of” changing the activity’s basic parameters or will “address” significant environmental aspects of the activity.”

As such, the Committee has also said that the outcome of the later decision is not the test; the question is what the reconsideration or update is capable of changing or what environmental aspects it will address.

The Aarhus Convention Compliance Committee's advice to the Netherlands explains that an activity's basic parameters can include permit conditions required to address significant environmental aspects, including limits on emissions (including noise) and safety measures.ⁱⁱⁱ

Where approval of a submission under a pre-operational condition has the effect of determining or materially changing the operating techniques, mitigation measures or other requirements under which the installation may operate, that approval may amount to a reconsideration or update of the operating conditions for the purposes of Article 6(10).

The Maastricht Recommendations support looking at the substance of the decision rather than its label. They state that the "*name or label given to the decision*" is not decisive and that its scope under the Convention is determined by its "*legal functions and effects*".

They also recognise that Article 6 decision-making may take place in stages, including later decisions concerning technical design, mitigation measures and technological details related to environmental standards.^{iv}

The fact that the original permit was subject to consultation does not remove any public participation obligation that may arise under Article 6(10) in relation to a later approval.

For example, at Riverside:

- **PO6 - CO2 venting:** following final design, the operator must submit a report reviewing the CO₂ venting risk assessment, including final vent locations and venting scenarios, and submit operating techniques and a vent management plan for approval. The Environment Agency states that the approved vent management plan will become an operating technique under the permit.
- **PO8 - Noise:** following final design, the operator must submit an updated Noise Impact Assessment and Noise Management Plan, including the specific noise control measures and attenuation levels to be achieved. The approved Noise Management Plan is then incorporated into the permit's operating techniques.
- **PO11 - CO2 conditioning and compression:** following final design, the operator must provide details of the conditioning and compression arrangements, including the location, composition and impacts of emissions from venting non-condensable gases, for Environment Agency approval.^v

For example, at Runcorn:

- **PO6 - CO2 venting:** following final design, the operator must submit a report reviewing the CO₂ venting assessment, covering matters including vent locations and venting scenarios, together with the operating techniques used to minimise risks from CO₂ venting.

- **PO10 - noise:** following final design, the operator must submit an updated Noise Impact Assessment for Environment Agency approval. The decision document states that if this identifies a significant adverse impact at a receptor, the plant will not be able to operate. It was in response to a question about consultation on this assessment that the Environment Agency stated that “*Consultation on responses to pre-operational conditions is not part of our process*”.

For example, at Protos:

- **POM6 - CO₂ venting:** following final design, the operator must validate the assumptions used in the original CO₂ venting risk assessment. If the design parameters differ from those originally assessed, it must submit an updated assessment of the effects of short-duration CO₂ venting on human health, together with a management plan setting out operating techniques to minimise phase changes, solid effects and dense gas behaviour. The plan is subject to Environment Agency written approval and must then be implemented.
- **POM7 - other than normal operating conditions (OTNOC):** following final design, the operator must submit an OTNOC management plan for Environment Agency approval, identifying potential OTNOC events and the measures to minimise their occurrence and reduce their impacts.^{vi}

The aforementioned Runcorn response pertaining to noise indicates that the Environment Agency’s current process does not provide for public consultation on responses to pre-operational conditions.

To the extent that Article 6(10) requires public participation in a particular approval, that process will need to accommodate the Convention’s requirements.

The Environmental Permitting Regulations and the Industrial Emissions Directive also support this concern. Schedule 5 of the EPR requires public participation where a permit variation involves a substantial change, while Articles 12 and 14 of the IED require permits to address foreseeable emissions, significant environmental effects and the measures needed to prevent or reduce pollution.

Where matters such as final noise mitigation, CO₂ venting controls, OTNOC measures or the location and impacts of emissions are only determined after the permit has been granted, they are substantive environmental controls rather than simply administrative details.

The Environment Agency should therefore ensure that public participation is not avoided merely because such matters are dealt with through pre-operational conditions rather than a formal permit variation.

The Riverside, Runcorn and Protos examples suggest that this is a general permitting issue that needs to be addressed by Defra and/or the Environment Agency.

Some pre-operational conditions deal only with detailed implementation or verification. Others leave the Environment Agency to approve matters that determine environmental controls, assessments or operating techniques after the main permit consultation has ended.

Where a later approval amounts to a reconsideration or update of operating conditions and is capable of significantly changing the basic parameters of an Article 6 activity or addresses significant environmental aspects of it, Article 6(10) requires public participation in accordance with Article 6(2)-(9).

For example, the Riverside Decision Document explains for Noise and vibration that:

"The Applicant's assessment identified a rating level 7 dB above the nighttime background level at the most affected receptor when no additional mitigation is applied. ... The Applicant explained that the plant has not yet reached final design and that further mitigation is planned. The dominant noise source is the back-up air source heat pump (ASHP) fans. According to BS4142, an exceedance of +7 dB may indicate an adverse impact, depending on the context. We have reviewed the Applicant's assessment and agree with their conclusions. Our view is that an adverse impact would only be acceptable if Best Available Techniques (BAT) were applied to minimise noise. On this basis, we agree with the Applicant that further mitigation is necessary. We have therefore set a pre-operational condition (PO8) to ensure these measures are implemented, incorporated into the noise management plan, and followed by a revised noise impact assessment once the final design is complete. A pre-operational condition is appropriate given that detailed plant design is outstanding."

This illustrates why consultation on the original permit does not necessarily provide public participation in all of the environmental decisions that will subsequently be made.

The Environment Agency has accepted that the assessment may indicate an adverse noise impact and has agreed that further mitigation is necessary, but the detailed design, specific final mitigation and revised noise assessment are left until after the permit has been issued.

Noise is plainly a significant environmental aspect of the activity, so the later approval of PO8 is the type of decision to which the Article 6(10) test is directly relevant.

UKWIN therefore asks the Environment Agency to adopt a general principle for these later approvals, and to apply it to Riverside, Runcorn and Protos as well as future carbon capture permits at waste incinerators (and more broadly where appropriate).

We ask that the same principle is applied to improvement conditions or other permit mechanisms where the same Article 6(10) test is met.

In light of the above, we ask the Environment Agency to:

- publish the operator's submission and supporting assessments before deciding whether to approve them where the later approval amounts to a reconsideration or update of operating conditions and is capable of significantly changing basic parameters or addresses significant environmental aspects;
- provide a reasonable opportunity for the public concerned to comment before approval, and take those comments into account in the decision;
- publish the approval decision and the reasons for it, including any resulting operating techniques, mitigation or other requirements; and
- amend its Public Participation Statement so that it expressly provides for public participation where approval under a pre-operational, improvement or similar condition amounts to a reconsideration or update of operating conditions for which participation is appropriate under Article 6(10) of the Aarhus Convention.

We would be grateful if the Environment Agency could confirm whether it will adopt this approach and how it proposes to deal with the relevant forthcoming approvals under the Riverside, Runcorn and Protos permits.

If the Environment Agency considers that public participation is not required for any of these later approvals, please explain how that position has been assessed against Article 6(10) and the Compliance Committee's guidance.

Thank you in advance for your consideration of the issues raised.

Yours sincerely,

Shlomo Downen,

National Coordinator of the United Kingdom Without Incineration Network (UKWIN)

i

https://assets.publishing.service.gov.uk/media/68778cc42bad77c3dae4dc60/Decision_Document_QP3724SE.pdf

ii https://unece.org/sites/default/files/2020-12/ece.mp_pp_c.1.2020.8.e.pdf

iii https://unece.org/sites/default/files/2025-04/ECE.MP_PP_C.1.2025.6_Netherlands_aec.pdf

iv

https://unece.org/fileadmin/DAM/env/pp/mop5/Documents/Post_session_docs/ece_mp_pp_2014_2_add.2_eng.pdf

v <https://www.gov.uk/government/publications/da17-6jy-cory-environmental-holdings-limited-environmental-permit-issued-eprjp3020lla001>

vi <https://www.gov.uk/government/publications/ch2-4jf-encyclis-limited-environmental-permit-issued-eprlp3132fxv009> and <https://www.gov.uk/government/publications/ch2-4jf-encyclis-limited-environmental-permit-issued-eprlp3132fxv010>