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Mr Lee Gordon  
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Your Ref: Middlewich EfW Appeal  
Our Ref: APP/R0660/A/10/2129865/NWF  
**Further appeal references at  
foot of letter**  
Date: 8 April 2011

Dear Mr Gordon

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT  
ASSESSMENT)(ENGLAND AND WALES) REGULATIONS 1999, REGULATION 19  
LAND OFF POCHIN WAY and ERF WAY, MIDDLEWICH, CHESHIRE  
APPEALS BY COVANTA ENERGY LIMITED**

I refer to the above appeals and to the submissions by Cheshire East Council to the Inspector holding the local inquiry into these appeals, Richard Tamplin. The substance of these submissions is that the Secretary of State should be asked to request further information from the Appellants under Regulation 19(1) of the 1999 Regulations on the effects of the supply of combined heat and power (CHP) from the proposed energy from waste facility (the EfW facility) on the environment in order that the submitted consolidated environmental statement can be considered an environmental statement (ES). This letter gives the Secretary of State's response to the Inspector's request.

The Secretary of State has given careful consideration to the request of the Inspector, particularly in the light of the advice in paragraph 111 of Circular 02/99, "Environmental Impact Assessment", that Regulation 19 powers should only be used when the further information is necessary to complete the ES and thus enable proper consideration of the likely environmental effects of the development. The power should not be used simply to obtain clarification or non-substantial information because of the burden of additional delay and costs this imposes on appellants required to provide further information.

The Secretary of State notes that there is no dispute that the application for the proposed EfW facility, now the subject of Appeal A, is an EIA application for Schedule I development as defined by the 1999 Regulations. He notes that the Appellants submitted an ES with the application and that on 1 October 2010 he issued a direction under Regulation 19 requiring that this ES and further material submitted by the Appellants be updated and consolidated. This updated and consolidated document is known as the CES.



The Inspector's ruling, which is attached as an Annex to this letter, has taken into account both the Council's submissions and those made on behalf of the Appellants. He considers that because the fundamental purpose of the EfW facility is to recover energy from waste in accordance with the aims of the revised Waste Framework Directive 2008 (Directive 2008/98/EC) and the Waste (England and Wales) Regulations 2011 (SI 2011: No 988), this purpose can only be fulfilled if the energy generated by the facility is exported, whether as electricity or as CHP or as some combination of the two. Accordingly he concludes that the export of energy is an intrinsic and necessary part of the development so that the effects of that exported energy fall to be assessed under the EIA Regulations as part of the development.

The Inspector concludes further that CHP connections to all parts of the Midpoint 18 Business Park are probable and that on the information before him the effect of those connections on protected species, including European protected species, is a likely significant effect of the proposed development. He also considers that an assessment of those effects is reasonably required to assess the environmental effects of the development which the Appellants can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile.

The Secretary of State notes that although the Appellants do not know the precise location and identity of occupiers of the whole of the Midpoint 18 Business Park, they have voluntarily undertaken assessments of indicative corridors for the electricity connection to the grid and of a CHP connection to the nearby premises of British Salt. Neither forms part of the development subject of Appeal A and no conclusive agreement has been made in the latter case. On that basis, and bearing in mind the parameters and considerations identified by the Inspector in this ruling, the Secretary of State agrees that it would not be unreasonable to expect the Appellants to carry out an assessment of the likely significant effects of the proposed CHP connections on the basis suggested by the Inspector.

In reaching his conclusions the Secretary of State has taken into account the advice in paragraphs 45 and 47 of Circular 02/99, that a development should be considered for EIA on its own merits and judged on the basis of what is proposed by the developer, and that a developer can only be asked to provide an ES in respect of the specific development he has proposed. But the Secretary of State is also aware that the European Court of Justice has held in its judgement in *Kraaijeveld (Dutch Dykes)*[1996] ECR I-5403, that the wording of Council Directive 85/337/EC as amended on the assessment of the effects of certain public and private projects on the environment, (the EIA Directive) is that it has a wide scope and a broad purpose.

Accordingly the Secretary of State agrees with the conclusions of the Inspector and hereby requests, in exercise of his powers under Regulation 19(1) of the 1999 Regulations, that the Appellants, Covanta Energy Limited, provide further information by undertaking an assessment of the likely significant effects of CHP connections from the proposed EfW plant to all buildings on Midpoint 18 Phases 1, 2 and 3 (whether existing, permitted or indicative) in terms of their effects on the habitats of protected species, and especially on European protected species, together with appropriate mitigation measures. This further information should be incorporated in the CES together with the existing assessments of the grid connection and the proposed CHP connection to British Salt in order that the CES is an ES within the meaning of the 1999 Regulations.

A copy of this letter goes to Cheshire East Council and to CHAIN.

Yours sincerely

*Rynd Smith*

Rynd Smith  
Director Development Plans, Policy and Quality

(Signed with the authority of the Secretary of State)

**Further appeal references:- APP/R0660/A/10/2142388**

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