

Strasbourg, 23 January 2014
[files03e_2014.doc]

T-PVS/Files (2014) 3

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

34th meeting
Strasbourg, 2-5 December 2014

Complaint in stand-by

***MARSUPELLA PROFUNDA* THREATENED BY WASTE
BURN INCINERATOR
AT ROSTOWRACK FARM, ST DENNIS
(United Kingdom)**

REPORT BY THE GOVERNMENT

*Document prepared by
The Department for Environment, Food & Rural Affairs (DEFRA), United Kingdom*

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22 November 2013

Dear Ivana

Bern Convention Complaint No.2013/11 – *Marsupella profunda* threatened by waste burn incinerator at Rostowrack Farm, St Dennis, UK

1. I refer to your e-mail of 30 August containing a response from Mr Toms, via Mr Rickard of the Cornwall Waste Forum, to our letter dated 24 July providing information relating to the above Complaint. Please accept my apologies for the delay in replying but we have been waiting for additional information from the Environment Agency (EA) and I understand there have been staff changes there.
2. Mr Toms has confirmed that he has no comments regarding the first two paragraphs of our earlier letter. This rest of this letter will address each of Mr Toms' paragraphs, 3) through to 9).

Paragraph 3 – Community consultation

I understand that the consultation event at Kingsley Village on 9th September 2010 was just one part of EA's consultation. EA held this event to help interested parties formulate their response to the consultation; it was not the consultation itself. Holding the event went beyond EA's usual responsibilities and remit. The consultation documents were available online or on request to members of the public. EA extended the deadline for consultation from the end of August through to 29 October to ensure that there was time for a response from interested parties.

EA has provided additional information relating to the consultation arrangements which can be found at **Annex A**. It provides a history of the relationship between EA and members of the St. Dennis Anti-Incinerator Group (STIG).

Paragraph 4 – Critical levels

As there are no critical levels specific to *Marsupella profunda*, EA used generic critical levels for the protection of vegetation and ecosystems.

Critical levels for ammonia, nitrogen oxides and hydrogen fluoride were considered in the review of the applicant's modelling. EA concluded that the impacts were not likely to be significant. In fact in all cases, the predicted impacts were below the H1 "insignificance" criteria at the site.

Paragraph 5 – Critical levels continued

As EA was not aware of any species specific critical levels or loads for *Marsupella profunda* it assessed the predicted acid deposition at the Claypits with background acid concentrations quoted in APIS (as explained in the Decision Document). As the additional deposition was assessed to be insignificant, and within the expected variation in the background values, both EA and statutory nature conservation adviser Natural England considered this to be suitable screening. EA has explained its definition of insignificance in the Decision Document with reference to its H1 guidance.

Paragraph 6 – Critical levels continued

EA used the best available information for this species and followed advice given to them by Natural England. Natural England agreed with EA's methodology for assessment and the conclusions reached.

Paragraph 7 – Hydrogen fluoride

EA considered the predicted process contribution from the proposed incinerator at the Claypits and compared that with background on APIS. All nearby sources should be considered within background value. The assessment in combination with other sources (and background) was therefore carried out. Natural England agreed with the conclusions that were drawn. Table A3.4.2 on P44 of the Decision Document explains how EA did their assessment in line with their process explained in H1 guidance.

Paragraph 8 – Meteorological data

EA has previously provided to Mr Rickard and others locally, a detailed report on its assessment of alternative meteorological data explaining why it used wind data from Camborne. Please see an attached report at **Annex B**.

Paragraph 9 – Critical level

EA are not aware of any assessment criteria that could be applied to *Marsupella profunda* for protection of acid deposition which is why EA followed an alternative using generic critical levels as best available information. In addition to this, EA have worked closely with Natural England during the determination and they have not raised specific concerns in this respect.

3. I hope that this response sufficiently addresses the concerns of the Complainant, and that we can draw this issue to a close, but please let me know if further information or clarification is required.

Yours sincerely

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Annex A

Consultation Arrangements

History of the relationship between the Environment Agency and members of the St. Dennis Ant-Incinerator Group (STIG).

We (EA...) began receiving correspondence from members of St Dennis Anti Incinerator Group (STIG) in early 2007. Ken Rickard was then the Chairman of STIG. Cornwall County Council had started talking about their plans to construct a waste incinerator at Rostowrack Farm, near St Dennis in Cornwall, in 2006. We responded to these letters and explained our role in the process. This included our role as a statutory consultee for the planning application and as the competent authority to consider the application for an environmental permit. A number of these early letters included questions about our monitoring process which we explained in detail. Judy Proctor, Environment Agency Area Environment Manager, also met with STIG face to face in September 2008. Rod Toms also attended this meeting.

SITA UK did not submit their planning application for an incinerator with energy recovery to Cornwall County Council until 20 March 2008. We received their environmental permit application on 24 July 2008.

At that time the volume of letters we received from members of the public increased. Most were unhappy that an incinerator was being proposed for their area and expressed concerns about its effect on their health, roads and the environment. We replied to these letters and explained our role as we had done to STIG in 2007. We also made this information available in a briefing note and on our website.

After carefully checking the paperwork we received for the environmental permit we accepted the application as duly made on 17 September 2008. The same day we attended a public planning meeting in St Dennis. Representatives from STIG and Cornwall Sustainable Waste Network, along with Matthew Taylor, the former MP for the area, and Stephen Gilbert, the current MP for the area, spoke at the meeting. Judy Proctor spoke at the meeting and answered questions from members of the public.

As soon as we accepted the application as duly made we advertised a public consultation period to allow people to comment on the application. We wrote to everyone who had contacted us with questions or concerns previously and advised them that we had received the application and how they could comment on it. This included members of STIG and Rod Toms. We went beyond statutory requirements to publicise the consultation and took out large adverts in local newspapers to ensure that there was broad public awareness of the consultation process.

The application documents were held on public registers at Cornwall Council in St Austell and the Environment Agency office in Bodmin. We were aware of the strong public feeling surrounding the application and arranged for an additional copy of the application, draft permit and decision document to be also held at Clay Area Training and Work Centre (ClayTAWC) in St Dennis. This allowed more people to access the documents.

At this time we spoke to interested parties, including representatives from STIG and Cornwall Sustainable Waste Network, to explain that we would not be able to answer any questions specific to the determination of the application we had received from SITA UK, but reassured them that answers to their questions would be included in the final decision document. We told them we would be able to answer any general questions they had relating to incinerators and compliance in general. We received a large volume of emails and letters asking these type of questions, which we answered. In addition to responding to specific queries we also sent out briefing notes to interested parties at each significant point of the process.

On 22 January 2009, we attended a public meeting organised by the parish council in St Dennis. Members of the public were invited to submit questions to the Environment Agency prior to the meeting to allow more complete answers to be provided at the meeting. Rod Toms sent questions which were answered at the meeting. STIG were also represented at the meeting. Judy Proctor

attended, along with two other technical officers and a communications officer from the Environment Agency. The meeting was chaired by Councillor Fred Greenslade and lasted a long time. We were thanked for attending the meeting.

In 2009, we remained in regular contact with members of STIG, answering their emails and letters. We tried to set up further face to face meetings with them to address their questions. We began this in February 2009. They were unable to make most of the suggested dates, despite a large number of dates and times being put forward. We did manage to meet with Rod Toms and Brian Arthur on 2 November 2009. In early 2010, the groups were putting together evidence for the Planning Enquiry, and they let us know that trying to find a date to meet with us was no longer a priority for them as their time was being taken up with the enquiry. Despite not meeting face to face we remained in contact by letter, email and phone.

In August 2010 we announced that we were „minded“ to issue the permit to SITA UK. We explained in a briefing note, which went to all interested parties, that from the information provided to us we were satisfied that the incinerator could be operated so that human health and the environment are protected from any harmful emissions.

Following the publication of the draft permit we held a public surgery session in Kingsley Village, Fraddon, on 9 September 2010. The venue was chosen due to its proximity to St Dennis and because it was available at short notice for both the day and evening. We held a special session alongside the public surgery to which representatives of STIG (which included Rod Toms, Brian Arthur and Ken Rickard) were invited. This was so their questions could be given full attention by Environment Agency Officers. It was at this meeting we agreed to extend the final date for comments on the draft permit and draft determination from August, to 29 October 2010, at the request of STIG and others. This was so that it did not clash with the deadline for the final submissions for the planning appeal. This reflects how, throughout the process, we have listened to advice and the needs of those concerned with the application and tried, wherever possible, to adapt our processes to accommodate them.

Following the public surgery Ken Rickard wrote to Paul Leinster (the Environment Agency's Chief Executive) on 24 September 2010. He stated that he was unhappy that the Environment Agency were „minded“ to issue a permit to SITA UK. He felt that there had not been a thorough investigation into the application. He was also unhappy that the officers present at the public surgery had not been able to answer all the questions put to them at the meeting. Richard Cresswell (the Director for the Environment Agency South West) replied to him on 7 October 2010. We responded to the individual points of his letter and reassured him that the technical points he made would be included in the decision document.

We attended waste panel meetings with Cornwall Council, in December 2010 and January 2011, at which members of STIG were also present. STIG used these meetings to pass questions to us via their local councillor Fred Greenslade. We answered their questions in full, and in writing.

Ken Rickard wrote to Richard Creswell on 19 October 2010. He raised further points about the meeting including that he had believed before the meeting that any questions asked would be answered at the meeting. They wanted this as it would help them respond to the draft permit documents. Richard Creswell replied on 10 November 2010. He said that Environment Agency Officers had been able to help those present to identify where they felt there was factual inaccuracy or omission and that it had been explained that this could be submitted as part of their response to the draft permit documents.

In both these letters Mr Rickard acknowledges, and is complimentary of, the help and actions of the Environment Agency's Area Environment Manager, Judy Proctor and her team.

We issued the final permit and decision document in December 2010. Following the issue of the permit Ken Rickard has made two complaints questioning our determination and drawing our attention to some typographical errors in the published Decision Document. We answered these in full and in accordance with our complaints policy (on 18 January 2011 and 23 March 2011).

Despite the large volume of correspondence we have received from Ken Rickard, and whilst he has been unhappy with our determination of the permit for the incinerator at St Dennis, we have

maintained a good relationship with him and other members of STIG and Cornwall Sustainable Waste Network

Since receiving the complaints from Ken Rickard we have had further correspondence from Rod Toms regarding the calculations in the draft determination document. We have answered his query and received thanks and positive feedback from him.

We remain satisfied that SITA UK has demonstrated in their application that they can construct and operate an incinerator with energy recovery without risk to the environment or human health.

Planning Application: Background Information

On 26 March 2009 Cornwall County Council rejected SITA UK's planning application. Cornwall became a unitary authority in June 2009. SITA UK submitted an appeal to Cornwall Council on 17 September 2009. The planning appeal hearing ran from 16 March 2010 until 7 May 2010 and reconvened during July 2010. Closing submissions were presented on 5, 6 and 7 October 2010. The Secretary of State ruled that SITA UK's appeal had been successful and that planning permission should be granted. This was announced on 20 May 2011.

Annex B

Requests 490 and 474 – supplementary question on meteorological data, permit application Cornwall Energy Recovery Centre, St Dennis, Cornwall.

1.0 Introduction

- 1.1 The National Permitting Service (NPS) received a public consultation response questioning to the validity of the meteorological data used in the Cornwall Energy Recovery Centre (CERC) air quality and human health impact assessments. NPS asked the National Air Quality Modelling and Assessment unit (NAQMAU) to comment on the validity of the met data.

2.0 General Comments

- 2.1 The applicant has provided an explanation of their selection of meteorological data in Annex E4 of the application. CERC carried out sensitivity analysis to an early plant design using met data from St Mawgan, Camborne and St Dennis School. CERC states that St Mawgan (at only 12km from the proposed plant) was initially the preferred met station but they claimed that local terrain features make the data un-representative. They claim that although Camborne is 35km away, the prevailing winds are more representative of the local wind-flows at St Dennis. The St Dennis School data was recorded for the year 2006 only but CERC claims that the single year is shows a similar directional signature to Camborne and hence returned similar modelling predictions. The applicant chose Camborne rather than the more local St Dennis met data because a minimum of three (preferably 5) years of met data should be used for a detailed impact assessment and the predictions using St Denis are similar to Camborne.
- 2.2 We agree that a minimum of three met years should have been used and therefore a single year of St Dennis data would not have been appropriate. However, the omitting St Mawgan data on the grounds of comparison with that single year (of the local St Dennis data) might not be justifiable. We checked sensitivity analysis to Camborne and St Mawgan meteorological data using only data owned by the Environment Agency. Similar to the applicant, we found that St Mawgan data generates the highest modelling predictions. We therefore conservatively used the peak St Mawgan year to test the model and make our check predictions. As stated in our report, despite using met data that generated higher predictions, and the other issues identified in our audit, we agree with the applicant's conclusions that exceedences of the air quality objectives are not likely. We also used the more precautionary met data in our check modelling and calculations of the human health intake and habitats assessments.

3.0 Conclusion

- 3.1 The applicant took the local St Dennis met data into account in their sensitivity analysis predicting that St Dennis provides similar predictions to Camborne but lower than St Mawgan. However, we did not agree that the St Mawgan data should necessarily have been excluded. Using the most conservative from St Mawgan and Camborne we agree that exceedences are not likely as a result of the proposed plant.

**National Air Quality Modelling and Assessment Unit, Compliance and Technical Services
Tŷ Cambria
Cardiff
23rd March 2009**