

# **P-05-1003 Demand an EIA now on the dumping of radioactively contaminated mud in Welsh waters, Correspondence - Petitioner response to letter from Minister for Environment, Energy and Rural Affairs, 08.09.20**

## **Introduction.**

Environmental Impact Assessment is fundamental to major developments on land and at sea. For land-based projects the Welsh Government issued its own EIA(Wales) Regulations in 2017. NRW issues licences for land-based activities and regulates them. However, for a marine project, Wales uses the same Marine Works EIA Regs as England, and both the planning and regulatory functions are vested in NRW ( the MMO does the planning and issues licenses in England while the EA regulates).

EIA applies to all major development projects, in this case the Hinkley Point-C Power Station granted planning and MMO consent in 2013. That gave planning consent for up to 300 000t sediment excavation and dumping in Cardiff Grounds, as long as NRW licensed it. The Welsh Government and EDF have falsely maintained alternately that an EIA was not necessary or that the project EIA covered it. Yet NRW's own rules say an EIA is always required for works within a top-rank conservation site, as is the Severn Estuary.

## **In response to Lesley Griffiths' letter as Minister, 10 August.**

The marine licensing process supports but does not encompass the requirements of the Environment Wales Act 2016. In particular Welsh marine licensing lacks;

- a) appropriate arrangements for public participation (Part 1, s.4(d)) based in the Aarhus Convention and EU law.
- b) take account of all relevant evidence (Part 1, s.4(e)), yet the Minister says they decide on "the evidence which supports an application" only;
- c) appropriate regard to uncertainties (Part 1, s.4(e)), as encoded in the precautionary principle of the UN 1992 Convention and the Lisbon Treaty.

Though not explicit in the EWA 2016, the OSPAR Treaty requires the precautionary principle in respect of marine regulatory decisions. Environmental Impact Assessment requires public participation (a) and assessment of uncertainties (c).

Marine licensing aims to apply only the minimum standards. It works to the 'de minimus' IAEA level for radioactive pollutants. Wales can go better than minimum standards; our sustainable development commitment requires that we do, particularly re. radioactivity levels set by the nuclear industry (Euratom has remit to develop nuclear power). Furthermore the law in Wales - Environment (Wales) Act 2016 - requires NRW to take account of all relevant evidence, to gather evidence in respect of uncertainties, and to change their decisions where appropriate.

The IRPC 'safe' dose model is challenged by many scientists and the ECRR. Wales needs to do better. We are also required under OSPAR to reduce radioactivity levels in Welsh waters to 'historic' levels and not discharge further artificial nuclides. The EWA 2016 can cover all this, but the Welsh marine licensing does not.

The Cardiff High Court case challenged EDF's claim that they had carried out EIA within the Power Station EIA of the dumping in Welsh waters. EDF conceded in the settlement registered at the Court that they were wrong. The judge said it was up to the Welsh Government and Senedd to resolve this hole in the claim that all necessary procedures had been fulfilled. The WG's Marine Consents Unit reportedly said in 2013 that EIA is not needed, but this undocumented decision does not comply with EIA-screening processes laid down in the Regulations, and the MCU was closed down on the start-up of NRW in 2013.

NRW proceeded to issue the licence without considering the issue. If the English planning decision did not apply in Wales and the MCU decision is not a valid planning decision, there was no planning consent for the dumping in 2018. The dumping in fact started during the Court hearings; the legal case could have pursued this, but we had to settle because of the huge liability (£100k per day) associated with the injunction that had been sought.

The current proposal for 600 000cu m extraction counts as an amendment to the top-level EIA (Schedule 1) power station development. The Marine EIA Regs 2007 (and 2017 revision) apply across the England/Wales divide, but it is questionable whether England's planning decision applies to Wales.

The WG Marine Consents Unit (disbanded 2013) was said to decide that EIA was not needed, but that "screening" decision is not documented. NRW treated it as a licensing decision alone.

The Minister poses the issue incorrectly (paras. 4-5):

*"need to consider whether an Environmental Impact Assessment (EIA) is required to support an application for a marine licence... NRW is defined as both the Appropriate Authority and the Regulator under these regulations. It is, therefore, a regulatory matter for the MLT..."*

- NOT SO - the EIA legislation stands in its own right relative to the EDF project. It is a *planning matter* for NRW as the Appropriate Authority. We consider the MLT, or NRW itself, do not have the necessary planning expertise, as that based in the Minister's own planning division.

Minister's para.6 :

Implies the MLT alone can decide EIA-screening, and in consultation with its experts on EIA-scoping.

- This is untrue. Both processes are specified in the EIA Regs and both require consultation with defined consultation bodies.

Minister's para.7 :

*"Robust" not "cause any harm"*

- non-EIA approach missed harm from alpha-nuclides (MLT is now to assess)
- Borehole samples below OSPAR minimum requirements and radiological biotoxicity assessment omitted though required in 2014-15 IAEA and IMO updates. Mounds of solid material now detected on the seabed, shows the dumped material did not all disperse and must be presumed to have smothered the benthic life buried by it.
- Must follow OSPAR guidelines: these require solid material to be separated and not dumped at sea. NRW disregarded this condition. Also require alternatives to sea-dumping be considered; NRW did not require this, just accepted EDF's false statements of no land-based alternative.

Minister's para.8 :

Above Action Level 1 for several toxic metals and organics.

- CEFAS did not assess the impacts of these poisons if dumped on marine life in the dumping area, but just dismissed the issue on the basis of exceedances in some sediments elsewhere in the Channel (which are not to be dumped).
- Contrary to the Minister's assurance, CEFAS failed to show the dredged sediment is safe and NRW did not challenge their 'experts', ignoring procedure.

Minister's para.9 :

- NRW's dedicated page on its website is rudimentary and does not comply with planning requirements for a public Register.
- There are no records of the communications between NRW and the company. We had to ask for the July 2020 report to NRW on the 2018 dumping to be posted, but no other documents from the 2017-18 licence review are available.
- All documents posted up for the January 2020 consultation have been removed and public responses to it were never posted. We just have the NRW's brief summaries of those responses. In contrast, LPAs and the Planning Inspectorate Wales post up full documents.
- NRW used to keep full sequential files with file-logs that prevented arbitrary removal of documents. The Environment Agency Public Register web pages include public responses (as on the Hinkley fish-deterrent issue).
- NRW's practice to individual requests for file-information is sometimes to authorise access to the internal file for that person for a limited time, or sometimes to send out a CD with copies of the files. Both procedures entail delays, not the access within office hours that planning law requires.

The Minister fails to mention that NRW were to approve the sediment sampling plan so that MMO could approve the start of sampling. The plan had to be changed but EDF failed to submit a revised version for approval in August. EDF have nevertheless proceeded with the sampling (core extraction) operations by the Jack up Barge "Excalibur", disregarding the lack of approval. They apparently think they can ignore NRW as the operations are in English waters and approved by the MMO.