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**By post and email**

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Our Reference: PM/GP/MFA  
Your Reference:

8 August 2008

Dear Ms Sargeant

**Tyne Tunnel Sea Disposal Licence**

We are writing on behalf of Mr Robert Latimer following your recent email correspondence with him concerning dredging and disposal at sea as part of the construction of the New Tyne Tunnel. We understand that Mr Latimer has recently received an email from a Geoff Bowles and should be grateful if you would direct this letter to him if he is the most appropriate person to respond to its contents.

**1. Environmental Impact Assessment**

We have seen email correspondence between you and Mr Latimer in which you have stated:

“The Tyne Tunnel project was subject to EIA in connection with the application made under the Transport and Works Act. The Marine Works Regulations provide that if an EIA has already been undertaken by another regulator the MFA is not required to undertake another one.”

The Government’s detailed guidance note on the Marine Works Regulations states that the MFA can determine that an EIA under the Marine Works Regulations is not required where the MFA is satisfied with the EIA carried out by another authority. Therefore your statement to Mr Latimer is incorrect insofar as it implies that MFA can simply rely on the previous EIA without addressing the question of whether it is adequate.

As you will no doubt be aware, the EIA carried out for the Tyne Tunnel was the subject of legal challenge in the case of *R ( Atkinson) v Secretary of State for Transport [2006]EWHC Admin* (copy attached). The challenge was unsuccessful but the reasoning in the judgment made clear that this was partly due to the fact that future licences and consents would be required in relation to the disposal process and that the process of granting these consents would require the environmental aspects of such disposal to be considered. In relation to sea disposal, we would refer you to paragraphs 35 and 36 of the judgment, which we reproduce below:

“35. The claimant in his witness statements had expressed particular concern about the option of sea disposal. He said that it was not clear from the ES whether land filling or sea disposal was the intended option. It was certainly the case that both the ES and the inquiry evidence of Mr Lofthouse had treated sea

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disposal as an option, but TWPTA had stated that sea disposal was not part of the proposals, so that only disposal to land required to be addressed. In paragraph 8.115 of his report the inspector made clear what TWPTA's approach was to sea disposal, and he endorsed it:

*“Moving on to sea disposal, this does not form any part of the current proposals. It has merely been identified as a possible option. Accordingly, I have no hesitation in concluding that the TWPTA have been perfectly correct in concentrating on the environmental impacts of the land disposal method – the worst case scenario. If, at some time in the future, it were proposed to change to some measure of sea disposal at sea. This would not be granted by DEFRA unless it were satisfied that the environmental effects would not be material.”*

36. That, it seems to me, was an unchallengeably correct approach, and I do not think that the Secretary of State was in error in not seeking an evaluation of the sea disposal option.”

Given that consideration of the environmental impacts of sea disposal was specifically expressed not to have been undertaken at the point where the Tyne Tunnel was approved, your authority is not able to rely on this previous EIA. It is our view that the consequence of the project being only partially assessed at the earlier stage is that there remains an obligation on your authority to make an assessment of the environmental impacts of sea disposal. If your authority disagrees with this view, please explain why.

We also note that the Government's guidance note goes on to state at paragraph 28 that where the MFA makes a determination that an EIA carried out by another consenting authority is sufficient, the regulator must defer giving regulatory approval until the consenting body that has carried out the EIA informs them that the decision to grant a regulatory approval meets the measures required to comply with the EIA. Please inform us of whether the Secretary of State has been approached in this regard and provide us with a copy of any response.

In addition, please inform us of whether a screening opinion was prepared for the present application and provide us with a copy of any such opinion. If no such opinion was prepared, please explain why.

## **2. Food and Environment Protection Act duties**

Further and in any event we would point out that your organisation has a number of duties in relation to the Food and Environment Protection Act (FEPA) 1985, regardless of the position in respect of the Marine Works Regulations. Section 8(1) of FEPA provides that in determining whether to issue a licence a licensing authority shall have regard, among other things, to the need to protect the marine environment, the living resources which it supports and human health. As the Explanatory Memorandum to the Marine Works (Environmental Impact Assessment) Regulations 2007 points out, Section 8(1) of FEPA has enabled regulators to carry out an environmental appraisal of the effects of a project. Therefore your authority is both able and obliged to carry out an assessment of the environmental impacts of sea disposal in any event.

In addition s 8(2) of FEPA requires your authority to have regard to the availability of alternative disposal options. Bearing in mind the TWPTA's position that sea disposal did not form part of the options for the site at the time of the public inquiry and court case, your authority will no doubt wish to give close scrutiny to the reasons why TWPTA is now applying for a sea disposal licence.

Further, we note that in a recent email from Mr Bowles to Mr Latimer of 4 August, it was stated that samples of the material from the New Tyne Tunnel have been analysed and the results indicate that the material is suitable for sea disposal. Please explain when this analysis took place and whether the results have been made publicly available.

## **Next Steps**

In addition to responding to the matters raised above, we should be grateful if you would inform us of what stage the consideration of the application has reached, what information your authority has considered in reviewing the application and what, if any, attempt has been made to consult the public on the application. For the avoidance of doubt, all requests for information in relation to this matter are made under the Environmental Information Regulations/Freedom of Information Act.

We look forward to your earliest response.

Yours sincerely

Friends of the Earth Rights & Justice Centre