

OVERVIEW & SCRUTINY COMMITTEE

3 DECEMBER 2008

STORAGE OF AMMONIUM NITRATE AT CHATHAM DOCKS

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Summary

This report provides background information in relation to the storage of ammonium nitrate at Chatham Docks, Chatham, Kent.

1. Budget and Policy Framework

- 1.1 Under Chapter 4 Rules, Part 5, paragraph 8 of the Constitution, each Overview and Scrutiny Committee is responsible for setting its work programme and in paragraph 22.1 to consider any matter affecting the area or its inhabitants.
- 1.2 There are no implications contained in this report to the current Budget and Policy Framework.

2. Background

- 2.1 This report is being presented to Members at the request of the committee on 28 August 2008 following concerns with respect to the storage of ammonium nitrate at Chatham Docks, Chatham.
- 2.2 This report will explain the background to this issue with particular reference to a recent application for Hazardous Substance consent for storage of 2,500 tonnes of ammonium nitrate at this site.

3. Advice and analysis

- 3.1 Ammonium Nitrate fertiliser in solid form where the nitrogen content is greater than 28% of its weight is subject to The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003. Trading Standards enforce these regulations. Relevant ammonium nitrate fertiliser cannot be imported into Great Britain (GB) from within the

European Union (EU) unless it is accompanied by a detonation resistance certificate relating to a sample certified as being a representative sample by the sampling body for each batch.

3.2 Relevant ammonium nitrate fertiliser shall not be imported into GB from outside the EU unless:

- The material is a single batch or is divided into clearly identifiable batches
- It is accompanied by a detonation resistance certificate (relevant)
- A detonation resistance certificate has been issued within a specific time
- An importer sends (not later than 5 days before arrival) sample material and a certificate for the batch and an identification document relating to the material to the Department for the Environment, Food and Rural Affairs.

3.3 An inspector may carry out a check of relevant ammonium nitrate material to ensure that the material meets detonation resistance requirements. Officers do not board ships to take a sample but sample from a land base.

3.4 Medway Council have been informed of two shipments to Chatham Docks which took place in September 2006 and January 2008. Detonation Resistance Test Certificates accompanied both shipments. These confirm legal compliance with the Ammonium Nitrate materials (High Nitrogen Content) Safety Regulations 2003. Trading Standards officers have the power to take a sample to confirm this or if suspicions are aroused. No sample was taken with the first shipment. A sample was taken from the second shipment (January 2008) and the sample met the requirements of the Detonation Resistance Test.

3.5 In March 2008 an application was received by this Council seeking Hazardous Substance consent for storage of 2,500 tonnes of ammonium nitrate at this site (planning reference MC2008/0599). The ammonium nitrate was to be stored within an existing building in bags of 500kg and 600kg, with no more than 300 tonnes per stack of bags. It was not to be used in any industrial process on site but stored for onward transmission. The main issue in determining the application related to safety in environmental terms as well as any potential risk to human life or health.

3.6 Hazardous Substances consents are controlled by their own legislation - the Planning (Hazardous Substances) Act 1990 with subsequent regulations and amendments. This means that the process for considering them is slightly different to a normal planning application. The applicant must advertise the application before applying for consent, in the form of a site notice and a notice in the local press. This was carried out in relation to application MC2008/0599. There is no requirement for the planning authority to undertake any further consultation with the general public. However a site notice was posted

and a press notice issued, in addition to the notices posted by the applicant. The application also had extensive press coverage and was well known about in the local area.

- 3.7 There was a requirement to consult a number of relevant bodies including the Health and Safety Executive (HSE) and the Environment Agency (EA). Both the HSE and the EA raised objection to the application. The application was refused under officer-delegated powers on 30 July 2008 primarily as a result of the concerns raised by the HSE and EA. The reasons for refusal are set out below:
1. The proposed storage would create an unacceptable safety risk, given the proximity of the site to large areas of high-density residential development, leisure and education uses and the proximity of the Medway Police Station which may prevent adequate emergency services response in the event of an incident at the site. The proposal is therefore contrary to the provisions of Policy QL1 of the Kent and Medway Structure Plan 2006 and Policy BNE2 of the Medway Local Plan 2003.
 2. The proposed storage would constitute a highly vulnerable use within a Zone 3 Flood Risk area and as such is contrary to the provisions of PPS25, Policy NR10 of the Kent Medway Structure Plan 2006 and Policy CF13 of the Medway Local Plan 2003.
 3. In the absence of any details of drainage or of the management of potentially polluting incidents, it is not possible to determine whether the proposed storage would unacceptably increase the risk of possible pollution to the River Medway and the internationally important wildlife site at the Medway Estuary and Marshes. The proposal is therefore contrary to the provisions of Policies NR5 and EN6 of the Kent and Medway Structure Plan 2006 and Policy BNE35 of the Medway Local Plan 2003.
- 3.8 Officers are currently establishing whether ammonium nitrate is being stored on this site. This is the type of ammonium nitrate described at paragraph 5.2(2) of this report (see below). Hazardous substance consent is not required for the storage of less than 1000 tonnes of this type of ammonium nitrate. Medway Council is unable to control the existing storage of such substances under 1000 tonnes. The storage of levels of ammonium nitrate below this threshold would however, be controlled by the Health and Safety Executive through health and safety legislation.
- 3.9 Earlier this year Medway Council was made aware that the quantities of ammonium nitrate being stored on the site may have exceeded the 1000 tonne threshold. A requisition for information under Section 330 of the Town and Country Planning Act 1990 (as applied by Section 37 of the Planning (Hazardous Consents) Act 1990) was therefore served on the owner of the site in June 2008. A response was received

indicating that although the 1000 tonne threshold had been exceeded in the past, the current levels of storage fell within this threshold. As such it was not considered expedient to take further action given that there was no longer a breach.

4. Motion at Full Council

- 4.1 The following motion was passed at the Full Council meeting on 18 September 2008 and sent to the Minister for Health and Safety in the Department for Work and Pensions:

"This Council believes that current legislation, which permits the storage of 1,000 tonnes of ammonium nitrate (and other quantities of dangerous materials as specified in the regulations) without the approval of the local authority, is undemocratic and does not take full account of the safety and views of local residents. In light of recent concerns raised about the storage of hazardous material in residential areas, Medway Council calls on the government to amend the 1999 legislation so that permission to store any amount of hazardous material has to be sought from the local authority and restrictions should be introduced to prevent the storage of any hazardous substances in residential areas, as local residents safety will always be paramount."

The Portfolio Holder for Community Safety and Enforcement clarified his intention in proposing the motion was to call for restrictions on industrial chemical storage.

- 4.2 Officers are currently seeking a response from the Minister for Health and Safety.

5. Financial and legal implications

- 5.1 The Planning (Hazardous Substances) Act 1990 provides that presence of a hazardous substance on, over or under land (if the quantity is more than the quantity prescribed as the controlled quantity for that substance) requires the consent of the hazardous substances authority. This Council is the hazardous substances authority for the Medway area.
- 5.2 The Secretary of State has the power to specify substances that are hazardous substances. The Planning (Hazardous Substances) Regulations 1992 (SI 1992/656) (as amended by the Planning (Control of Major-Accident Hazards) Regulations 1999) prescribes ammonium nitrate as a hazardous substance, requiring consent if in the quantities specified below:
- (1) Where the ammonium nitrate or ammonium nitrate compound has a nitrogen content as a result of the ammonium nitrate of more than 28 per cent by weight or where an aqueous

ammonium nitrate solution has a concentration of ammonium nitrate of more than 90 per cent by weight, the controlled quantity is 350 tonnes.

- (2) Where the ammonium nitrate is a simple ammonium nitrate based fertiliser which conforms with the requirements of the Fertilisers Regulations 1991 or composite fertiliser in which the nitrogen content as a result of the ammonium nitrate is less than 28 per cent in weight, the controlled quantity is 1000 tonnes.

- 5.3 Contravention of hazardous substances control is a criminal offence (by any person knowingly causing the substance to be present on the land, any person allowing it to be so present or any person in control of the land).

6. Recommendations

- 6.1 This report is for information purposes only.

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Background papers

Application MC2008/0599: Hazardous substance consent application for the storage 2500 tonnes of Ammonium Nitrate at Chatham Docks, Chatham.