

**City of York, North York Moors National Park and North Yorkshire County Council  
Minerals and Waste Joint Plan ("the Plan") Examination**

**Briefing Note to Inspector Elizabeth Ord, LLB (Hons), LL.M, MA, Dip TUS and to the  
Joint Planning Authorities (respectively "the Inspector" and "the Planning  
Authorities")**

**Participant: INEOS Upstream Limited ("INEOS")**

**Subject: Examination Matter 3: Transport, Infrastructure and Safeguarding -  
Safeguarding**

**Supplementary Submission regarding (i) the revised safeguarding boundary put  
forward by Sirius following the hearing session which took place on 13th April 2018 (see  
attached) and (ii) the latest text proposed by the Planning Authorities for the relevant  
safeguarding policies and the relative supporting justification (see attached).**

1. The Revised Safeguarding Boundary

The proposed boundary of the potash/polyhalite safeguarded area ("the Safeguarded Area") has been redrawn by the potash owners to ensure that it no longer encroaches on any areas covered by existing PEDLs. INEOS welcomes this revision to the relevant Policies Map, as it, together with the removal of the proposed sub-surface "2km buffer zone" from Policy SO1, will ensure that there is no possibility of future operational conflict either at surface or sub-surface.

2. The Revised Safeguarding Policies

Given the proposed revision to the terms of the boundary of the Safeguarded Area and the removal of the 2km buffer, INEOS and other existing PEDL holders will be unaffected by the terms of the Safeguarding Policies. However, as one of the policies (S03) is intended to be used to assess the acceptability or otherwise of "proposals for deep drilling or development of underground gas resources", INEOS has a number of points which as a matter of principle, it would wish the Inspector and the Planning Authorities to take into account when they assess its soundness.

Taking each of the three policies in turn:

***"Policy S01: Safeguarded Surface Mineral Resources***

*The following surface minerals resources and associated buffer zones identified on the Policies Map will be safeguarded from other forms of surface development to protect the resource for the future:*

- i All crushed rock and silica sand resources with an additional 500m buffer;*
- ii All sand and gravel, clay and shallow coal resources with an additional 250m buffer;*

- iii *Building stone resources and active and former building stone quarries with an additional 250m buffer."*

INEOS agrees with the proposed revised wording.

***"Policy SO2 Developments proposed within Safeguarded Surface Minerals Resource Areas***

*Within the Safeguarded Surface Minerals Resource Areas shown on the Policies Map, permission for development other than minerals extraction will be granted where:*

- *It would not sterilise the mineral or prejudice future extraction; or*
- *The mineral will be extracted prior to the development (where this can be achieved without unacceptable impact on the environment or local communities), or*
- *The need for the non-mineral development can be demonstrated to outweigh the need to safeguard the mineral; or*
- *It can be demonstrated that the mineral in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource; or*
- *The non-mineral development is of a temporary nature that does not inhibit extraction within the timescale that the mineral is likely to be needed; or*
- *It constitutes 'exempt' development (as defined in the Safeguarding Exemption Criteria list, as set out in paragraph 8.47).*

*Applications for development other than mineral extraction in Safeguarded Surface Minerals Resource Areas should include an assessment of the effect of the proposed development on the mineral resource beneath or adjacent to the site of the proposed development.*

INEOS agrees with the proposed revised wording.

**Policy SO3 Safeguarded Deep Minerals Resource Areas**

The proposed revised wording of this part of the policy is as follows:

**SO3 Part 1) Safeguarding Potash from surface development vulnerable to subsidence**

*Potash (including polyhalite) resources within that part of the Woodsmith Mine permission area, identified on the Policies Map for safeguarding, will be safeguarded from certain surface developments to protect the resource for the future. Relevant forms of surface development include;*

- *Large institutional and public buildings;*
- *Major industrial buildings including those with sensitive processes and precision equipment vulnerable to ground movement;*
- *Major retail complexes;*
- *Non-residential high rise buildings (3 storeys plus);*
- *Strategic gas, oil, naphtha and petrol pipelines;*

- *Vulnerable parts of main highways and motorway networks (e.g. viaducts, large bridges, service stations and interchanges);*
- *Security sensitive structures;*
- *Strategic water pumping stations, waterworks, reservoirs, sewage works and pumping stations;*
- *Ecclesiastical property;*
- *Power stations;*
- *Wind turbines;*
- *Surface hydrocarbons development.*

*Permission for the above forms of development will be granted where it can be demonstrated that a significant risk of sterilisation of the safeguarded mineral deposits would not arise, or the need for the surface development would demonstrably outweigh the need to safeguard the mineral deposit."*

INEOS disagrees with the proposed revised wording for the following reasons.

The expert advice given to the Planning Authorities by the British Geological Survey ("BGS") was that, given the extent and depth of the resource, there was no need for a potash mineral safeguarding area. However, the potential for "minor" subsidence caused by potash mining persuaded the BGS that there was merit in putting one in place so that it could highlight the issue to those developers who might wish to site developments that were potentially sensitive to minor surface subsidence at a location that unbeknown to them lay within an area that might be affected by future underground potash extraction operations. The concern was that if "sensitive" developments were allowed to be located on top of an area of exploitable potash, it could lead to a sterilisation of the mineral "due to the risk to cost and reputation associated with any detrimental impact" occurring to the surface development. It was, therefore, that risk of minor surface subsidence and the consequential impact on developments which were likely to be sensitive to such minor subsidence which provided the justification for the introduction of the potash MSA in the first place. It also provided the justification for the introduction of Policy SO2 Part 3) (now new Policy SO3 Part 1).

Against that background, INEOS would wish to make the following points:

Firstly, surface hydrocarbon development, unlike the other sensitive developments listed in Policy SO3, is not a type of development that is "vulnerable to [minor] subsidence". It was not listed in the list of sensitive developments that appeared in the first draft of the safeguarding policies. INEOS, therefore, submits that "surface hydrocarbons development" should be removed from the list of "surface developments vulnerable to subsidence."

Secondly, the revised wording of Policy SO3 Part 1) introduces considerable uncertainty as regards which types of development are caught by the policy requirement. The original wording (set out at original policy SO2 Part 2)) provided that "the following [listed] types of development" should be accompanied by the relevant information. If a proposed development was included in the list of the types of development that were deemed to be sensitive to "minor surface subsidence" then an applicant knew that the policy requirement would apply.

The revised wording removes this certainty. It now states that "certain [unspecified] surface developments, which will "include" the forms of "relevant " surface development listed, will

now be caught by the policy requirement. The use of the word "include" means that the types of development caught by the policy is open ended. The new wording also makes no mention of "minor subsidence". It only refers now to "subsidence". Every form of development is vulnerable to subsidence that is more serious than minor subsidence. The effect of the revised wording is to include every type of development that is vulnerable to subsidence. In other words every type of development.

INEOS, therefore, requests that the new Policy SO2 Part 1) is revised as follows:

- (i) the words "*minor surface*" should be inserted between the words "to" and "*subsidence*" in the heading "Safeguarding potash from surface development vulnerable to subsidence.";
- (ii) the words "*certain surface developments to protect the resource for the future. Relevant forms of surface development include:*" should be deleted and replaced with the words, "*the following types of surface development that are likely to be vulnerable to minor surface subsidence:*", and
- (iii) "*Surface hydrocarbon development*" should be removed from the list of developments.

So the revised wording proposed by INEOS is as follows:

**"SO3 Part 1) Safeguarding Potash from surface development vulnerable to minor surface subsidence**

*Potash (including polyhalite) resources within that part of the Woodsmith Mine permission area, identified on the Policies Map for safeguarding, will be safeguarded from the following types of surface development that are likely to be vulnerable to minor surface subsidence:.*

- *Large institutional and public buildings;*
- *Major industrial buildings including those with sensitive processes and precision equipment vulnerable to ground movement;*
- *Major retail complexes;*
- *Non-residential high rise buildings (3 storeys plus);*
- *Strategic gas, oil, naphtha and petrol pipelines;*
- *Vulnerable parts of main highways and motorway networks (e.g. viaducts, large bridges, service stations and interchanges);*
- *Security sensitive structures;*
- *Strategic water pumping stations, waterworks, reservoirs, sewage works and pumping stations;*
- *Ecclesiastical property;*
- *Power stations;*
- *Wind turbines;*

*Permission for the above forms of development will be granted where it can be demonstrated that a significant risk of sterilisation of the safeguarded mineral deposits would not arise, or the need for the surface development would demonstrably outweigh the need to safeguard the mineral deposit."*

### **SO3 Part 2) Protecting potash (including polyhalite resources from other underground minerals development**

The proposed revised wording of this part of the policy is as follows:

*"SO3 Part 2) – Protecting potash (including polyhalite) resources from other underground minerals development:*

*Potash (including polyhalite) resources within that part of the Woodsmith Mine permission area, identified on the Policies Map for safeguarding, will also be protected from sterilisation by other forms of underground minerals extraction, deep drilling and the underground storage of gas or carbon in order to protect the resource for the future.*

*Where proposals for deep drilling or development of underground gas resources or the underground storage of gas or carbon are located within the area safeguarded for potash, (including polyhalite) shown on the Policies Map, permission for development will only be granted where it can be demonstrated that the proposed development will not adversely affect the potential future extraction of the protected mineral, or the benefits of the proposed development would demonstrably outweigh the need to safeguard the resource.*

INEOS disagrees with the proposed revised wording for the following reasons.

The revised wording provides that unconventional oil and gas development will "only" be permitted within the potash MSA in circumstances where the PEDL holder is able to demonstrate either that its proposed operations "will not adversely affect the potential future extraction" of the potash/polyhalite" or that the "benefits" of the relevant unconventional gas development will "demonstrably outweigh" the need to safeguard the resource.

The unqualified reference to "adverse" effect and the use of the word " potential" means that every PEDL operation (no matter the extent of the potential sterilisation effect) would be prohibited thereby leaving the PEDL operator in the extremely difficult position of having to prove to the Planning Authorities the "demonstrable" need for the shale gas that it was looking to exploit (a nigh on impossible task at the exploration and appraisal stages in particular) relative to the need to safeguard the potash/polyhalite resource that would be likely to be sterilised if planning permission for the shale gas proposal were to be granted. This is a far more difficult test for sub-surface minerals to meet than the one applied under Policy SO2 to safeguarded surface minerals. For these reasons, INEOS would submit that additional flexibility is required in the policy and recommends that the wording of new Policy SO3 Part 2) is revised as follows:

- (i) the word "only" where it appears in the second paragraph should be deleted;
- (ii) the words "adversely affect" where they appear in the second paragraph should be deleted and replaced with the words "permanently sterilise", and
- (iii) the words ",or it can be demonstrated that the potash/polyhalite in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource, or the deep drilling or development of underground gas resources or the underground storage of gas or carbon is of a temporary nature that does not inhibit extraction within the timescale that the potash/polyhalite is likely to be needed." should be appended at the end of the second paragraph.

So the revised wording proposed by INEOS is as follows:

*"SO3 Part 2) – Protecting potash (including polyhalite) resources from other underground minerals development:*

*Potash (including polyhalite) resources within that part of the Woodsmith Mine permission area, identified on the Policies Map for safeguarding, will also be protected from sterilisation by other forms of underground minerals extraction, deep drilling and the underground storage of gas or carbon in order to protect the resource for the future.*

*Where proposals for deep drilling or development of underground gas resources or the underground storage of gas or carbon are located within the area safeguarded for potash, (including polyhalite) shown on the Policies Map, permission for development will be granted where it can be demonstrated that the proposed development will not permanently sterilise the potential future extraction of the protected mineral, or the benefits of the proposed development would demonstrably outweigh the need to safeguard the resource or it can be demonstrated that the potash/polyhalite in the location concerned is no longer of any potential value as it does not represent an economically viable and therefore exploitable resource, or the deep drilling or development of underground gas resources or the underground storage of gas or carbon is of a temporary nature that does not inhibit extraction within the timescale that the potash/polyhalite is likely to be needed."*

### 3. The Revised Supporting Text

Following on from the foregoing proposed revisions to the wording of new Policy SO3, INEOS requests that the following adjustments are made to the wording of the supporting text:

- (i) Paragraph 8.15 - insert the word "minor" between the words "to" and "subsidence" where they appear on the last line of the revised text;

- (ii) Paragraph 8.17 - insert the word "*minor*" between the words "*to*" and "*subsidence*" where they appear on the seventh line of the revised text;
- (iii) Paragraph 8.19 - delete the last sentence and replace with the following:  
  
*"Where underground conflict could arise, applicants will need to demonstrate either that appropriate measures can be implemented to ensure that the safeguarded resource in the location concerned is adequately protected from permanent sterilisation or that any one or more of the circumstances referred to in Policy SO3 Part 2) apply."*
- (iii) Paragraph 8.20 - replace the word "*complimentary*" with "*complementary*".

**DLA Piper UK LLP**

**Agents for INEOS Upstream Limited**