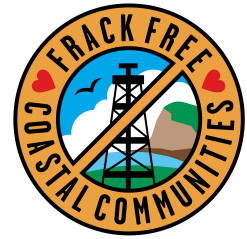


Frack Free Coastal Communities (FFCC) Submission to Environment Agency



Consultation on Environmental Permit Draft Decision EPR/YP3623LC/A001

1. Executive Summary

1.1 Frack Free Coastal Communities (“FFCC”) welcomes the opportunity to comment on the Environment Agency’s Draft Decision to grant Environmental Permit EPR/YP3623LC/A001 in respect of the proposed Cloughton-2 Wellsite at Burniston, North Yorkshire.

1.2 FFCC recognises the important statutory role performed by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 (“the EPR”). We acknowledge that the Agency must determine permit applications independently, objectively and in accordance with its statutory duties to prevent pollution, protect human health and secure a high level of protection for the environment.

1.3 This submission has been prepared following a detailed review of:

- the Environment Agency’s Draft Decision Document;
- the permit application and supporting technical documentation;
- the consultation responses submitted by statutory consultees, local councils, community organisations and members of the public; and
- the additional technical information referred to throughout the Draft Decision.

The submission is confined to matters that fall within the Environment Agency’s regulatory responsibilities. It does not seek to revisit issues that properly belong within the planning system, nor does it invite the Agency to determine wider questions of Government energy policy.

1.4 Having considered the Draft Decision in detail, FFCC submits that the Environment Agency has not yet demonstrated that the statutory requirements for granting the proposed environmental permit have been satisfied.

Our principal concern is not that the Environment Agency has necessarily identified the wrong environmental risks. Rather, it is that the Agency repeatedly concludes that those risks have been adequately assessed whilst simultaneously acknowledging that significant elements of the environmental evidence remain unavailable and will only be provided after the permit has been granted through a series of pre-operational conditions.

1.5 Throughout the Draft Decision, the Environment Agency states that it is satisfied that risks to groundwater, surface water, geological integrity, air quality and human health can be adequately controlled.

However, the same document acknowledges that numerous important matters remain outstanding, including:

- the Hydraulic Fracturing Plan;
- further geological verification and fault assessment;
- baseline groundwater monitoring and additional hydrogeological information;
- an updated Surface Water Management Plan;
- an updated Waste Gas Management Plan;
- a Leak Detection and Repair Plan;
- confirmation of the dimensions and extent of the underground mining waste facility; and
- further operational information required to demonstrate compliance with Best Available Techniques (“BAT”).

These are not matters of administrative detail. They relate directly to the environmental risks that the permit is intended to regulate.

1.6 FFCC accepts that pre-operational conditions are an established and valuable feature of the environmental permitting regime. They enable regulators to secure final operational details before activities commence.

However, FFCC submits that such conditions should not be used to postpone the assessment of matters that are fundamental to determining whether the statutory tests for granting a permit have been met.

Where important geological information, groundwater investigations, environmental monitoring arrangements or operational safeguards remain incomplete, those deficiencies should ordinarily be resolved before—not after—a permit is granted.

1.7 The Draft Decision also contains a number of internal inconsistencies.

In several places, the Environment Agency expresses confidence that environmental risks have been satisfactorily assessed whilst elsewhere acknowledging uncertainties that have yet to be resolved through future submissions by the operator.

For example, the Agency concludes that groundwater risks are acceptable whilst simultaneously requiring additional groundwater monitoring and hydrogeological information before operations may commence. Similarly, it concludes that geological risks are acceptable whilst acknowledging that detailed fault mapping and verification can only be completed following drilling and the submission of a future Hydraulic Fracturing Plan.

FFCC submits that these examples illustrate a broader concern that the Draft Decision sometimes relies upon anticipated future information rather than evidence currently available for independent scrutiny.

1.8 FFCC is also concerned that the consultation process does not always demonstrate meaningful engagement with the substance of many technical representations submitted by statutory consultees, parish councils, community organisations and members of the public.

Detailed submissions have frequently been summarised before being addressed through generic response boxes. Whilst this approach may assist administrative efficiency, it does not always explain why particular technical evidence has been accepted or rejected, nor does it consistently demonstrate how that evidence has informed the Agency’s assessment.

1.9 Particular concern also arises in relation to the proposed underground mining waste facility.

The Draft Decision acknowledges that between approximately fifty and seventy per cent of the injected proppant carrier fluid may remain permanently within the geological formation. Although the Environment Agency concludes that the environmental risks associated with this waste facility are acceptable, important uncertainties remain regarding the final extent of the waste facility, geological structures, fracture propagation and long-term containment.

FFCC submits that these matters warrant further assessment before any permit is granted.

1.10 This submission further examines the adequacy of the Draft Decision in relation to:

- geological uncertainty and fault mapping;
- groundwater protection;
- surface water management;
- mining waste management;
- air quality and flaring;
- Best Available Techniques;
- environmental monitoring;
- human health; and
- the Environment Agency's response to consultation representations.

In each case, FFCC considers whether the evidence presently available is sufficient to satisfy the statutory requirements of the Environmental Permitting regime.

1.11 FFCC fully recognises that environmental permitting and planning are separate regulatory regimes with distinct statutory purposes. This submission does not invite the Environment Agency to reconsider matters that properly fall within the planning system.

However, where inconsistencies exist between planning and permitting information, where environmental assessments depend upon information that has not yet been produced, or where important operational safeguards remain incomplete, those matters fall squarely within the Environment Agency's own statutory responsibilities.

1.12 The purpose of this submission is therefore not to challenge the principle of environmental regulation by the Environment Agency.

Rather, it is to examine whether the evidential threshold required before an environmental permit may lawfully be granted has, on the material presently available, been met.

FFCC submits that it has not.

1.13 Accordingly, FFCC requests that the Environment Agency:

1. withdraw the current Draft Decision;
2. require the applicant to provide the outstanding technical information identified throughout the Draft Decision;
3. undertake a full reassessment of that information before determining the application;
4. make all material technical documents publicly available; and

5. provide a further opportunity for public consultation where additional information materially affects the environmental assessment.

1.14 In FFCC's submission, such an approach would more fully reflect the objectives of the Environmental Permitting regime, reinforce public confidence in the integrity of the regulatory process and ensure that any final determination is based upon a complete, transparent and evidence-based assessment of environmental risk rather than information that remains to be provided after the permit has already been granted.