

Application Number: 11/19/0159

Address: William Blythe Ltd Bridge Street Church Accrington Lancs BB5 4PD

Determination by: 11 July 2019 (extension agreed 10 Oct 2019)

Applicant: William Blythe Ltd

Agent: n/a

Description: Hazardous Substance Consent: Changes to the location and quantity of a number of substances including transport to and from the site and in the site.

Note: This is an application for the determination of an application for hazardous Substance Consent. Hyndburn Borough Council is the “Hazardous Consent Authority” responsible for determining applications for hazardous substance consent. Guidance on hazardous substance consents and the means by which they should be determined is set out at Appendix 1 of this report.

The application for hazardous substance consent is available to view on the Council’s website and the full guidance on hazardous substance consents can be viewed at: <https://www.gov.uk/guidance/hazardous-substances>.

Human Rights: The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from Article 8 (the right to respect for private and family life, home and correspondence) and Article 1 of Protocol 1 (the right of peaceful enjoyment of possessions and protection of property).

Application Site and proposal

The William Blythe site lies within Church and is bounded by the Leeds Liverpool Canal, the railway, a landfill site and Bridge Street in Church. William Blythes is a long established company that manufacture a range of chemicals that have a wide variety of uses.

This is application for Hazardous Substance Consent under the Planning (Hazardous Substances) Act 1990, the Planning (Hazardous Substances) Regulations (Regulation 6) 2015. Changes in the way the applicant operates their site, in particular changes to the location and quantity of chemicals used and their transportation, have resulted in the submission of this application for hazardous substance consent that will consolidate relevant parts of previous hazardous substance consents that are still relevant to operations at the site, but also cease the use of a number of chemicals.

The application sets out the chemicals that are covered by the application, their maximum quantity to be present on site (tonnes) and the location on the site where they will be stored (on maps). These include (full details are set out in the application) Oxygen (30 tonnes), Iodine (80 tonnes), Petroleum products (29 tonnes), Nitric acid (100 tonnes), Copper Nitrate (100 tonnes), Copper Zinc Carbonates (120 tonnes), Copper Nitrates (85 tonnes), mixed metal Nitrate (300 tonnes), Zinc Chloride (70 tonnes).

As a consequence of operation changes at the site, the applicant no longer manages a number of chemicals at the site, including:: Arsenic Trioxide, Arsenic Acid, Chlorine(generation of, it's not stored on site), Copper compounds (Copper Chloride, CCA, Copper Azoles, Copper Pyro, Copper Chromite, Copper Bromide), Chromic Acid and Tins (Stannic Chloride Anhydrous, Stannic Chloride, Stannic Chloride Pentahydrate).

Although these chemicals are no longer used by the applicant, they are permitted by a number of older Hazardous Substance Consents. Like a grant of planning permission, hazardous substance consents confer a right to use the land/site in a particular way and this right continues to exist until it is formally revoked. The revocation of a hazardous substance consent involves the use of bespoke regulations and an order that will be finally signed by the Secretary of State.

This application for a hazardous substance consent is significant because the applicant is no longer proposing to manage chlorine at the site. The storage and management of chlorine at Blythes Chemicals is the main reason why the Health and Safety Executive imposed a consultation zone around the site that effectively limits the scale of development that can take place within the three zones. The Health and Safety Executive has indicated that the changes proposed are likely to result in a significant reduction in size of the consultation zone.

However, the consultation zone cannot be reduced in size, or removed, until the relevant consents have been formally revoked by the Secretary of State. The applicant has cooperated with the Health and Safety Executive and the Council in the preparation of this application for Hazardous Substance Consent, and the associated legal agreement, that should pave the way for the revocation of the old hazardous substance consents.

Consultations

Public consultation: Site notices were displayed and an advertisement was placed in the local paper. 28 days was allowed for responses, which is relevant to this type of application. One response was received which did not formally object to the proposal, but requested clarification in relation to what was proposed.

LCC Highways: No objection

Lead Local Flood Authority (LLFA): No comments have been received

Environment Agency: Confirmation that the Environment Agency has no formal response to make in relation to the application.

HBC Environmental Health: No objection

Health and Safety Executive (HSE): Awaiting formal response. Informal response has been received which highlights that given that the extant consents will be revoked, there will be a significantly less onerous Consultation Zone associated with the site. This will have an impact on planning decisions moving forward, in the vicinity of the site.

Cadent: No objection but an informative is requested.

Lancashire Fire and Rescue: No comments have been received.

United Utilities: No comments have been received.

Canal and Rivers Trust: No comment to make on the application.

Relevant Hazardous Substance Consent History

Details of the hazardous substance consents for this site are set out at appendix 2.

What will the hazardous substances authority (Hyndburn Borough Council) consider in making a decision?

Before reaching a decision, the hazardous substances authority (Hyndburn Borough Council) will weigh up all the comments received, including those from the [COMAH competent authority](#) (in this instance the Health and Safety Executive). It will take account of local needs and conditions, the local plan, and any other material considerations.

Observations

The proposal is for Hazardous Substance Consent, as required by the Planning (Hazardous Substances) Act 1990; the Planning (Hazardous Substances) Regulations (Regulation 6) 2015. Where an application is made to a hazardous substances authority (the Council) for hazardous substances consent, that authority—

- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit; or
- (b) may refuse hazardous substances consent.

In dealing with such an application the hazardous substances authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—

- (a) to any current or contemplated use of the land to which the application relates;
In this instance the application relates to the chemicals be used and or stored at the site, the use of the land will remain the same.

- (b) to the way in which land in the vicinity is being used or is likely to be used;
The changes proposed are likely to have a significant impact on the way in which land in the vicinity of the site is being used, this is explained in the report.
- (c) to any planning permission that has been granted for development of land in the vicinity;
This is likely to change in the future.
- (d) to the provisions of the development plan; and
These are explained below.
- (e) to any advice which the safety regulator has given following consultations in pursuance of regulations under section 7(2).
The advice of the Health and Safety Executive is set out in this report.

The Health and Safety Executive has a designated consultation zone around the site that is illustrated below. The practical effect of the consultation zone is to limit new development as a means of preventing more people from being exposed to the risks presented by the storage and use of chlorine at the site.

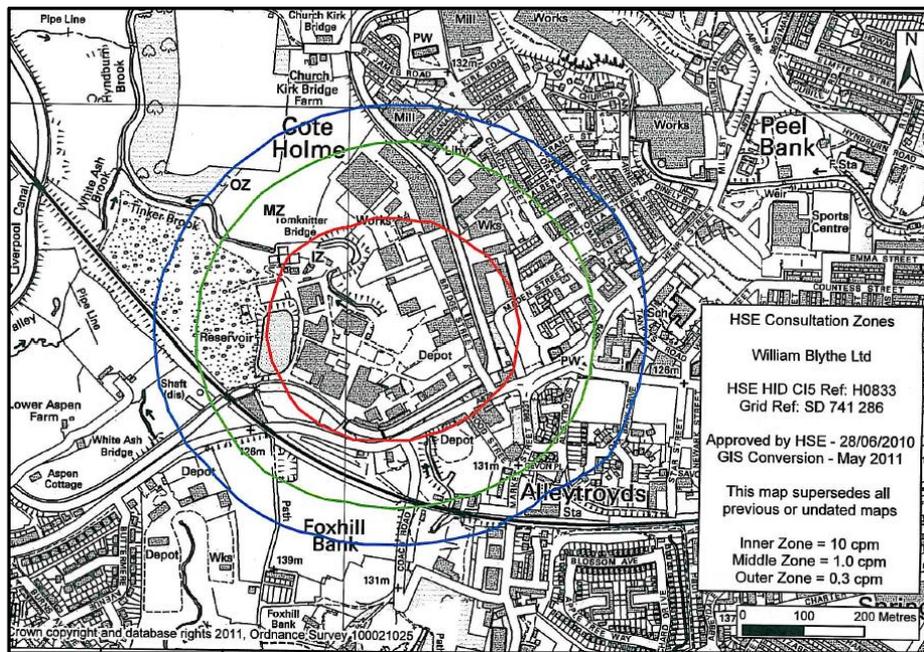


Fig 1. HSE Consultation Zone – Church Canal Gateway.

The Blythes Chemicals site is within the urban area, as designated by the Local Plan, and although there is no specific policy relating to the site the Core Strategy describes the area in the following terms:

5.19 A large area of Church is within the Health and Safety Executive’s consultation zone around the Blythes Chemicals Site. The presence of a hazardous substance consent for the manufacture of chlorine at the site means that there are strict limitations on the types of development that are permitted within the three zones shown in Fig (1) above. This has resulted in difficulties in pursuing traditional regeneration proposals in this area because it has not been possible to benefit from the increases in land values associated with new development. In the event that

the hazardous substance consent is revoked during the period of the Core Strategy, the Blythes Chemicals Site would present an opportunity for widespread regeneration in West Accrington Gateway which would necessitate the preparation of a Supplementary Planning document for that area.....

Although the applicant is seeking a new hazardous substance consent that will make provision for the chemicals that they plan to use at the site, the significant change is that the applicant is no longer seeking to store or use chlorine at the site, which was the main reason why the Health and Safety Executive believed such a large consultation zone to be necessary.

The storage and management of chlorine (a poisonous gas) at the Blythes site represents a significant societal risk to the people that live and work within the consultation zones illustrated above. The effect of the zone is to limit develop in the area as a means of ensuring that more people are not exposed to the risks. This application presents an opportunity to partially remove the societal risk present through revocation of the old hazardous substance consents that provide for the storage and use of chlorine at the site.

The application sets out the chemicals that are covered by the application, their maximum quantity to be present on site (tonnes) and the location on the site where they will be stored (on maps). These include Oxygen (30 tonnes), Iodine (80 tonnes), Petroleum products(29 tonnes), Nitric acid (100 tonnes), Copper Nitrate (100 tonnes), Copper Zinc Carbonates (120 tonnes), Copper Nitrates (85 tonnes), mixed metal Nitrate (300 tonnes), Zinc Chloride (70 tonnes).

The new consent is also required by the applicant as the following substances are no longer required on site:

Arsenic Trioxide, Arsenic Acid, Chlorine(generation of, it's not stored on site), Copper compounds (Copper Chloride, CCA, Copper Azoles, Copper Pyro, Copper Chromite, Copper Bromide), Chromic Acid and Tins (Stannic Chloride Anhydrous, Stannic Chloride, Stannic Chloride Pentahydrate).

The HSE has been notified of the application, however due to their work commitments and response times, they are unable to provide a formal response at this stage. However they have confirmed that the result of this consent would mean that *'there will be a significantly less onerous Consultation Zone associated with the site. This will have an impact on planning decisions moving forward, in the vicinity of the site'*.

In discussions, the HSE has also suggested that the applicant submit a s106 Agreement under the Town and Country Planning Act which will ensure that the applicant will not seek compensation arising from the revocation of old consents and will not oppose their revocation.

The applicant has worked closely with officers to prepare this agreement, and there is a draft s106 prepared which is currently being considered.

When this agreement is signed, and officers have received confirmation from the HSE that they have no objection to the granting of this consent (and the inclusion of any conditions they require), officers are satisfied that this consent can be granted.

Recommendation

The application has been considered in terms of the requirement of the Planning (Hazardous Substances) Act 1990, the Planning (Hazardous Substances) Regulations (Regulation 6) 2015.

It is recommended that the application for hazardous substance consent be approved subject to the following:

- i. no objection being raised by the Health and Safety Executive, and
- ii. any conditions recommended by the Health and Safety Executive in their response, and
- iii. appropriate conditions to ensure that the consent is in line with the details in the application, and
- iv. a s.106 agreement under the Town and Country Planning Act being entered into between the applicant and the Council which will contain the following obligations:
 - a. a list of chemicals that have not been managed at the site for the past 5 years;
 - b. that the applicant / company will not seek compensation from the Council arising from the revocation of old hazardous substance consents, and
 - c. that the applicant / company will not oppose the revocation of the old hazardous substance consents.

Appendix 1 Guidance on hazardous substance consents (Extracts from Planning Practice Guidance September 2019)

The purpose of hazardous substances consent

What is the purpose of hazardous substances consent?

The hazardous substances consent process ensures that necessary measures are taken to prevent major accidents and limit their consequences to people and the environment. This is a key part of the controls for storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk. The system of hazardous substances consent does not replace requirements under health and safety legislation.

Hazardous substances consent provides control over the presence of hazardous substances whether or not an associated planning permission is required. Where the presence of a hazardous substance is directly associated with a proposed development, local planning authorities can exercise control through the decisions on applications for planning permission.

The consent process regulates the storage and use of hazardous substances and enables breaches of control, which may present serious risks, to be dealt with quickly and effectively.

Separate health and safety law ensures measures are in place for the safe use of hazardous substances. However, even after measures have been taken to prevent major accidents, there will remain the residual risk of an accident which cannot entirely be eliminated. Hazardous substances consent ensures that this residual risk to people in the vicinity or to the environment is taken into account before a hazardous substance is allowed to be present in a controlled quantity. The extent of this risk will depend upon where and how a hazardous substance is present; and the nature of existing and prospective uses of the application site and its surroundings.

Who decides if the risk of storing hazardous substances is tolerable?

The hazardous substances authority (in this instance Hyndburn Borough Council) has responsibility for deciding whether the risk of storing hazardous substances is tolerable for the community. Therefore the decision on whether a particular proposal to store or use a hazardous substance should be allowed is one for the hazardous substances authority. Where the hazardous substances authority is itself applying for hazardous substances consent it must apply to the Secretary of State.

Who is the hazardous substances authority and what is its role?

The hazardous substances authority will usually be the local planning authority. The local council should therefore be the first point of contact to check who the hazardous substances authority is. The hazardous substances authority for an area determines hazardous

substances consent applications and enforces the controls. In some circumstances the county council are the hazardous substances authority.

Who advises the hazardous substances authority on the level of risk?

The [COMAH competent authority](#) advises the hazardous substances authority on the nature and severity of the risk to persons in the vicinity and the local environment arising from the presence of a hazardous substance. The COMAH competent authority is a statutory consultee and must be consulted by the hazardous substances authority before hazardous substances consent can be granted.

Who is the Control of Major Accident Hazards (COMAH) competent authority?

The COMAH competent authority for most cases is the Health and Safety Executive and Environment Agency, acting jointly and for nuclear sites the Office of Nuclear Regulation and the Environment Agency, acting jointly. They advise hazardous substances authorities on the nature and severity of the risk to persons in the vicinity and the local environment arising from the presence of a hazardous substance at an establishment.

Does hazardous substances consent override planning permission requirements?

Where there is development associated with the storage or use of hazardous substances, a separate planning permission may also be necessary. In some cases, an environmental permit may also be required. Dealing with related applications for hazardous substances consent, an environmental permit and for planning permission together should speed up decision making and avoid unnecessary duplication in providing information.

There may be different considerations, and decisions, for related applications. It is important that related decisions are not inconsistent (eg conditions containing conflicting requirements). To avoid confusion, detailed control over the manner in which a hazardous substance is to be kept or used is best addressed by hazardous substances consent conditions.

Deciding whether a hazardous substances consent is needed

When is consent needed for the storage or use of hazardous substances?

Consent is needed if specified hazardous substances are stored or used at or above specified controlled quantities. Where more than one substance is present there are procedures for working out whether consent is required. In certain circumstances there are exemptions to these controls.

What hazardous substances are subject to the controls?

The list of substances and controlled quantities set out in [Schedule 1 to the Planning \(Hazardous Substances\) Regulations 2015](#) is in 3 parts:

- Part 1: categories of hazardous substances and controlled quantities.
- Part 2: named substances and controlled quantities.

- Part 3: substances used in processes that it is reasonable to foresee may generate a controlled amount of hazardous substance.

Hazardous substances consent is required for hazardous substances present at any establishment that falls within the scope of the [Seveso III Directive](#). The concept of 'establishment' is important. It is defined in Article 3 of the directive and means any installation or collection of installations which are within an area of land under the control of the same person or body. In distinguishing one establishment from another it is essential to establish who exactly has control.

How is a variation to a consent made?

For changes to an existing consent, an application can be made to the hazardous substances authority to vary or revoke any conditions on a previous consent. For example applicants may want to consolidate all consents held prior to the new Planning (Hazardous Substances) Regulations 2015 into a new consent using the thresholds of substances at Schedule 1 and agree with the hazardous substances authority that all previous consents can be revoked.

Applying for hazardous substances consent

How are applications for consent made?

If consent is required, applicants will need to apply for consent to the hazardous substances authority (in this case, Hyndburn Borough Council). It is important that applications provide all the relevant information as decisions on incomplete applications can be delayed. An application for consent must include the information set out in [regulation 5 of the Planning \(Hazardous Substances\) Regulations 2015](#).

Information prepared in connection with applications under other legislation (for example, environmental statements) may be useful for the purpose of an application for hazardous substances consent and can be submitted to the hazardous substances authority where relevant.

Deciding applications for hazardous substances consent

What does the hazardous substances authority do when it receives an application?

The first thing a hazardous substances authority will do is to make sure the application is in order. This will involve ensuring it meets the requirements set out in the [Planning \(Hazardous Substances\) Regulations 2015](#). If the application is in order, the hazardous substances authority will acknowledge it and send a copy of the application to the [COMAH competent authority](#). It will place details of the application on the register of consent applications, which is available to anyone who wants to see it. If it does not consider the application is in order it will tell the applicant why.

What expert advice should the hazardous substances authority seek?

Before deciding on a consent application, the hazardous substances authority should consult the COMAH competent authority and others as required by legislation. These include fire and civil defence authorities, other relevant planning authorities and public utilities. Natural England should also be consulted where it appears to the hazardous substances authority that an area of particular natural sensitivity or interest may be affected. These are likely to be European sites (Special Areas of Conservation and Special Protection Areas), Ramsar sites, Sites of Special Scientific Interest (SSSI) or priority habitats (Habitats and Species of Principal Importance included in the list published by the Secretary of State under [section 41 of the Natural Environment and Rural Communities Act 2006](#)). The hazardous substances authority must give consultees at least 28 days to comment.

What is the role of the Control of Major Accident Hazards (COMAH) competent authority?

The role of the COMAH competent authority is to advise the hazardous substances authority on the risks arising from the presence of hazardous substances. The COMAH competent authority has the expertise to assess the risks to people, and risks to the environment. However, the decision as to whether the risks from hazardous substances are acceptable in the context of existing and potential uses of neighbouring land is made by the hazardous substances authority.

What will the hazardous substances authority consider in making a decision?

Before reaching a decision, the hazardous substances authority will weigh up all the comments received, including those from the [COMAH competent authority](#). It will take account of local needs and conditions, the local plan, and any other material considerations.

What consideration should be given to the Control of Major Accident Hazards (COMAH) competent authority's advice?

In view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from the [COMAH competent authority](#) that hazardous substances consent should be refused should not be overridden without the most careful consideration. Where a hazardous substances authority is minded to grant consent against COMAH competent authority advice, it should notify the COMAH competent authority and allow 21 days for the competent authority to give further consideration. During that period the COMAH competent authority will consider whether to request the Secretary of State for Communities and Local Government to call-in the application for determination.

What decision can the hazardous substances authority make on the consent?

It may grant consent, either with or without conditions, or may refuse it. If it refuses consent or grants it subject to conditions, it should provide full reasons for the decision. This will help the applicant to decide whether or not to contest the decision. The requirements for making

a decision are set out in the [Planning \(Hazardous Substances\) Act 1990](#) and the [Planning \(Hazardous Substances\) Regulations 2015](#).

What conditions can be imposed on a consent?

The hazardous substances authority can [impose conditions](#), including how and where substances are kept and the times substances may be present, or requiring permanent removal within a certain time.

Conditions on how a substance is to be kept or used may only be imposed if the Health and Safety Executive (or in the case of nuclear sites, the Office of Nuclear Regulation) has advised that such conditions should be imposed. Where the [COMAH competent authority](#) is considering imposing a condition that restricts the location of a substance within a site, it should try to avoid imposing undue restrictions on relatively small amounts of that substance being located elsewhere in the establishment. For example, a condition may allow a hazardous substance to be stored in a moveable container in a different area of a site from where it has previously been stored provided the quantity does not exceed 10% of the controlled quantity. This avoids situations where, for example, a relatively small amount of a substance in a moveable container in a different part of the site (eg a gas canister to service a staff kitchen), or which is covered by the '2% rule', would otherwise be a breach of the condition.

Can hazardous substances authorities revoke or change a consent?

The hazardous substances authority can revoke or modify a consent. This requires confirmation by the Secretary of State, and the hazardous substances authority would be liable to pay compensation. There are specific circumstances where a consent can be revoked, set out in [section 14 of the Planning \(Hazardous Substances\) Act 1990](#).

In some cases the use of the land with a consent may change. For example, there have been situations where sites with consent have since been converted into a car park. In these situations the hazardous substances authority can revoke the consent. Where a consent has not been relied on for 5 years, or the use of the land has changed materially since the consent was granted, it may be revoked without compensation being payable.

If there is a change to the person in control of part of the land the consent is automatically revoked unless an application for continuation has been made. When (under [section 17 of the Act](#)) an application to continue the consent is made, the hazardous substances authority may (under [section 18 of the Act](#)) modify a consent in any way they consider appropriate; or they may revoke it. However it should rarely be appropriate to impose more onerous conditions or revoke a consent.

Appendix 2 Hazardous Substance Consent history.

Application Number	Description	Consent Details
PR/92/0006	Application for Deemed Consent Under the Planning (Hazardous Substances) Regulations 1992. Deemed Consent given on 17.9.92	Substances notified to the HSE under the Notification of Installations Handling Substances Regulation 1982: Arsenic Trioxide - 800te notified during the establishment period (12 months before 1st June 1992). 1600te Established Quantity. Maximum storage quantity of Arsenic Trioxide held in 3 storage areas, maximum size storage container - 0.240te. Arsenic Trioxide storage compound, maximum quantity stored during establishment period - 290te. The area will store up to 500te. Arsenic Trioxide drum marshalling area, maximum quantity stored during establishment period - 230te. Arsenic Acid plant, maximum quantity of Arsenic Trioxide stored during establishment period - 10te. Maximum quantity of Sodium Arsenite Solution (process product) stored during establishment period - 7te. Sodium Arsenite drum storage area, maximum quantity stored during establishment period in 0.25te containers - 85te. Chlorine - 15te notified during the establishment period. 30te Established Quantity. Maximum storage quantity of Chlorine stored during the establishment period - 15te in 1te containers. Letter received on the 11th September 1992 from the HSE indicating that the HSE has been notified by William Blythe for up to 15te of Chlorine in 1te drums, and notification for up to 1200te of arsenic(111) compounds in vessels of varying sizes. The notification predates 1 June 1991.
PR/93/0006	Planning (Hazardous Substances) Regulations 1992. Relocation and Modification of Chlorine Storage. Consent given on 4.8.1993.	Conditions: The chlorine handling operations including deliveries of drums, drum connections and disconnections and operation other than automatic changeover of drums which have been connected between 8am and 4pm should be restricted to daytime hours i.e. 8am to 4pm. The hazardous substance should not be kept or used outside the area shown in yellow and green on drawing MC4521/1. Note: The HSE requested that the Hazardous Substance Authority (Hyndburn Borough Council) negotiate with William Blythe to reduce the established Chlorine storage quantity from 30te to 24te. This was not agreed by Wm Blythe and the consent was not altered with this consideration.
PR/99/0010	Application for Deemed Consent Under the Planning (Hazardous Substances) Regulations 1992. Deemed Consent given on 26.2.2001	Conditions: The hazardous substances shall not be kept or used other than in accordance with the application particulars provided in Form 1, nor outside the area marked for storage of the substances on the plan which formed part of the application. The maximum quantity of Chlorine on the site shall not exceed 23te. Chlorine shall not be stored in vessels exceeding 1te. The maximum quantity of arsenic trioxide on the site shall not exceed 850te. List of hazardous substances identified in Form 1 'the application' and maximum quantity proposed to be present: Arsenic Trioxide, 1600te (modified in conditions). Chlorine, 30te (modified in conditions). Arsenic Acid, 500te. Copper Chloride, 1100te. Chromic Acid, 80te. Zinc Chloride, 1000te. Metal Nitrates, 120te. Tanalith, 1300te.
Letter	Letter HSE to HBC dated 27.10.2010	Letter states "2000 - Consent modified reducing Chlorine to 20te. Previous Chlorine drum handling condition was not referred to. Zones largely set by Chlorine with very small contribution from Arsenic Trioxide." Note: The '2000 Consent' predates the deemed consent approval date of PR/99/0010 (26.2.2001), yet appears to consent to a lower quantity of Chlorine storage. No record of the 2000 consent can be located on the HBC website electronic records.

PR/06/0200	Hazardous Substance Consent: Changes Necessary to Location and Quantity of a Number of Substances.	Conditions: The hazardous substances shall not be kept or used other than in accordance with the application particulars provided in Form 2, nor outside the area marked for storage of the substances on the plan which formed part of the application. List of hazardous substances identified in Form 2 'the application' and maximum quantity proposed to be present: Arsenic Trioxide, 400te. Chlorine, 20te. Arsenic Acid, 500te. Copper compounds, 5000te. Chromic Acid, 300te. Zinc Chloride, 1000te. Metal Nitrates, 600te. Iodine. 80te. Iodine compounds. 300te. Sodium Chlorate, 25te. Potassium Chlorate, 25te. Hydrazine, 8te. [<i>Tanalith appears to have dropped off the list from PR/99/0010</i>]. A full list of compounds was submitted by William Blythe in a separate correspondence, however the list did not enter the Consent Conditions - see Appendix A.
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