

Council of Ministers Report

Agenda Item: B3

Exemption: 3.2.1 (a) (xiv)

Water Contamination – Proposed Settlement Agreement

1. Background

Pollution in the St Ouen's Bay Aquifer, by fire fighting foam residues attributed to the Airport, first became evident in 1993.

Jersey Airport and the then Harbours & Airport Committee subsequently undertook a range of activities to remediate the problem, the main being the provision of a new Fire Training Ground. This involved removal of contaminated shale/rock and the construction of a deep concrete wall on the eastern face to prevent groundwater running through the Fire Training Ground. Whilst this would contain contamination close to the fire training ground it did not remove the plume of contamination moving through the aquifer towards St Ouen's Bay.

In 2004 the States approved P176/2004: Jersey Airport: Fireground Remediation – Deed of Settlement. This approved and ratified the Deed of Settlement between the Harbours & Airport Committee and the supplier of the fire fighting media whereby a full and final settlement of £2.6million was paid to the States. The costs associated with the project to that date and the options available are set out in that Project.

[REDACTED]

Post pollution remediation included significant environmental impact assessment; along with long term scavenge pumping from the aquifer with permission to discharge this into the public sewer administrated by TTS. The final outfall of the public sewer which would ultimately contain tiny amounts of PFOS and other fire fighting foam compounds (believed to be calculable but not measurable due to such low levels) was also subject to a third party impact assessment on behalf of TTS and paid for by the Airport. These studies permitted the discharge with the added requirement of the Airport having to sample seaweed and some shellfish species, an activity which continues today.

The Airport's Environmental Policy covers all aspects of the Airport's Operations. With respect to fire fighting foam, this is strictly controlled with primary use being within the contained Fire Training Ground and the Washdown Bay near Stand 19 on the Southern Apron, both of which have formal discharge consent permits from TTS.

Since contamination became evident Jersey Airport has supplied bottled water at its cost for personal consumption by residents and commercial operators in the affected area. Jersey Airport also undertakes regular sampling of natural water in the area to monitor the progress of contamination. Furthermore, the airport, in conjunction with health officers has encouraged all affected property holders to connect to mains water supply at the Airport's cost.

2. Current issue & steps taken

In early 2006 a Water Pollution Residents Association was formed, which amongst other things sought the ongoing payment of water rates by Jersey Airport for those properties connected to the mains water supply. An affected resident had also retained lawyers in similar regard. As a result, external legal advice, through the Law Officers' Department, was obtained to progress this matter.

In late 2006 Jersey Airport agreed to contribute £519,000 towards the cost of Jersey Water extending water mains to the St Ouen's Bay area.

In July 2007, following legal advice a draft Settlement Agreement and Deed of Arrangement was developed and sent to 67 affected residents and relating to 71 known property units (a mix of residential and commercial). This draft agreement proposed that Jersey Airport reimburse water charges incurred by residents after December 2006, who had connected to the mains.

The essential elements of the Agreement were that in return for the Landowner not making a claim against the States for contamination of the water supply, the States/Jersey Airport will:

- 1) Pay for connection to mains water
- 2) Reimburse water charges for a period of time (in this case 25 years from 1.6.08 (the commencement date) which relate to prohibited purposes only.
However, if there is a material change in use of the property OR the property is enlarged or improved so that consumption increases by more than 20% then the water charges will be capped at 20% over & above the water charges paid before the change.
- 3) Pay electricity charges over & above £30 per annum, relating to the operation of submersible pumps and equipment within the property to enable testing to take place on an annual basis.

Jersey Airport has been paying the water charges and reimbursed water charges since properties were connected to the mains as a

gesture of good faith while discussions with residents and their legal representatives were ongoing.

In September 2007 it was agreed, again following legal advice, that Jersey Airport would meet the costs of resident's legal costs in negotiating and concluding the Draft settlement agreement. These third party legal costs were capped by agreement. There are currently 29 residents being represented by three legal firms.

Jersey Airport has worked jointly with its legal advisers, Jersey Water and Jersey Property Holdings to resolve this matter.

Of the 67 residents being dealt with, 51 are currently connected to the mains and are using mains water supplies. 12 are connected but not yet using the mains supply and 4 are not yet connected (including Les Mielles Golf Club).

The key area of dispute is the period for which water charges should continue to be paid by Jersey Airport. Jersey Airport's position is that this should be a maximum of 25 years or for as long as contamination is proven to persist, whichever is the shorter. The residents' lawyers, however, are seeking to extend this for as long as natural water is contaminated. This refers to the requirement in the draft agreement for "Regulatory Approval" to be given by the Minister for Health & Social Services. A copy of a letter addressed to the Medical Officer of Health and Minister for Social Services dated 6th July 2010 which covers this issue and seeks agreement to provide such "Regulatory Approval", is attached.

There has been recent consideration of a lump sum payment, and while no formal offer has been made to residents or their legal representatives, it is believed this form of payment would not be acceptable. Furthermore, a lump sum a significant impact on the airport's financial position.

3. Estimated Costs & liabilities (based on 67 residents to whom letters were sent & the associated 71 affected properties (incorporating 74 water connections))

(n.b. "projected" includes inflation of 2% per annum)

Costs to date (as reported to the States on 3 November 2009)
£6,977,250

(including remediation costs, laying of water main to affected properties and connection of affected properties to mains)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Recommendation

That the principles behind the draft Settlement Agreement and Deed of Arrangement, as set out and to be applied to those 67 landowners (& 71 properties) identified, be endorsed by the Council Of Ministers.

That the Council of Ministers be asked to advise as to whether the decision to proceed should be made by the States.

Julian Green
Airport Director

1st July 2010

The Council was advised that full agreement with the affected parties had not yet been reached. As a consequence, the costs incurred by Jersey Airport were now approaching £7 million. The key area of dispute with the affected parties was the period for which water charges should continue to be paid by Jersey Airport as part of the proposed settlement agreement. Legal representatives for those affected were seeking to extend payment for as long as contamination was proven to persist, whereas Jersey Airport had sought to cap liability at 25 years or as long as contamination was proven to persist. The option of a lump sum payment offer had been considered by Jersey Airport as a potential method of breaking the deadlock; however, it had been discounted on the basis of the resulting negative impact on the financial position of the Airport and because the offer was not thought likely to be accepted in any event.

Ministers sought clarification [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The Council noted the position and, having formed the view that the offer already submitted to affected parties was a generous one, recommended that the Minister for Economic Development instruct Jersey Airport to maintain its existing offer.

Health and Social Services Department

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14 July 2010

Our ref: SDS/ ACP/PFOS

Senator A Maclean
Minister for Economic Development
Economic Development Department
Liberation Place
St Helier
JE1 1BB

Dear Senator Maclean

St Ouen's Bay Water Contamination – Proposed Settlement Agreement

I reply to your letter of the 2nd July 2010 regarding the above matter. This has been a long running issue and I know my officers [REDACTED]

[REDACTED] The comments made then remain valid now although I note the wording for "Regulatory Approval" in the latest agreement has changed slightly.

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If the responsibility for determining potability and wholesomeness is to rest with the Public Health Department I would expect all costs associated with specialist advice, surveys and monitoring necessary to form an objective opinion to be met in full by your Department. This is likely to be a considerable sum over many years. I am also sure that there will be a need to monitor contaminants once the agreement has been terminated to ensure levels have truly reduced to an acceptable standard. In this instance I am recommended to a monitoring and reporting period of 3 years after any agreement ends.

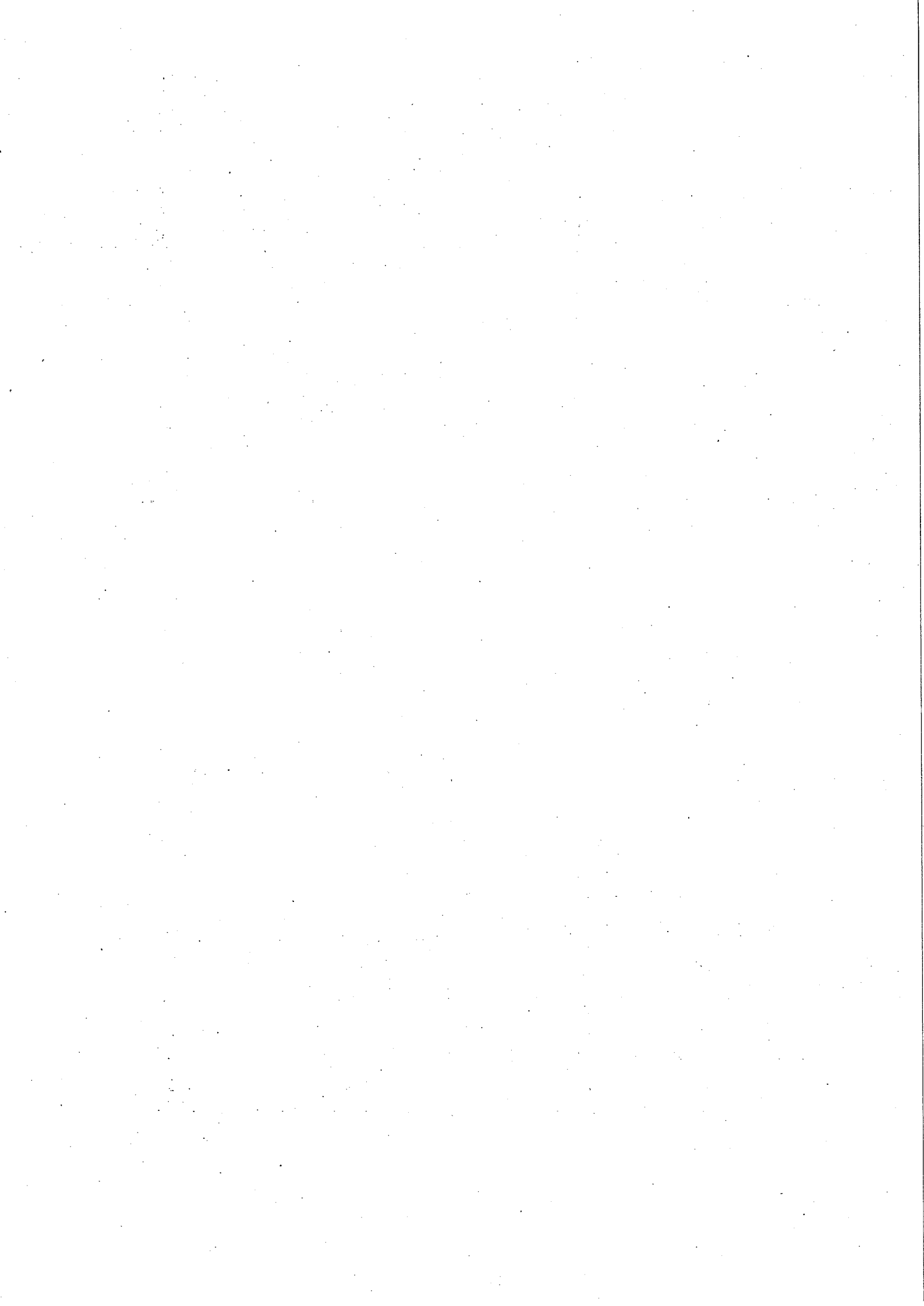
In addressing the matters referred to as 'Prohibited Purposes' the drinking water standard applicable at the time will be the determinant, effectively the "potability" standard. I would expect the relevant potability test to be the gateway marker for all uses i.e. once water is potable it is suitable for all previously prohibited purposes. The department cannot undertake to determine the appropriateness of contaminated water for prohibited purposes on a piecemeal basis whilst the water remains unpotable or unwholesome.

It would be helpful if you could advise me of the long term monitoring and funding arrangements; my Officers have long felt that groundwater monitoring should be undertaken by the Environment Department and that funding currently sitting with the Airport should be moved to them to allow this to happen.

In agreeing to the definition for "Regulatory Approval" I will be committing the Public Health Department to a detailed and in-depth piece of work; I am sure you will appreciate, I cannot agree to such a commitment without knowing the necessary resources are in place and that the exit strategy from the agreement is very clear.

Yours sincerely

Deputy Anne Pryke
Minister for Health and Social Services



Economic Development Department

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02 July 2010

Deputy A.E Pryke
Minister for Health & Social Services
Peter Crill House
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Dear Deputy Pryke, *Anne,*

St Ouen's Bay Water Contamination – Proposed Settlement Agreement

You will be aware that pollution in St Ouen's Bay by fire fighting foam residues (PFOS), attributed to the Airport, first became evident in 1993. Jersey Airport subsequently undertook a range of activities to remediate this problem, the main being the provision of a new Fire Training ground.

Another key element of the remediation, in conjunction with health officers, was the encouragement of all affected property holders to connect to the mains water supply, at the Airport's cost. Of the 67 residents being dealt with, 51 are currently connected to the mains and are using main water supplies. 12 are connected but not yet using the mains supply and 4 are not connected (including [REDACTED]).

In early 2006 a Water Pollution Residents Association was formed, which amongst other things sought the ongoing payment of water rates, by Jersey Airport, for those properties connected to the mains water supply. In July 2007, [REDACTED]

67 affected residents (and relating to 71 properties). This draft agreement proposed that Jersey Airport reimburse water charges incurred by residents after December 2006 who had connected to the mains. This for a proposed period of 25 years (the Indemnity Period). The draft Settlement Agreement states in 3.10:-

"If Regulatory Approval has not been given by the end of the Indemnity Period, the Minister shall review in good faith whether Water Charges or any part thereof should be paid for any further period after the expiry of the Indemnity Period."

The Minister referred to is the Minister for Economic Development.

The Residents Association however want the Airport to remain liable until such time as that Regulatory Approval has been given. This remains to be resolved.

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Continued./

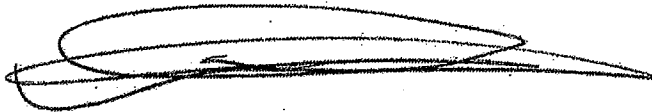
The purpose of my writing to you is that "Regulatory Approval" in the draft Settlement Agreement is defined as:-

- *" means a written and considered statement by the Minister for Health and Social Services (based on the scientific knowledge on the date of the making of the statement) the terms or the effect of which is that water naturally occurring in, on or under the property is no longer unpotable or unwholesome only as a result of the presence of substances which appear to be reasonably attributable to Jersey Airport's use of firefighting foam."*

Therefore I seek your agreement to the proposed definition of "Regulatory Approval" and the duty of the Minister for Health and Social Services in providing such a written and considered statement.

My intention is to have the proposed draft Settlement Agreement considered by the Council of Ministers on 15th July 2010. If you were able to provide me with your view before that date it would be much appreciated. If you wish to discuss this further please do not hesitate to contact me.

Yours sincerely



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