

Permitting decisions

Refusal

We have decided to refuse the Standard Rules Permit (SR2009 No5 – Inert and Excavation Waste Transfer Station) application for the Site at Horn Lane,

The proposed facility location is Horn Lane Goods Yard, Horn Lane, Acton, London.

We consider in reaching that decision we have taken into account all relevant considerations and legal requirements.

Purpose of this document

This decision document provides a record of the decision making process. It:

- highlights key issues in the determination
- gives reasons for refusal
- shows how all relevant factors have been taken into account

This application is related to a similar bespoke permit application with the same applicant, at the same site. This bespoke application is still being determined and a separate decision document will be produced in due course for that application.

Unless the decision document specifies otherwise we have accepted the Applicant's proposals.

Read the permitting decisions in conjunction with the refusal notice.

Summary of decision

We have decided to **refuse** the Standard Rules Permit (SR2009 No5 – Inert and Excavation Waste Transfer Station) Application for the Site at Horn Lane Goods Yard, applied for by S.Walsh & Son Limited.

The Application is refused on the grounds that the standard rules generic risk assessment does not adequately address the risks at this sensitive location.

This is in accordance with paragraph 8.10 of the Environmental Permitting Guidance core guidance for the Environmental Permitting (England and Wales) Regulations 2010 (last revised March 2013) (the Core Guidance) which states “Regulated facilities that require a location specific assessment of impact and risk are not suitable for standard rules” .

How we made our decision

We gave the Application the reference number EPR/EB3700KU/A001. We refer to the Application as ‘the **Application**’ in this document in order to be consistent. The Applicant is S.Walsh & Son Limited, we refer to S.Walsh & Son Limited as ‘the **Applicant**’. We refer to the Site at Horn Lane Goods Yard, Horn Lane, Acton, London as ‘the **Site**’ in this document.

The Application was received by the Environment Agency (EA) on 11th October 2016 and following further payment for advertising the Application was duly made on 21st November 2016.

The Applicant made no claim for commercial confidentiality. We have not received any information in relation to the Application that appears to be confidential in relation to any party.

The determination was progressed and the Application assessed in accordance with the requirements of the above standard rules set. We accept that following an assessment of the Site location that the standard rules criteria for the permit applied for **could** be met in terms of;

- The activities not being within 500 metres of a European Site,
- RAMSAR Site or
- A Site of Special Scientific Interest (SSSI),
- 50 metres of any spring or well,
- or of any borehole not used to supply water for human consumption.

However given that:

- The high levels of PM10 pollution currently monitored in the area,
- The extremely close proximity of a local authority air quality monitoring station and Defra Automatic Urban and Rural Network (AURN) monitoring station,
- The extremely close proximity of residential properties,
- The extremely close proximity of a primary school, and Youth and Community Centre,
- The close proximity of a junior high school,
- The negative impact the existing, well run and smaller scale waste management Site is having on local air quality.

It was decided that the standard rules risk assessment does not consider or adequately address the Site specific and high risk the Site would pose to local air quality.

Consequently, issuing a Standard Rules Environmental Permit in this location could have a significant detrimental impact on local air quality, as the risks posed (given the close proximity of sensitive receptors and the high background levels) are not anticipated or assessed in the risk assessment that accompanies the Standard Rules Environmental Permit. A detrimental effect on local air quality would be considered to be pollution of the environment which would have the potential to negatively impact on human health.

Therefore in order to ensure that there is no increase in PM₁₀ particulate air pollution to this area of Ealing then a Site specific dust management plan and Site specific risk assessment is required. This means that the Site is not eligible for a standard rules permit.

DESCRIPTION OF THE FACILITY AND GENERAL ISSUES

General Description

The Site at Horn Lane Goods Yard is roughly rectangular in shape bounded on the north and south boundaries with railway lines. There is currently no infrastructure on the Site and the Site surface is covered with railway track ballast.

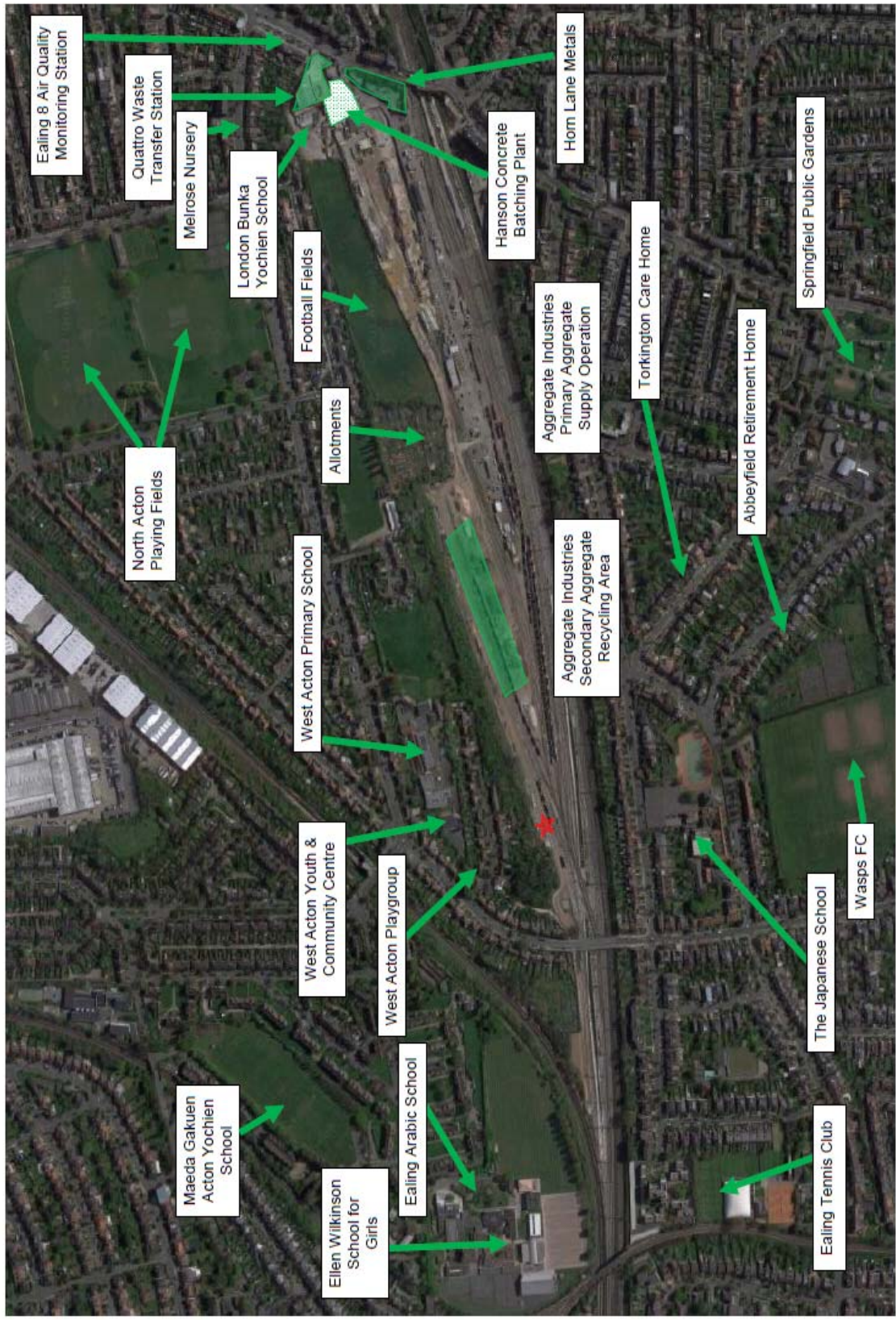
The Surrounding land use is predominantly residential. However amongst the residential properties are the West Acton Primary School, West Acton Playgroup, West Acton Youth and Community Centre, and the Society of Afghan Residents to the north. To the south is also the Japanese School and the Ellen Wilkinson School for Girls to the west. To the east are some industrial properties including a concrete batching plant regulated by the London Borough of Ealing under a Part B Environmental Permit, a small exempt scrap metal Site, a large aggregate supply operation and a waste transfer station, regulated by the Environment Agency as a Bespoke Environmental Permit.

Horn Lane itself is a busy road and used frequently as a short cut between the North Circular (A406) and the Western Avenue (A40).

To the south of the Site and in addition to the railway sidings mentioned above, is the main railway into London Paddington from the West Country.

In a 750m radius from the proposed site are:

- 1001 Residential Properties
- 237 Non Residential Properties
- 15 Items of Infrastructure (such as schools, railways, train stations, doctors surgeries and dentists)



What the Application is for

The Applicant has applied for a standard rules permit to allow the Applicants to operate an Inert and Excavation Waste Transfer Station within the Horn Lane Goods Yard.

The wastes acceptable under the Standard Rules Permit are concrete, bricks, tiles, and ceramics, and mixtures of glass, bituminous mixtures, soil and stones, and track ballast. The applicant is only intending to accept waste clay and track ballast. The Standard Rules Risk Assessment is based on an operator accepting a mixed range of wastes. Where, as here, that is not the case, there is a potential increased risk from the generation of particulates specifically as the insoluble mineral element of clays is a constituent part of PMs and because track ballast can also give rise to dust and particulates. This takes the proposed activities outside of the scope of the generic risk assessment and in such a sensitive location as this one requires location specific assessment of the impacts and risks.

The total quantity of waste that can be accepted at a Site under these rules must be less than 250,000 tonnes a year. Wastes can be bulked up for disposal or recovery elsewhere and can be manually sorted or separated for recovery but these rules will not allow any waste treatment activities such as screening and crushing. These rules will also not permit the burning of any wastes, either in the open, inside buildings or in any form of incinerator. These rules do not allow any point source emission into surface waters or groundwater.

The activities at the Site such as the manual sorting, loading and unloading of road and rail freight, the storage, the haulage to and from site and movements around the site have the potential to give rise to considerable emissions of PM10 and NOx. These will pose a risk of pollution and harm to human health, which in this particular location is not adequately addressed by the standard rules set risk assessment. Even with the above exclusions set out by the standard rules permit, the lack of treatment activities and minimal waste codes authorised by the permit, from our experience the activities can still give rise to dust without appropriate abatement and infrastructure in place. As such, in this particular location a site specific assessment of impact and risk is required to determine whether the activities would give rise to pollution and potential breaches of the air quality standards and a standard rules permit is not appropriate.

There are waste types allowed by the permit that are potentially dusty wastes, including one of the two identified by the Applicant. If any activities were to be allowed here the site would need to be bespoke built with set procedures and management systems in place that govern the use of site abatement. This cannot be done under a standard rules permit.

Background

The Site consists of an area of land that is not currently used for any activity. The land itself is made up of flat unused railway sidings covered in track ballast and unmade land. There is an earth bund to the north of the Site, which the Applicant would remove as part of the Site preparation works to maximise use of any permitted area. This would effectively remove a noise and PM10 abatement measure from the Site in doing so. Just beyond this earth bund, some 5m north of the proposed site perimeter is the nearest residential boundary. There is no vehicular access to the proposed Site from the West, and access would be gained from the East and utilising the Horn Lane entrance and private haul road, and then travelling along and down past Aggregate Industries aggregate recycling facility and Environmental Permitted waste area. This proposal will give rise to increased traffic levels and increased emissions from the site. Given the particularly high background levels in this area the impact of these additional emissions again justifies a site specific assessment of risk.

Particulate Pollution

Fine particulate pollution has a significant impact on health and is thus a major public health issue in London. It is estimated that fine particles contribute to an impact on mortality equivalent to around 4,200 deaths in London per year. In response to this the London Air Quality Network measures air quality against UK standards but Defra run a similar EU reporting network (called AURN). The results of this monitoring network is freely available and gives alerts to local residents when poor air quality is expected so they can modify their behaviour to reduce the impact of the poor air quality.

At Horn Lane the London Borough of Ealing installed an air quality monitoring station in 2006 called 'Ealing 8' which is part of the London Air Quality Network. This is located less than 100 yards from the entrance to 307 Horn Lane. Since it began operation in 2006 the 'Ealing 8' monitor has consistently failed to meet the Air Quality Objectives for PM₁₀ daily average. As a result the London Borough of Ealing has declared an Air

Quality Management Area for PM₁₀ and Nitrogen Dioxide (NO₂). They have also put in place an action plan in an attempt to improve the local air quality:

(<http://aqma.defra.gov.uk/action-plans/LBoEaling%20AQAP%202003.pdf>)

Various studies have identified the industrial sites in the area which includes a waste transfer station currently in operation at 307 Horn Lane as sources of PM₁₀ particulate pollution.

In late 2012 Defra announced that it would be adopting the Ealing 8 monitoring site onto the AURN network which would report compliance with EU wide air quality limits. The actual process of adoption may take some time with it becoming active at the end of 2014 being a realistic date. Once this monitor becomes part of the AURN network the data will be shared with the EU by Defra. If the Ealing 8 monitor records exceedance of the limits the UK will be taken to have breached the limits set out in the EU air quality directives.

We have included a study into the local ambient air quality that was carried out at the end of 2013 and early 2014. This shows that when comparing the collected data from the monitoring at the Ealing 8 monitoring site for 2013 with the AQS objectives, the monitoring location was subject to concentrations of PM₁₀ that **did not meet the PM₁₀ daily average AQS objective**. It did however meet the annual average, but only just, with a value of 37.5µg/m³ being recorded against the limit of 40µg/m³.

We also collected data from our mobile monitoring facility (MMF) during the period 5th December 2013 – 26 March 2014 comparing that with the AQS objectives it showed that that monitoring location was subject to concentrations of PM₁₀ and PM_{2.5} that were likely to meet their respective AQS objectives. However once again this monitor was subjected to significant periods of wet weather and it is important to note that it was located due north of the site, rather than in the prevailing direction of wind across the site. The PM₁₀ & PM_{2.5} concentrations observed by the MMF are influenced by seasonal variations and meteorological conditions. Therefore the snapshot monitoring period between 5 December 2013 and 26 March 2014 is not a true representative of meteorological conditions over a typical year, and therefore these results should be viewed with caution as the monitoring period is likely to have **underestimated**. This means that in different meteorological conditions it is still likely that the PM₁₀ & PM_{2.5} objectives in the area will be exceeded.

Air Pollution

The Site is located in a densely populated area with adjacent industrial Sites. On the 14 December 2000 the London Borough of Ealing declared the whole borough an Air Quality Management Area due to levels of PM₁₀ (Particulate Matter less than 10 microns in diameter) and Nitrogen Dioxide not meeting air quality objectives in many parts of the borough.

In the UK, air quality is maintained and improved through the air quality objectives and with the assistance of the Air Quality Strategy 2000 (AQS). The AQS sets out various objectives in regulations for the purpose of local air quality management. In the case of Nitrogen Dioxide there are two limits;

- Hourly mean of 200µg/m³ not to be exceeded more than 18 times a year
- Annual mean of 40µg/m³

For PM₁₀ the limits are;

- 24 hour mean of 50µg/m³ not to be exceeded more than 35 times a year
- Annual mean of 40µg/m³

In order to assess compliance with the air quality objectives the local authority use a number of strategically placed monitors across the borough which collect data. One of these monitors has been in place at Horn Lane since 2005 and data shows it has consistently failed to meet the 24 hour mean PM₁₀ limits set out in the UK air quality standards

In addition to this network Defra have a similar network which is used to report on air quality to the European Union. These are known as AURN monitors. An AURN monitor has been monitoring air quality at Horn Lane since 1 January 2015.

Horn Lane has been, since 2005, exhibiting extremely high levels of PM₁₀ pollution (~270µg/m³, where the limit is 50µg/m³). A combination of sources is thought to be responsible but monitoring by the LB Ealing, Kings College London and the EA suggested, with a high degree of confidence, that this monitoring Site “is strongly affected by emissions from a mixed industrial area to the south west, comprising of a waste transfer

station, aggregates handling, a cement batching plant and miscellaneous operations” (*Analysis of PM10 concentrations at Horn Lane, Acton* – May 2008, Ben Barratt and Gary Fuller, Environmental Research Group - Kings College London) and “the [former] Gowing & Pursey Site along with the entrance to the Sites are contributing to elevated levels of PM₁₀” (*Analysis of Particulate Concentrations at Horn Lane, Acton 7 April 2010 to 7 November 2010 – December 2010, Ambient Air Monitoring Team, Environment Agency*). As a result it is commonly accepted by the above organisations that the Horn Lane Goods Yard area that includes the Applicant’s Site has “significantly contributed to failures of the local air quality objective”. Any additional emissions within that area will have a further detrimental effect on air quality and have the potential to cause further failures of the local air quality objective and therefore it is entirely reasonable to require a more detailed assessment than provided for by the standard rules application.

As a result the London Borough of Ealing have also put in place an action plan in an attempt to improve the local air quality:

(<http://aqma.defra.gov.uk/action-plans/LBoEaling%20AQAP%202003.pdf>) and a Low Emission Zone as well

https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi7gPXK7MfVAhXFOyYKHVJOBfMQFggpMAA&url=https%3A%2F%2Fwww.ealing.gov.uk%2Fdownloads%2Fdownloads%2Fid%2F10131%2Flow%2Femissions%2Fstrategy%2Ffor%2Facton%2Fgoods%2Fyard.pdf&usq=AFQjCNGyHJj8AyqPk0gLip_5HBgbFU1FSq

We have also undertaken many rounds of ambient air quality monitoring in the area. The first round of monitoring showed that the PM10 levels were far in excess of the UK air Quality Standards with the 24 hour average exceeding the 50ug/m3 level on 206 days compared the permitted number of just 35 days. Concerted effort by the Environment Agency in partnership with the London Borough of Ealing, Transport for London, the Greater London Authority have dramatically reduced levels of PM10 in the area.

These efforts included improving the management systems in place at EA and Local Authority regulated Sites but also carrying out EA led Permit Variations to reduce the scale and intensity of the activities likely to cause dust or other fugitive emissions in the area.

It must be noted that these EA led Variations only took place after previous operators admitted having exhausted all appropriate abatement techniques to control dust and the emissions still continued despite their considerable efforts.

The most recent set of monitoring data from the Ealing 8 monitor showed that during 2016 the 24 hour average for PM10 met the air quality standards for the first time since 2006 with only 19 days recording over the 50ug/m3 limit. This was a largely due to the temporary closure of the waste transfer station but also the improvements made in the area.

When examining provisional data for 2017 to date, already the 24 hour average for PM10 has recorded 15 days where the 50ug/m3 has been exceeded. If dust levels continue at current rates in the area it is likely that it will once again meet the air quality standards for the monitoring location. Any additional sources of dust in the area have the potential to contribute negatively and cause further daily exceedances which may cause a breach of air quality standards. Therefore their impact needs to be carefully assessed and in more detail than is the case for a Standard Rules Permit.

STATUTORY AND REGULATORY FRAMEWORK

The Legal Framework

The Waste Framework Directive 2008/98/EC – Article 13 sets out certain objectives that need to be met. Waste must be recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular;

- without risk to water, air, soil, plants and animals,
- without causing a nuisance through noise or odours,
- without adversely affecting the countryside or places of special interest.

This is delivered through paragraph 3 of part 1 of schedule 9 of the Environmental Permitting (England and Wales) Regulations 2016 (the Regulations).

Under Regulation 13(1) of the Regulations we may grant an environmental permit and equally we have a discretion to refuse to grant a permit and in some specified circumstances (not relevant here) we must refuse to do so.

Regulation 26 of the Regulations provides for the production of standard rules. Standard rules permits are cheaper and easier to apply for as they are appropriate for activities and in locations where a generic risk assessment and standard conditions can be relied on to protect the environment.

“Standard rule sets and permits allow a simplified and light-touch procedure for regulating simple activities for which the risks and means of controlling them are readily defined” (Penfold Review Progress Update, 2011). Generic risk assessments have been devised for a number of regulated facility types that share similar characteristics where a good understanding of the hazards and risks posed by these low to medium risk activities already exists. However generic risk assessments and standard rules criteria cannot make provisions for every eventuality. Occasionally exceptional circumstances may arise as they have done in this application where location-specific issues are evident and that cannot be adequately assessed by the generic risk assessment.

Given the;

- close proximity of residential properties,
- sensitive receptors such schools and a playgroup
- the air quality monitoring stations and
- the proposals for improvements sought Air Quality Action Plan and the Low Emission Strategy produced by the LB Ealing,

we consider this to be an exceptional circumstance and the location specific issues cannot be assessed by the generic risk assessment.

The underlying principle of the Environmental Permitting Regime is to protect the environment, and without further risk assessment we are unable to assess whether the proposed activity fulfils the above relevant objectives in terms of the unknown risk it poses to the surrounding environment.

EU Air Quality Limits

EU Framework Directive 96/62/EC on ambient air quality assessment and management came into force in November 1996 and had to be implemented by member states by May 1998. This directive aimed to protect human health and the environment by avoiding, reducing, or preventing harmful concentrations of air pollutants. As a framework directive, it requires the European Commission to propose 'daughter' directives which set air quality limit and target values, alert thresholds and guidance on monitoring and measurement for individual pollutants. Council Directive 1999/30/EC (the first daughter directive) included limit values for particulate matter in ambient air.

Directive 2008/50/EC on ambient air quality and cleaner air for Europe was adopted in May 2008. This directive replaces Directive 96/62/EC and the first three existing daughter directives with a single directive on air quality. It also sets new standards and target dates for reducing concentrations of fine particles.

Central government has overall responsibility for ensuring that the UK meets the various limit values that have been set by the EU Air Quality Directives and Daughter Directives. The EA has a direct obligation under the Regulations to ensure that the facilities it regulates do not contribute significantly to a breach of a limit value.

UK Air quality objectives

The UK Air Quality Standards Regulations 2010 came into force in June 2010; they implement the EU Directive on ambient air quality.

The Environment Act 1995 requires the UK Government to produce a national 'Air quality Strategy' (AQS). The AQS establishes the UK framework for air quality improvements. Measures agreed at a national and international level are the foundations on which the strategy is based. The first AQS was adopted in 1997 and replaced by the Air Quality strategy for the UK published in January 2000. The 2000 Strategy has subsequently been replaced by the Air Quality Strategy for the UK 2007.

The air quality objectives in the AQS are a statement of policy intention or policy targets. As such, there is no legal requirement to meet those objectives except in as far as they mirror any equivalent legally binding limit values in EU Directives and English regulations.

The Environment Act 1995 requires that the EA has regard to the AQS in exercising its pollution control functions (Section 81 of the 1995 Act). Local Authorities are also required to work towards the Strategy's objectives prescribed in regulations for that purpose.

Broadly, the AQS requires that for waste operations, the EA should base environmental permit conditions on the application of appropriate measures or higher standards if national objectives are likely to be breached.

EA Remit with Respect to Air Quality

The EA has a number of duties related to air quality as follows:

- To ensure that facilities it regulates comply with EU obligations on the UK such as Air Quality Limit Values;
- To ensure that the facilities it regulates do not contribute significantly to breaches of AQS objectives; and
- To support local authorities in improving local air quality.

The EA is committed to ensuring that appropriate measures are used to deliver the maximum improvements to air quality where UK exposure reduction objectives or EU air quality target values are being, or are likely to be, exceeded.

Section 108 Deregulation Act 2015 – Growth duty

We considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 110 of that Act in deciding whether to grant this permit.

Paragraph 1.3 of the guidance says:

“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”

We have addressed the legislative requirements and environmental standards to be set for this operation in the body of the decision document above. The guidance is clear at paragraph 1.5 that the growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections. We consider our decision is appropriate to ensure the necessary protections.

To quantify the impact of the proposed operations on the EU Air Quality Standard would require a site specific assessment of risk. As such this means the activity is not suitable for the standard rules set applied for.

In order to issue an Environmental Permit for the site for waste management activities we would need to receive an application that has enhanced abatement measures beyond those that would normally be expected for an operation of this type supported by a robust site specific risk assessment to demonstrate their effectiveness. Using our experience of regulating sites in air quality management areas, we would expect to see enhanced abatement measures such as those found in the Environment Agency’s guidance document 02_13 – Guidance for dust and particulate abatement measures at waste management facilities.

However such measures, although welcomed as part of an application for a bespoke Environmental Permit, would be considered to be in response to a site specific impact of risk. As stated in the Core Guidance paragraph 8.10, “Regulated facilities that require a location specific assessment of impact and risk are not suitable for standard rules”

It may still be possible to undertake the proposed activity as a bespoke operation, taking into account a site specific risk assessment. Any bespoke application would be assessed on its merits and we cannot say whether any such application would be granted or not. However, we cannot be satisfied that the standard rules and the related generic risk assessment will achieve the high level of environmental protection required under the Regulations in this location without further site specific assessment.