

# Permitting decisions

## Refusal

---

We have decided to refuse the transfer of permit, number EPR/WP3537ZG (the “Permit”), which has the application reference number EPR/VP3330JD, for Blaydon Quarry Landfill Site (the “**Facility**”) operated by Octagon Green Solutions Limited (company number 08326079).

The joint applicants are Midwest Solutions Limited (company number 10921526) (proposed transferee) and Octagon Green Solutions Limited (proposed transferor).

The Facility’s location is Blaydon Quarry Landfill Site, Lead Road, Greenside, Blaydon, Gateshead NE21 4SX.

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

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 our decision

The application for the transfer of the Permit, has been refused. This refusal is based on our conclusion that, were the Permit transferred to Midwest Solutions Limited, it would not operate the Facility in accordance with that Permit. In those circumstances we have a duty to refuse the application, pursuant to paragraph 13, Part 1, Schedule 5 of the Environmental Permitting (England & Wales) Regulations 2016 (“EPR”).

We have reached this conclusion having considered all the relevant circumstances, including in particular:

1. **Midwest Solutions Limited’s** Operator Competency;
2. **Midwest Solutions Limited’s** Financial Competency.

We have also considered whether there are any other duties placed upon the Environment Agency (for example our various environmental duties and the growth duty) which mean we should not follow the duty set out in paragraph 13, Part 1, Schedule 5 EPR. We have concluded that there are not.

Defra has produced guidance on the Environment Agency’s duty under paragraph 13, Part 1, Schedule 5 EPR (section 9 of ‘The Environmental Permitting Guidance - Core guidance’, dated March 2013). This expressly indicates that points 1 and 2 above are matters which the Environment Agency should take into account.

As key issues in our decision, we consider below each of these two points.

## Key issues of the decision

### 1. Operator Competence

Midwest Solutions Limited was incorporated on 18 August 2017 and, to the Environment Agency’s knowledge, has not undertaken any business activity. Hence, it does not have a history of interaction with environmental and other regulation. The director is Mr Gerard Patrick Ronan.

#### 1.1. Technical competence

Mr Ronan has not demonstrated any relevant industry specific qualifications nor experience of operating a complex waste installation such as a landfill.

The nominated Technically Competent Manager (TCM) holds a relevant WAMITAB qualification, but has exaggerated his experience and position as the MRF (Material Recycling Facility) and Landfill Manager at Wood Lane Landfill.

#### 1.2. Environmental record

The nominated TCM’s WAMITAB for landfill operations was issued on Nov 2013, continuing competence was awarded on Jan 2016 and is valid until 11 January 2018. A review of the compliance history for Wood Lane landfill since Jan 2014 reveals a significant number of occasions when the permit conditions were breached:

#### **Significant permit breaches and offences since Jan 2014:**

July 2015 – R36 Enforcement Notice was issued in relation to engineering other than in accordance with an agreed plan. The nominated TCM was e mailed in relation to this personally.

Nov 2015 - large waste fire was detected at the site by the fire service on 5/11/15. A warning letter was issued for a S33 EPA offence. Company advised EA that it was a cultural event.

Dec 2015 – CCS 2, monitoring not undertaken as required – enforcement remains outstanding.

Mar 2016 – CCS 2, missing monitoring data.

June 2016 - CCS 2 breach for the removal of gas and groundwater infrastructure due to quarrying operations. A R36 Notice was issued in June 2016 as a response.

### **Low level breaches since 2014:**

Warnings were issued for low level permit breaches in: June 2014, June 2015, August 2016 and December 2016.

Unlike Wood Lane Landfill, Blaydon Landfill is situated within an area of significant receptors, some of which are situated against the permit boundary. The review of the Wood Lane Landfill compliance history indicates it is likely that a significant regulatory presence would be required to ensure we maintain the confidence of local communities and partners.

## **2. Financial competence**

Given the very limited fiscal information available in regard to the transferee and that the application states that the parent company will provide the finance to support to the transferee we have considered the parent company's public accounts to assess the level of fiscal support which may be offered to the transferee, on a daily basis to ensure compliance. Having done so, we consider the transferee does not have access to sufficient funds to support and conduct a landfill operation.

### **2.1. Financial provision (FP)**

The transferee has failed to demonstrate FP. To date no 'legal' documents have been provided in support of the transfer of the Blaydon Quarry Landfill Trust Fund. Without this element the permit cannot be transferred.

We do not consider the current proposals for financial provision to be adequate (for example in terms of agreeing the quantum of financial provision required).

These matters might have been resolved before our determination if the transferee had satisfactorily responded to requests for further information. We have not, however, pursued this as doing so could have unreasonably put the proposed transferee to effort and expense when, given our concerns over operator competence, we have a duty to refuse the application in any event.

### **Other matters**

In addition to the above, we have concerns over other aspects of Midwest Solutions Limited's application, in particular the overall control over the operation and their status as legal operator. We have considered the transferee's reliance on the existing management for a period of time and their ongoing financial dependence upon the parent company. Based on the information currently supplied we are not satisfied that the proposed transferee would be the legal operator.

### **Summary**

Having reviewed the application information and considered all the relevant circumstances, including those set out above, we consider that were the Permit to be transferred to Midwest Solutions Limited, it would not operate the Facility in accordance with that Permit, nor would it truly be the operator of the facility nor able to provide adequate financial provision. In those circumstances we must refuse the Permit transfer application.