
Daneshill Landfill Site and Maw Green Landfill Site

**APPEALS PURSUANT TO REGULATION 31 OF THE
ENVIRONMENTAL PERMITTING (ENGLAND AND WALES)
REGULATIONS 2016**

**REGARDING SOIL TREATMENT FACILITY
AT DANESHILL LANDFILL SITE AND MAW GREEN
LANDFILL SITE**

APPEAL REFS: APP/EPR/636, 651 & 652

APPELLANT'S WRITTEN COMMENTS

**IN RESPONSE TO EA'S RULE 6 STATEMENTS FOR
APPEAL TWO AND THREE (REF 651 AND 652) DATED 30
JANUARY 2024**

**ON BEHALF OF FCC RECYCLING (UK) LIMITED and 3C
WASTE LIMITED**

1. INTRODUCTION

- 1.1. Freeths LLP is instructed to act on behalf of FCC Recycling (UK) Limited and 3C Waste Limited (“the Appellant”), in relation to three conjoined appeals pursuant to Regulation 31 of The Environmental Permitting (England and Wales) Regulations 2016 (“the Regulations”). FCC Recycling (UK) Limited and 3C Waste Limited are subsidiaries of Fomento de Construcciones y Contratas and therefore will be described as ‘FCC’ in the rest of this document.
- 1.2. As set out in FCC’s Conjoined Rule 6 Statement, dated 29 January 2024, this case relates to three appeals that have been conjoined. The terminology used in FCC’s Conjoined Rule 6 Statement will be adopted here.
- 1.3. Appeal One (Ref 636) relates to proposed activities at Daneshill, regarding treatment of soils containing ACMs, which the EA refused permission for in totality. Appeal Two (Ref 651) relates to a regulator initiated variation for proposed activities at Daneshill subject to conditions which FCC considers unacceptable. Appeal Three (Ref 652) relates to a regulator initiated variation for proposed activities at Maw Green regarding treatment of soils containing ACMs. It is important to note that in respect of Appeal Three, the EA had previously issued a permit for all of the activities which FCC sought to undertake; the regulator-initiated variation of that permit to which Appeal Three relates was a de facto revocation of the earlier permit (V9).
- 1.4. Procedural issues regarding the three conjoined appeals were addressed in the Case Management Conference on 1 December 2023 (“the CMC”). Both parties agreed to provide a conjoined Rule 6 statement addressing Appeal One and the two later appeals, Appeal Two and Three. However, the EA has issued two new Rule 6 Statements; one relates to Appeal Two and the other to Appeal Three. In large part the two new Rule 6 Statements adopt the same points; they also refer back to the EA’s Rule 6 Statement for Appeal One.
- 1.5. Although not recorded in the formal notes of the CMC, both parties also agreed not to issue any formal comments on the ‘final’ composite Rule 6 Statements to be issued in January 2024. However, an opportunity to provide comments has been granted by the case officer.

- 1.6. As noted above, the EA issued two separate Rule 6 Statements dated 30 January 2024; one for Appeal Two and one for Appeal Three.
- 1.7. FCC's written comments on the same are set out below dealing with each in turn. However, due to the overlap between the two EA Rule 6 Statements, FCC's written comments primarily reference the EA Rule 6 for Appeal Two.
- 1.8. It should be noted that these written comments are not intended to be a substitute for FCC's evidence which will address the EA's case in full. The absence of a response in this document to any element of the EA's Rule 6 Statements is not to be taken as FCC conceding to any point made. FCC maintains its full case as set out in its Grounds of Appeal and conjoined Rule 6 Statement.
- 1.9. The purpose of this document is to assist the Inspector by identifying comments in the EA's Rule 6 Statements for Appeal Two and Three which FCC considers to be factually inaccurate and/or which have been raised for the first time.

2. EA RULE 6 – APPEAL TWO

- 2.1. Paragraph 16 makes reference to a document which the EA describes as a 'supplement' to the "appropriate measures for soil treatment" called "Hazardous Waste Soil Treatment" ("the HWST Document"). The HWST Document was disclosed to FCC by the EA, for the first time, on 28 November 2023. It is expressly marked as a 'work in progress' and is evidently in draft form, has not been subject to consultation with any key stakeholders or the public and appears not to be underpinned by any other adopted guidance. The evidence base which has informed the HWST Document has not been disclosed. FCC considers that the EA's continued reliance on the HWST Document is unjustified and unlawful. The substantive issues which FCC has identified with the HWST Document will be addressed in the Appellant's evidence and its veracity will be tested under cross examination.
- 2.2. In paragraphs 23 and 24 of the First Response, the Agency refers to permit EPR/HP3632RP/V005 ("the ERQ Permit"). It states that the ERQ Permit contains similarly worded conditions to those being appealed and that the Appellant is in the process of discharging the conditions on the ERQ Permit. It is correct that the Appellant did not appeal the conditions of its ERQ Permit that was issued on 2 June 2021. However, FCC considers that the EA's depiction of the position regarding the pre-operational condition at ERQ could lead to a misunderstanding of the factual

position. FCC has made repeated attempts to discharge the pre-operational condition imposed by the EA on the ERQ Permit since 2021. The EA has refused all options put forward by FCC between October 2021 and December 2022. The central issue in dispute is what constitutes 'full enclosure' of the proposed mechanical screener; this is an issue which could not have been foreseen by FCC at the time it reluctantly accepted the imposition of the pre-operational condition. Furthermore, the EA has confirmed to FCC that in its view, it is impossible for FCC to discharge the condition. The current position is that FCC submitted a permit variation on 23 December 2022 and within this application applied to remove the relevant condition altogether from the ERQ Permit.

- 2.3. At paragraph 28 of the Response, the EA provides the definition of what it considers to be 'a building' and states the purpose of the same includes the prevention of the: "...accumulation of contaminated run-off which has to be further considered". This assertion has not previously been made by the EA in respect of Appeal One and it is not referenced in any of the Decision Documents which relate to Appeal One, Two or Three. FCC is unable to understand the EA's concern as the Proposed Activity for both the DH and MG Sites provide for sealed drainage of surface water run off. It is inappropriate for a new point to be raised by the EA at such a late stage. FCC will deal with the issue in its evidence and is hopeful that the EA's apparent misunderstanding of the proposed scheme can be resolved through SOCG discussions.
- 2.4. At paragraph 29, the EA refers to impermeable surfaces at the DH Site and documents which it states are related to Appeal One. In particular, reference is made to Proposed Layout Plan 3982-CAU-XX-XX-DR-1805; this plan relates to the MG Site not the DH Site. At paragraph 30 the EA asserts that the layout will not result in an impermeable surface being provided. FCC disputes the EA's assertion that the relevant plan does not provide for an impermeable surface. This point has not been previously raised by the EA in Appeal One, nor is it raised in any of the Decision Documents which relate to Appeals One, Two or Three. It is inappropriate for a new point to be raised by the EA at such a late stage. FCC will deal with the issue in its evidence and is hopeful that the EA's apparent misunderstanding of the proposed scheme can be resolved through SOCG discussions.
- 2.5. FCC agrees with the EA at paragraph 38, that once the soil has been treated to remove bound ACMs and tested to ensure levels are below the hazardous threshold for asbestos¹ the soil is non-hazardous. The EA's position at paragraph 38 is however

¹ Subject to any other hazardous substances also not being present.

in direct contradiction to its position as stated in paragraph 41. Waste which has been treated to remove bound ACMs will not be hazardous; in accordance with the EA's own position at paragraph 38 there is no requirement for their storage to be limited as if they were.

- 2.6. At paragraph 70, the EA states that, "there should be no pollution of asbestos fibres within the environment". This statement is wholly inconsistent with the setting of AELs and the use of mobile licences for the treatment of asbestos contaminated soils. This will be addressed by FCC's evidence.
- 2.7. At paragraphs 85, 112, 143, 151 and 169 the EA continues to criticise the information provided by FCC during the application process and the speed with which the information was, according to the EA, provided by FCC. FCC considers that the EA's assertions present a wholly partisan and inaccurate representation of the determination process which is relevant to Appeal One and Appeal Two. As the correspondence confirms the EA continually refused to consider and take into account technical data which FCC offered to make available. That data would have assisted the EA to properly consider the application for DH and directly addressed the EA's concerns regarding alleged increases in emissions from the use of the mechanical screener as part of the Proposed Activity. FCC will address this issue further in its evidence.
- 2.8. Paragraph 90 of the Response states: "*The Agency considers the use of a mechanical screener a novel process for the remediation of asbestos contaminated soil at an installation.*" This is the first time the Agency has raised the argument that the proposals are a "novel" process.
- 2.9. The Appellant fundamentally disagrees with this assertion for the following two reasons:
 - a) Mechanical screeners for remediation of contaminated soils, including those contaminated with asbestos, are not a "novel" process. They are widely used across for soil remediation in the UK and Europe;
 - b) If the "novel" element is related to the latter part of the assertion (i.e. at an installation), this makes little sense. The technique itself is not novel. It is widely used in connection with mobile permits. The EA's continued distinction between the use of screeners at installations, on the one hand, and mobile facilities is

unjustified and not supported by any objective evidence. FCC will address this issue in its evidence.

2.10. The EA makes reference to other facilities at paragraph 94 which it considers to be “fully enclosed”. Copies of the permits have been provided by the EA. However, these do not allow FCC to understand, to any meaningful degree, the alleged comparability of the facilities with the Proposed Activity or why the EA considers them to be “fully enclosed” and that basis upon which either the operators of those facilities or the EA consider that ‘full enclosure’ to be a requirement of BAT. These facilities have not been previously referred to by the EA and FCC will address any relevant points which arise in its evidence and/or by way of submissions. Further, at paragraph 132 the EA states that, “An enclosure and abatement is practicable in this case, it is being done at other sites handling asbestos contaminated soils”. Again, FCC is not aware of any comparators on which the EA is relying and/or the evidence base which the EA seeks to adduce in support of its assertion. FCC will address any further representations or evidence submitted by the EA on this issue, via rebuttal evidence if required.

2.11. At paragraph 116, the EA states that it, “does not consider a temporary building would result in a greater environmental impact”. The EA has to date not disclosed any evidence on which such an assertion could be justified. FCC will address this in its evidence.

2.12. At paragraph 179 of the Response, the EA states:

“the risk profiles of temporary remediation undertaken by mobile treatment plant and treatment undertaken at a fixed treatment installation are entirely different. Mobile plant deployments are limited to a maximum of 12 months (often shorter). They also remediate existing contaminated soils in situ at the point of contamination.”

2.13. At paragraph 180, the EA continues to pursue the alleged distinction between mobile treatment plants which use screeners to treat soils which are contaminated with asbestos at the Proposed Activities at the DH and MG Sites. FCC’s comments as set out in paragraph 2.7(b) of these submissions (set out above) apply with equal force. As to paragraph 179, it is entirely unclear to FCC why the EA is now suggesting that it has concerns regarding transportation of the waste. This point has not previously been raised by the EA with respect to Appeal One nor is it raised in any of the Decision Documents which relate to Appeals One, Two or Three. It is inappropriate for a new point to be raised by the EA at such a late stage. FCC will deal with the issue in its

evidence and is hopeful that agreement on this issue may be capable of being reached through the SOCG process.

3. EA RULE 6 – APPEAL THREE

- 3.1. As already noted above, the Rule 6 Statements submitted by the EA for Appeal Two and Appeal Three are, in large part, identical and points already made in respect of Appeal Two are not repeated here.
- 3.2. However, with respect to the following points made by the EA in respect of its Rule 6 for Appeal Three, FCC notes:
 - 3.2.1. At paragraph 6, the EA fails to mention that the October 2023 EP was a regulator initiated variation which in effect revoked a permit only issued in July 2023. FCC were not consulted on the revocation. The EA's decision to revoke V9 of the permit for the MG Site, in respect of the Proposed Activity, has led to the closure of the site whilst this appeal is determined.
 - 3.2.2. At paragraph 18, the EA states that V9 of the permit for the MG Site was, "issued in error". FCC notes that the EA has not provided any evidence to demonstrate this was the case. FCC submitted an FOI to the EA, requesting full details of the decision making process which led to the revocation; this FOI has been substantively refused by the EA. This will be addressed by FCC in submissions. FCC reserves the right to respond to any further evidence which the EA submits in support of its position.
 - 3.2.3. At paragraph 102, the EA references its position at the DH Site; it is not clear how this relates to Appeal Three.
 - 3.2.4. At paragraph 174, the EA quotes directly from the UKHSA's consultation response to application which led to V9 of the permit for the MG Site. FCC has requested a full copy of the UKHSA's consultation response to be disclosed by the EA (see paragraph 8.33 of FCC's Conjoined Rule 6 Statement). FCC repeats this request and asks that the EA disclose the same without further delay.