

**APPEALS ON BEHALF OF
FCC RECYCLING (UK) LTD AND 3C WASTE LTD**

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

**REGARDING PROPOSED SOIL TREATMENT FACILITIES
AT
DANESHILL LANDFILL SITE & MAW GREEN LANDFILL SITE**

**APPEAL REFERENCES APP/EPR/636 (APPEAL 1); 651 (APPEAL 2);
AND 652 (APPEAL 3)**

APPELLANTS OPENING STATEMENT

Relevant Background

1. This is a conjoined appeal relating to the Appellants' applications to vary environmental permits at the Daneshill Landfill Site and the Maw Green Landfill Site, so as to operate a soil treatment facility to treat and recover soils which are contaminated with asbestos containing materials (bound asbestos only).

2. The three appeals which have been conjoined and which are the subject of this Public Inquiry are as follows:
 - 2.1 Appeal One: this is an appeal against the refusal of the Appellants' application to vary the Environmental Permit for the DH Site, which was submitted to the Environment Agency on the 22 January 2021, relating to Environmental Permit EPR/NP3538MF (V008);

 - 2.2 The Appellants' application to permit the Soil Treatment Facility to recover bound asbestos contaminated soils was refused in its entirety by the Environment Agency on 9 December 2022 (N.B. the Environment Agency did however grant V9 of the DH EP so as to permit the operation of a soil treatment facility for wastes containing hydrocarbons via bio-remediation);

 - 2.3 Appeal Two: This relates to an appeal against the Regulator Initiated Variation of the EP for the DH Site, (EPR/NP3538MF/V010) which was issued by the Environment Agency on the 29 September 2023;

2.4. *Appeal Three*: this relates to an appeal against the Regulated Initiated Variation at MG Site (EPR/BS7722ID/V010) issued on 5 October 2023.

3. Appeal One therefore relates to the entire refusal of the Environment Agency to issue any permit for the treatment of asbestos contaminated soils (bound asbestos only) at the DH Site, whereas Appeals Two and Three relate to the imposition of conditions on the Regulator Initiated Permits for each site, which have been granted to permit the treatment of asbestos contaminated materials (“ACMs”).
4. As already set out in the Appellants’ submissions to date, it is important to note that (unlike the case at Daneshill) prior to the Regulator Initiated Varied Permit for Maw Green, the Environment Agency granted a permit (on the terms which the Appellant sought in its application to treat ACMs (bound asbestos only)) at the Soil Treatment Facility at Maw Green, on 20 July 2023 (EPR/BS7722ID/V009). The Appellant drew the Environment Agency’s attention to the issue of the MG EP (V9) for Maw Green, in its Statement of Case for Appeal One (dated 27 July 2023). Without any prior notice being given to the Appellant, the Environment Agency revoked MG EP (V9), through its Regulator Initiated Variation, and the latter is the subject of Appeal Three.
5. Appeal One was submitted on 2 June 2023. The appeals against the two Regulator Initiated Variations were submitted on 17 November 2023 (Appeals Two and Three).
6. There has been an unusually long period from the submission of Appeal One to the commencement of the Public Inquiry. In large part, this is a result of delays in the submission of the Environment Agency’s Statements of Case (which were repeatedly objected to by the Appellants) and the need to appeal the two new Regulator Initiated Variations for DH and MG.
7. There have been a number of written submissions made to date, on behalf of both the Appellants’ and the Environment Agency, including Statements of Case for Appeal One, Appeal Two and Appeal Three (however the Appellant submitted a cojoined Rule 6 Statement for all three appeals in February 2024) and with various written comments having been issued by both parties on the respective Statements of Case submitted by the other.
8. The Appellants intend to apply for their costs of the appeals against the Environment Agency; notice of the intention to apply for costs was provided in writing to the Planning Inspectorate and the Environment Agency on 18 March 2024.

9. The details regarding the progression of the Environment Agency's case will be set out in the Appellants application for costs in respect of all three appeals and will not be repeated here. However, it should be noted that, for the first time, the Environment Agency raised new issues in February 2024 regarding assertions that the treatment pads to be constructed for the Soil Treatment Facilities were not acceptable and, in discussions on the Statement of Common Ground, raised for the first time that it considered emissions of PM2.5 and PM10 to be in some way unacceptable (although as at the opening of the Inquiry the Environment Agency's case on this point remains vague and generalised) and accordingly this issue was only raised for the first time by the Environment Agency in March 2024.
10. It is agreed between the Appellants and the Environment Agency that all three appeals require the determination of materially similar issues. There are however some differences between the Regulator Initiated Variation for the DH Site and the Regulator Initiated Variation for the MG Site. It is expected however that these differences can be discussed at a round table session, which will take place without prejudice to the Inspector's decision on the appeals, in Week 2 of the Public Inquiry which is programmed for four days commencing on 30 April 2024.

Main Issues

11. The Appellants consider the main issues to be as follows:
 - 11.1 the correct interpretation and application of the Industrial Emissions Directive (through the application of the Environmental Permitting (England and Wales) Regulations 2016 ("the EP Regs");
 - 11.2 the interpretation and application of BAT14, as set out in the BAT Conclusion (dated 10 August 2018);
 - 11.3 the likely emissions of asbestos fibres from the Soil Treatment Facilities and the level of risk posed by the same;
 - 11.4 whether, having regard to the risks, the operational techniques and procedures which the Soil Treatment Facilities will operate in accordance with constitute BAT and are therefore compliant with the terms of the Industrial Emissions Directive;
 - 11.5 whether the best available techniques which the Appellants propose for the operation of the Soil Treatment Facilities is the "most effective in achieving a high level of protection of the environment as a whole".

Overview of the Appellant's Case

12. In summary, the case for the Appellant is that the risks which will arise from the Soil Treatment Facilities (whether to the environment or human health) are negligible and that the Best Available Techniques will be deployed to avoid or minimise emissions so far as is possible.
13. Dr Cole's extensive evidence addresses the real time data which is available regarding the Appellant's other Soil Treatment Facilities which have operated and treated asbestos contaminated materials in precisely the same way as is proposed through these appeals.
14. In particular, the Appellants have obtained over 18 months' worth of monitoring data whilst operating a Mobile Treatment Licence for a Soil Treatment Facility at the Maw Green Landfill which treated asbestos contaminated soils. In addition, Dr Cole adduces evidence of his own independent testing whilst activities were ongoing under the same Mobile Treatment Licence at Maw Green. Finally, data has been provided and analysed regarding the Appellant's Soil Treatment Facility at Edwin Richards Quarry (ERQ) which:
 - i) currently processes asbestos contaminated soils, with open storage of those materials permitted at the ERQ site; and
 - ii) was the location of a trial (by the operator) of a screener, treating ACMs at ERQ which was undertaken pursuant to a Mobile Treatment Licence, and which allowed the Appellants to test the practicability of applying "covers" to the Screener.
15. Dr Cole draws on the extensive real time data available regarding similar facilities operated by the Appellants and undertakes a clear and careful analysis of the risks which are likely to be posed by the proposed activities.
16. In order to further elucidate and quantify the likely degree of risk which the proposed activities would pose to either human health or the environment, Mr Stouling provides evidence which is intended to determine and explain the dispersion factors which will apply so as to minimise the potential impact of any (negligible) emission from the Soil Treatment Facilities to sensitive receptors.
17. It must be noted that the purpose of Mr Stouling's dispersion modelling, as explained in his main proof of evidence to the Appeal, was to address third party concerns that had been raised regarding the potential for asbestos fibres to be released and to impact upon sensitive receptors located in the vicinity of the Maw Green Landfill and the Daneshill Landfill.

18. Mr Stoling's evidence was not therefore submitted to address what the Appellant concerned to be a main issue in dispute with the Environment Agency. However, as already noted above the Environment Agency now seeks to dispute the acceptability of PM2.5 and PM10 emissions from the Soil Treatment Facilities proposed by the Appellants and a rebuttal Proof of Evidence is being submitted by Mr Stoling to address these matters in so far as has been possible. As already noted above, the Appellant is currently unable to fully understand the Environment Agency's case on PM2.5 and PM10, which has not been properly particularised and is currently unsupported by any objective technical evidence. The Appellant therefore reserves the right to adduce additional evidence in response to the Environment Agency's case, once it has been disclosed.
19. Ms Heasman's evidence deals with the interpretation and application of the Industrial Emissions Directive (via the EP Regs) and BAT, with particular focus on BAT14. One of the main issues in dispute between the Appellants and the Environment Agency is the degree to which the Soil Treatment Facilities at MG and DH can or indeed should be enclosed. Ms Heasman undertakes a full assessment of the proposed Soil Treatment Facilities in respect of all of the provisions regarding best available techniques (accordingly her evidence is not limited to BAT14). In doing so, she refers to and relies upon the proposed Operating Techniques which were submitted to the Environment Agency with the applications that resulted in DH EP V9 and MG EP V9; those Operating Techniques also (at least regarding soil acceptance and testing procedures have been approved by the Environment Agency through the grant of DH EP V10 and MG EPV10).
20. Ms Heasman also sets out the wider environmental benefits of the proposed Soil Treatment Facilities and the environmental costs which would likely arise from the Environment Agency's insistence that they be located within a "building" or be refused.
21. Ms Heasman clearly concludes that the proposed activities will be operated in accordance with BAT and accordingly that the appeals should be allowed.
22. Following the examination of the evidence, the Appellant therefore anticipates that it will be conclusively inviting the Inspector to grant the Appeals for Appeal One, Appeal Two and Appeal Three in accordance with the details of the Proposed Activities as applied for (unless updated by the Appeal Documents).
23. The proposals comply with the provisions of the IED (via the EP Regs) and will result in an overall environmental benefit. Accordingly, the appeals should be allowed and the

environmental permits as applied for (as amended by appeal documents) should be granted without further delay.

Alison Ogley
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18 March 2024