

**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)**

NOTICE OF APPELLANTS' COST APPLICATION

Introduction

1. The Appellants (FCC Recycling (UK) Limited and 3C Waste Limited) hereby give notice that they intend to make an application for costs against the Environment Agency on both procedural and substantive grounds.

Proposed Grounds of the Appellants' Cost Application

2. The grounds under which the Appellants intend to apply for costs against the Environment Agency are as follows:

- 2.1 Firstly, in respect of procedural matters:

- 2.1.1 Failing to cooperate with the Appellants with respect to the timely preparation of a Statement of Common Ground, thereby limiting the issues on which evidence needed to be called;

- 2.1.2 Failing to appropriately consider and engage with technical information provided by the Appellants in advance of the exchange of evidence, in order to facilitate time for the Environment Agency to assess the same and thereby provide an opportunity for parties to agree technical matters and avoid the preparation of evidence, in particular this relates to the technical report of Dr Simon Cole, which

was provided to the Environment Agency by the Appellants in advance of the exchange of evidence;

2.1.3 Continuing to introduce delays through the appeal process, by requesting extensions and deadlines without prior discuss with the Appellants, resulting in the Appellants being required to respond to applications for additional time for service of Rule 6 Statements and, for example, written comments on Rule 6 Statements throughout the Appeal process, resulting in extra time spent by the Appellants objecting to the Environment Agency's continued requests which were causing substantive prejudice to the Appellants;

2.1.4 Not agreeing a Statement of Common Ground in a timely manner and failing to agree factual matters, common to the cases of both parties, and where in some instances the Agency's own evidence sets out precisely the same information;

2.1.5 Introducing new issues in dispute late in the Appeal process, for example raising for the first time in February 2024, that the Environment Agency objected to the proposed design of the treatment pad upon which the soil treatment facility would be located, notwithstanding that the Environment Agency had already granted permission for the same to proceed as per Versions 10 of the Environmental Permits for both the DH Site and the MG Site.

2.2 Second, in respect of substantive matters:

2.2.1 Refusing to grant an environmental permit for the treatment of asbestos containing materials, in December 2022 (V9 of the DH EP) in reliance upon erroneous and unjustified grounds, including failing to take into account real data of substantially similar operations in determining the application;

2.2.2 Reliance upon 'internal guidance', which had not been published, was clearly a work in progress and had not been consulted upon with relevant stakeholders thereby resulting in a clear breach of the Regulators' Code;

2.2.3 Failing to provide any objective or specific evidence to substantiate the Environment Agency's reasons for refusal with respect to Appeal One and/or in respect of Appeals Two and Three which support the reasons for issuing EP Version 10 for both the DH and MG Sites, with onerous and restrictive conditions;

- 2.2.4 Continuing throughout the Appeal process to make vague generalised and inaccurate assertions about the likely impacts of the soil treatment facilities at both the MG Site and the DH Site which are entirely unsupported by any objective analysis and/or evidence;
- 2.2.5 Not determining similar cases in a consistent manner, and continuing to adopt an internally inconsistent and confused approach to the environmental permitting of soil treatment facilities which treat asbestos contaminated soils;
- 2.2.6 Failing in its decision making process and throughout the appeals to undertake any form of valid of risk assessment to quantify and assess the level of risk likely to be posed by the soil treatment facilities at DH Site and MG Site;
- 2.2.7 Failing to take into account the risks of the proposed soil treatment facilities when determining and applying BAT and failing to have regard to the best overall environmental outcome for the environment, when making permitting decisions, as required by the IED.

Concluding Comments

- 3. The Appellants reserves the right to amend and add to any of the grounds on which it will seek an application for costs. A full application for costs will be submitted by the Appellants before the close of Public Inquiry in April 2024.

FREETHS LLP
18 March 2024