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for people and wildlife



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8 January 2019

Dear Tom,

**Grange Landfill - Permit No. EPR/DB3803MN**

Following receipt of your letters dated 12th December 2018, I have now taken advice and reviewed the position of the Environment Agency. I do believe that the points raised have been covered in the considerable body of previous correspondence between our organisations. However, you have been very forthright about the concerns local residents and Elected Members have about this site and I understand your efforts to make sure that the Environment Agency accounts fully for its decisions.

Given that most of your points/questions raised are based upon legal advice you have received, I have attempted to set out my response to each point in turn which, I hope, will subsequently be of most use to you. However, I would begin with my general observation that, whilst I do concede (and have previously accepted) that it would have been in all our interests for the Environment Agency to have consulted with your Council from the outset on this matter, I am satisfied that we would have made the same decisions.

In response to Items (a) to (h) in your letter of December 12<sup>th</sup>

- (a) We do have a legal power to commence closure procedures under Schedule 10, Para 10 Environmental Permitting (England and Wales) Regulations 2016 (EPR 2016). The Regulations give effect to the Landfill Directive in England.
- (b) This particular site was an 'Existing Landfill' as described in Art. 14 of the Landfill Directive. The operator (permit holder) of the site submitted a conditioning plan to the Environment Agency as outlined in Art. 14(a) stating their intentions to submit a permit application by the closing date of 'Tranche 7' (the tranche the landfill had been allocated) 6th May 2006.

Based on the conditioning plan it was not considered appropriate to instigate closure at that time. At the time the conditioning plan was submitted the site had stopped receiving waste. At no time since then has the operator accepted any further waste at the site. No permit application was received by the tranche closing date (this was a common occurrence, many operators chose to submit conditioning plans to keep their options 'open'). At this point, in accordance with our procedures, we should have issued a Closure Notice allowing the operator time to submit a

closure report and for us to review and confirm definite closure of the site following a site inspection.

This did not happen, in part due to the fact that the operator had not accepted any waste at the site for a number of years. In this context the requirement under the Landfill Directive for the site "not to continue to operate" was already satisfied as the site was not operational.

- (c) I do not believe we have conceded to acting unlawfully. Whilst we did not serve a Closure Notice on this site, this has had no effect on subsequent events. The Licence would still have remained in existence regardless of whether we had served the Closure Notice or not. The operator would still have been able to apply to vary the Licence at any time with or without a Closure Notice in place as it subsequently did. Even if a site is definitively closed it can still become operational again if its permit is varied so that future activities are compliant with the Landfill Directive.
- (d) This is not so, the environmental permit (previously the Waste Disposal Licence (WD 20 R21) was issued on 01/11/1978 and remains extant until the competent authority (EA) either revokes or agrees with the operator that the permit surrender (completion criteria) has been met, at which time we would accept surrender of the permit if this was applied for. Until then the operator is required to comply with the conditions of the permit. The original licence was modified 6 times, the last being 28/02/1994 the number of conditions increased from 29 to 40. These conditions required the operator to put in place measures to protect the environment and human health and included the operator undertaking and/or maintaining:
- **General site management** as described by their working plan (1 to 4 and 40)
  - **Waste acceptance criteria** (2 and Schedule of conditions Appendix)
  - **Site security** (5)
  - **Site drainage** (11 to 13)
  - **Operational placement** and management of waste (14 to 29)
  - **Restoring the site** once final levels were met (30 to 32)
  - **Record keeping** (33 to 34)
  - **Management/ monitoring and reporting** of landfill gas (35 to 39)
  - **Site plan**

These conditions remained in place from 1994 until the permit variation in March 2016. By undertaking these requirements the operator met their obligations to protect the environment and human health (as was perceived at that time). These conditions remained effective regardless of whether the site was operational or closed.

- (e) As described above, no waste has been deposited at the site since 1998 to this day. If any operator wanted to resume operating in similar circumstances and whether or not a Closure Notice had been served we would have informed them that they need to submit a permit variation to demonstrate compliance with the Landfill Directive and until such time they must not accept waste at the site. If any operator had ignored any such advice and accepted waste without a permit variation we would have taken enforcement action including serving a Closure Notice where appropriate. The operator did not obtain an unfair commercial advantage.

- (f) No, this is not the case. Whilst waste is not currently being accepted at the site, the operator must ensure the site is compliant with the environmental permit. The varied permit issued on 23/02/2016 fully superseded and consolidates the 1994 Waste Disposal Licence and previous modifications and requires (as stated in point (d) above) the operator to put in place measures to protect the environment and human health which we would consider appropriate and reflecting the latest standards.

The following new requirements were added to the permit to strengthen the obligations on the operator:

- Financial provision (1.2.1 to 1.2.4)
- Pre-operational requirements (2.4.1 and 2.4.2 and table S1.4A and S1.4B)
- Emissions limits and standards (3.1.1 to 3.1.5 and 3.2.1, 3.2.2)
- Noise limits (3.3.1 and 3.3.2)
- Notifications to EA (4.3.1 to 4.3.4 and Schedule 5)
- Interpretation (4.4.1 and 4.4.2)

The current permit is fully compliant with the requirements of the Landfill Directive.

- (g) In the environmental permit the financial provision (FP) conditions require that, 1.2.1 No activities authorised by this permit shall be commenced unless the operator has entered into an Agreement with the Environment Agency to secure financial provision for meeting the obligations under this permit and has provided the provision.

1.2.2 The operator shall give prior notice to the Environment Agency of its intention to commence operations at the site.

Our guidance, 'Guidance of the financial provision for landfills', highlights that,

1.3 For all landfills, the financial provision (FP) arrangements should be established before a permit is granted. The FP arrangements must be in place prior to the commencement of disposal operations.

The operator cannot commence authorised activities (the deposit of waste) until FP has been put in place. This is entirely in keeping with our guidance. FP arrangement must be in place prior to the commencement of disposal operations. As yet the operator is not ready to commence waste acceptance/disposal at the site.

- (h) These points have been addressed above. The key issue is that the environment is protected not that the operations are completed within a specific timeframe. This site now has a Landfill Directive compliant permit for any future operations and which protects the environment in the interim.

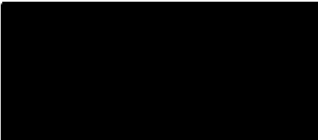
In conclusion, whilst we have accepted that we should (in accordance with our normal procedures) have served a Closure Notice at this site, the fact that we did not has not had any effect on subsequent events nor has it provided the operator with any commercial advantage. We maintain the view that neither protection of the environment nor human health has been compromised. The site permit has been extant throughout and the conditions therein require the operator to manage, maintain and monitor emissions produced at the site regardless of the site being operational, closed or mothballed.

After your consideration of my response and any further advice you receive from Counsel, I am happy to provide any further clarification required.

I acknowledge your further letter dated 21st December and will respond to the points raised in that within the next few days.

Whilst I again acknowledge your Council's concerns about this site, I would also give you my assurances that the site will not be allowed to operate unless and until all of the conditions and measures required to protect the environment, are secured and in place.

My sincere best wishes to you.



**MARK SCOTT MBE**  
Area Director, Yorkshire