

Landfill piggybacking - Anti-Waste/WRG Court of Appeal Judgment

Purpose of this note

This Regulatory Position Statement summarises how we will determine landfill permit applications in the light of the recent clarification by the Court of Appeal. This position updates previously issued regulatory guidance connected with these legal issues.

Background

The Court of Appeal handed down its judgment on the Anti-Waste WRG Judicial Review at the end of December 2007 [Case reference number: C1/2207/0900]. The court addressed two points of law relating to the Environment Agency's ability to grant PPC permits for existing landfills.

The judgment relates to the lawfulness of permitting a landfill based on the principle of "piggy-backing" where a PPC landfill includes a three dimensional boundary which excludes existing waste deposits. This is where a new landfill is built on top or partially overlies an existing landfill by constructing a Landfill Directive compliant liner over the existing waste. The judgment also clarifies that both of the landfill areas may be regulated by a single PPC permit where the existing landfill is releasing 'listed substances' to groundwater.

Environment Agency approach and implications

This judgment has implications for a number of landfill permit determinations. We have established a project team to work on the details for individual sites and to liaise with landfill operators whose sites may be affected by the judgment.

Defining a landfill installation involving 'piggybacking'

The Court of Appeal has clarified that there is no absolute legal bar to the grant of a landfill permit involving 'piggybacking'. Instead the legal validity of such a proposal depends on whether the areas are able to operate independently as functionally self-contained landfills.

In addition to the issues normally considered, the following -points need to be specifically addressed in an application for a piggy back landfill:

- compliance with the lining requirements of the Landfill Directive;
- functionality, stability, and durability of the engineered separation structure of the installation;
- effect on the existing waste mass and any degradation by-products produced within that waste mass including appropriate management and monitoring;
- management and monitoring of waste degradation by-products from the overlying waste mass;
- ability to monitor outside the proposed landfills;
- and the degradation by-products from both the existing and overlying waste must be capable of being managed and monitored independently and there must not be movement of leachate and landfill gas across the engineered separation at levels that would compromise this.

Where the degree of independence is insufficient to establish or maintain self-contained landfills throughout the life cycle of both, then the areas will constitute a single landfill and we will be unable to grant a separate landfill permit for the overlying waste.

Groundwater

The recent judgment clarifies that where an existing area of the landfill is giving rise to an unacceptable discharge to groundwater it may be possible to grant a landfill permit that includes the existing area and a new area of landfill. This is provided that the further deposits of waste will not cause or increase an unacceptable discharge from the existing landfill area.

The new area of landfill must not itself give rise to an unacceptable discharge, and must be designed so that appropriate and proportionate action can be taken to mitigate an unacceptable discharge from existing areas. An applicant for a permit must be able to demonstrate all these criteria are met through a quantitative risk assessment, including the impact from the release of leachate from the pre-existing waste as a result of placing further waste above it.

Where the operator is responsible for the existing and new landfill, he must propose actions so that the discharges from the old landfill area comply with or get as close as possible to compliance with the Groundwater Directive by applying all technically feasible and proportionate measures. Where the operator of the existing and new landfills are different, each will be responsible for compliance with the Groundwater Directive by applying appropriate technically feasible and proportionate measures.

Contacts

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