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Mr R Biddlecombe
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148 Edmund Street
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Your Ref: RJE/R88/WAS.065-0001

Our Ref: APP/EPR/15/443

Date: 1 July 2016

Dear Mr Biddlecombe,

**ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2010,
REGULATION 31**

APPEAL BY: WASTEOLGY LTD

SITE AT: GREENHAM QUARRY, WELLINGTON, SOMERSET TA21 0JU

I enclose a copy of our Inspector's decision on the above appeal.

The only challenge to an Inspectors decision on this type of appeal is by an application to the Administrative Court of the High Court of Justice for permission to seek Judicial Review. This should be done promptly and in any case not more than 3 months from the date of the decision.

If you have any queries relating to the decision please send them to:

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Or visit:

<https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>

Yours sincerely

Tim Mather
Environment Appeals Administration
Enc



Appeal Decision

Hearing held on 19 April 2016

Site visit made on 20 April 2016

by Joanne Jones BSc(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 July 2016

Appeal Ref: APP/EPR/15/443

Greenham Quarry, Wellington, Somerset TA21 0JU

- The appeal is made under Regulation 31(2)f and Schedule 6 of the Environmental Permitting (England and Wales) Regulations 2010.
 - The appeal is made by Wastelogy Ltd against a Notice of Revocation of Environmental Permit and Requirement to Take Steps issued by the Environment Agency.
 - The notice, dated 20 August 2015, concerns Environmental Permit Number: EPR/UP399OFT (EAWML27004).
 - The environmental permit authorises the holder(s) for keeping/treating of controlled waste namely permitted wastes as described in the conditions, on land at the premises occupied by the licence holder(s).
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Decision

1. The appeal is allowed and the Notice of Revocation dated 20 August 2015 relating to Environmental Permit Number EPR/UP399OFT (EAWML27004) for Greenham Quarry, Wellington, Somerset TA21 0JU, is quashed.

Procedural Matters

2. At the Hearing I heard representations from the appellant that the appeal procedure should be changed to that of an Inquiry. However, given that the Hearings procedure would allow questioning of either party, and that the two days allocated for this appeal Hearing would allow substantial questioning of the evidence, a Hearing would be a suitable procedure in this case, and I ruled as such at the Hearing.

Background and Main Issue

3. The underlying aim of the Environmental Permitting (England and Wales) Regulations 2010 (EPR) is to ensure that waste management is carried out without endangering human health or damaging the environment. The requirement to obtain a permit is governed by the EPR and the Environment Agency (EA) is the authority responsible for issuing permits. Under the EPR the EA has a number of enforcement powers. If it considers that an operator has contravened, is contravening or is likely to contravene a permit condition or conditions, it may serve an enforcement notice¹.

¹ 19 Enforcement Notices were served on Wastelogy during the period 2008 - 2015

4. In the event of a continuing risk of environmental pollution, and as an enforcement measure of last resort, the EA may serve a revocation notice² under Regulation 22 of the EPR.
5. The revocation notice ('the notice') identifies seven matters that led to the EA's decision. These are:
 - That the operator has had a poor record of compliance with its Environmental Permit since 2008;
 - In relation to the Environment Agency's Operational Risk Appraisal, the compliance banding of the site was the lowest rating (Band F) in 2011, 2012, 2013, 2014 and 2015.
 - The company has received advice and guidance on how to comply with the Permit. They have also been issued with warning letters, 19 Enforcement Notices and 2 Formal Cautions. These measures have failed to secure compliance.
 - The Working Plan is inadequate; it does not identify how the site should be run in order to comply with the Permit.
 - The infrastructure and drainage on site is inadequate and does not comply with the Permit.
 - The site has been operated in a manner which has impacted on the local amenity: namely noise.
 - There has been occasions where the Technically Competent Manager cover has been inadequate.
6. Having regard to the reasons given in the notice, the main issue in this case is whether the revocation notice and steps required are necessary and proportionate to prevent harm to the environment or human health.

The site and surroundings

7. The permitted site is located within a former quarry, close to the Devon and Somerset administrative border, and 6km west of the centre of Wellington. The site is accessed at its eastern end from the class 3 road that connects the A38 at Whiteball to the south-east with Greenham and Tracebridge to the north. The gated quarry entrance is set back from the public highway and shares an access off that highway with the residential property, 'Meadow View'. The shared access is owned by the occupants of 'Meadow View'.
8. To the west of the quarry and covering much of the surrounding hillside is an area of mature woodland. The trees and scrub around the eastern half of the quarry form a narrower strip of vegetation with pasture beyond to the north and a mixture of farm and industrial buildings to the south. To the east, beyond the public highway, is further farmland with a caravan touring park to the north-east beyond the nearest residential property 'Meadow View'.
9. Located towards the western end of the appeal site is a large steel framed and sheet clad waste storage / sorting building and to the rear of this the historic

² Revocation Notice was served on Wastology on the 20 August 2015

waste is stockpiled. Along the northern boundary are various office buildings, security accommodation and the weighbridge.

10. The current owner of Wastelogy (Mr M Redmond) took control of the business in 2007/2008. Prior to the acquisition 'Wastelogy' had a poor record of compliance, dating back to 2003. At the time of acquisition Mr Redmond stated that the site was *'full of waste, to the extent that the recycling building could hardly be seen'*. In 2011 a volumetric survey of the site showed that the volume of stockpiled waste was approximately 19,515 cubic metres. The permitted amount of waste that is authorised to be stored on site within the buildings is 600 cubic metres and outside the building 2,500 tonnes of inert waste.

Reasons

Introduction

11. The EA has provided a record of their site visits and enforcement actions from 2008 to the present. Photographs within both parties evidence highlight the nature and scale of waste storage on the site. The appellant did not contest the EA's extensive chronology of non-compliance. However, the appellant stated that this non-compliance was due in part to Network Rail's decision to compulsory purchase (CPO) his London waste site (known as RTS), which was processing the historic waste on the appeal site, and the resultant legal expenses and diversion of his attention to deal with this CPO issue.
12. Nevertheless, returning to the reasons given by the EA for issuing the revocation notice. That the appellant has failed to comply with some of the enforcement notices is evident. It is equally evident that the appellant has been, and remains in breach of permit conditions. However, various mitigating factors are referred to by the appellant. The site operator has in the past sought to comply with permit conditions and in recent months has tried to make inroads to reducing waste stockpiles on the site and making the required site improvements. These are matters that I address in assessing the compliance record and questions of competence, and in dealing with other relevant matters raised.

Protection of the environment

13. Pollution is defined in the EPR as: *"...any emission as a result of human activity which may – (a) be harmful to health or the quality of the environment, (b) cause offence to a human sense, (c) result in damage to material property, or (d) impair or interfere with amenities or other legitimate uses of the environment;..."*. Pollution is serious and may have a long-term negative impact on health and the environment or a significant immediate detrimental impact on these receptors.
14. The EA point to Permit breaches where waste had been stored off an impermeable surface, which led to water and ground contamination. The water sampling undertaken by the EA³ at the last outfall point from the site indicated that the Biological Oxygen Demand (BOD) was 178mg/l and 89.3mg/l respectively. The EA stated that a discharge permit would only allow a BOD of 30mg/l. High BOD levels are an indicator of poor water quality and can lead to direct impacts on aquatic species.

³ Surveys undertaken on the 13 November 2014 and 17 December 2014

15. Accordingly, the EA undertook a dye test to trace the course of the polluted water. This indicated that the contaminated water ended up in a disused canal, which the EA stated acted as a sediment trap. Nonetheless, it is a controlled water body and the introduction of drainage with such high levels of BOD could harm the environment. However, at the time of my site visit the sealed drainage system and interceptor tanks had been installed, with the remaining areas of concrete being laid to create an extended impermeable surface. Whilst I accept that the remainder of the historic waste needs to be removed before this can be completed, this has been prioritised and the appellant indicated that the historic waste would be removed by the end of May 2016.
16. To date no further water samples have been undertaken to ascertain the level (if any) of water contamination from the site. Although, at the Hearing the EA indicated that in principle the proposed drainage system would be more than adequate for the waste site, they argued that there remains a level of doubt over the long term management of the system due to a lack of a working plan.
17. Having a 'working plan' or environmental management system in place is an indicator of operator competence and an expectation on each permitted site, albeit the required management system depends upon the complexity of the regulated facility. Without a plan in place an operator may not have the ongoing proactive tools in place to manage any system failures. A draft plan based on the operators RTS site was in place. However, I do acknowledge that the site has gone through a period of change and the working plan would need to be a bespoke one and embrace these changes and the new operating systems which have been put into place. Nonetheless, in light of the evidence detailing the progress to date, and the engagement of technically qualified managers on the site, I am confident that the operator would be able to swiftly update the submitted draft working plan to reflect the operational practices of Green Quarry to the satisfaction of the EA. Indeed at the Hearing the appellant stated that this document was well underway to completion. I am therefore satisfied that there will be adequate controls in place in relation to risks to the water environment.
18. In addition to this, following a number of complaints, a Noise Impact Assessment was carried out by the EA. This assessment showed that the site was causing noise pollution likely to cause a significant adverse impact. As a result the appellant has implemented acoustic fencing along the eastern boundary, in accordance with a planning permission, as well as improvements to the waste processing building and the skip lorries. Given these improvements the EA were supportive of the progress made on site in terms of noise reduction. However, it is noted that these improvements will need to be further audited by the appellant to confirm that they are 'fit for purpose'. I also note that a noise limit condition has been imposed as a requirement of planning permission 4/35/13/0022, which can be enforced by the Waste Planning Authority.
19. In the light of this, I consider that there does not remain a significant risk of pollution from the appeal site. Therefore, the revocation of the permit is not justified in the interests of the protection of the environment or human health.

Compliance history and operator competence

20. The EA's evidence clearly points to a consistent record of poor compliance over a sustained period. Evidence produced by the EA in the form of Compliance

Assessment Reports (CAR) and other documents demonstrates this. I do not need to rehearse the list of issues noted on the CARs, these are self-evident from the documentation presented by the EA in this appeal.

21. The appellant refers to significant difficulties which have prevented the site from operating effectively. The first of these was the CPO of the RTS site by Network Rail. This led to a diversion of funding from the Greenham Quarry site and that the RTS operation could no longer support the appeal site in terms of the processing of historic waste. Whilst I accept that this situation would have placed a strain on the appellant, it is incumbent on the permit holder to have sufficient finances and competency to comply with permit conditions. Nevertheless, it would appear from the appellant's statement that in 2013 the business started to recover from the effects of the CPO and this resulted in the submission of a planning application to undertake the improvements of the appeal site and investment in buildings and infrastructure, such as the sealed drainage system and acoustic fencing. As I saw on my site visit, these improvements are near completion and clearly demonstrate the appellant's long term commitment and investment in achieving compliance.
22. Secondly, it was argued by the appellant that poor weather conditions had hampered the removal and processing of historic waste from the site. I accept that poor weather conditions can affect waste processing. However, such conditions impact on many waste operators who are nonetheless able to operate within their permit conditions.
23. I also accept that, in at least some instances, the permit breaches were relatively minor. That is, although breaches had occurred, for some reported problems the consequences for harm to human health and the environment were unlikely to be serious. Having said that, clearly there had also been serious breaches to which the response had historically been inadequate. However, as set out above recent investment is facilitating effective management of the site within permitted conditions. Of particular note is that the appellant has reduced the historic stockpiles of waste by some 15,476.01 tonnes⁴ during the period January 2015 – January 2016. This figure was not disputed by the EA at the hearing. Furthermore, the recurrent breaches in terms of site drainage and noise are being rectified by the recent investments on the site and the operator has employed Mr Ward as the Technically Competent Manager for the site.
24. Finally, the appellant brought to my attention a letter dated 27 November 2014 from the EA which provided the appellant 18 months to return the site to compliance, therefore a period until the 27 May 2016. Such an approach would reflect the rolling enforcement notice approach on this site, implemented by the EA, which had facilitated the removal of significant quantities of the historic waste from the site. However, during this 18 month period the Revocation Notice was issued, which the appellant considered was procedurally unfair and without explanation, albeit it was accepted at the Hearing that this letter would not prevent the EA from serving a Revocation Notice where necessary to protect the environment or where the operator was considered not to be competent.
25. However, I am not convinced that there was such a change in circumstance or a particular trigger to issue such a notice prior to the end of the 18 month

⁴ Doc 2

period. I also note that the water sampling referred to by the EA as an indicator of environmental harm was initially taken on the 13 November 2014, when the historic waste had been present on the site prior to the appellant taking over the site in 2007, and noise complaints were received from 2011. If the environmental harm from the site was so significant, over a protracted period of time, I would have expected a revocation notice to be issued at this stage rather than issuing of 'the letter'. In this respect I agree with the appellant that an operator should have an expectation that there is some certainty in the period they are allowed to deal with waste. As such, I can understand why the appellant relied on the 18 month window to achieve compliance. As I saw on my site visit significant progress had been made towards compliance, before the 27 May 2016 deadline.

26. To bring these matters together, the recent improvements to practices on the site show that the appellant is clearly working towards achieving compliance. Whilst there is further work to be completed to achieve full compliance, the revocation of the waste permit is not justified in circumstances where there is no significant harm to the environment or human health identified. Such factors indicate to me that the appellant is capable of operating this site competently and in ongoing compliance with the permit.

Conclusions

27. From what I saw on my site visit and the evidence before me, there has been a marked improvement in performance on the appeal site, which indicates that the operator is capable of operating that site competently. Accordingly, the Notice of Revocation for Greenham Quarry should be quashed

Joanne Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr R Wald	Barrister, 39 Essex Chambers
Mr R Biddlecombe	Agent, Squire, Patton and Boggs (UK) LLP
Mr M Redmond	Wastelogy Ltd
Mr N Ward	Wastelogy Ltd

FOR THE ENVIRONMENT AGENCY:

Mr Z Simons	Barrister, Landmark Chambers
Ms W Laird	Senior Lawyer, Environment Agency
Ms A Howe	Site Inspector, Environment Agency
Ms L Wright	Environment Management Team Leader, Environment Agency
Ms L Woodland	Senior Environment Officer, Environment Agency
Mr J Ayers	Site Inspector, Environment Agency
Mr A Gardiner	Area Environment Manager, Environment Agency

DOCUMENTS SUBMITTED DURING THE HEARING

Doc 01	10 photographs of the site dated between 2013 – 12 April 2016. Submitted by the Environment Agency
Doc 02	Removal of fines tonnages by enforcement notice periods. Submitted by the appellant.

