

# Peckfield Landfill Site - Position Statement of the Environment and Housing Scrutiny Board – May 2017

## Introduction

1. Peckfield Landfill accepts non-hazardous waste and is located immediately due west of the village of Micklefield, Leeds. The landfill occupies a former quarry and has been in operation since the early 90s. However, the existing operator (Caird Peckfield Ltd) took over the management of the site in May 2013. The landfill has residential properties on three sides, at varying distances, including the village of Micklefield.
2. The close proximity of the landfill site to residential areas reinforces the need for robust environmental management controls. However, there have been longstanding and widely acknowledged issues and concerns linked to the management of the landfill site, which led to an in-depth Scrutiny inquiry being undertaken by the former Safer and Stronger Communities Board during 2014/15 following a formal public request. This inquiry concluded in March 2015 and a report setting out the Scrutiny Board's findings and recommendations was published April 2015. This report is available via the Council's website ([click here for inquiry report](#)).
3. Since April 2015, the successor Environment and Housing Scrutiny Board has been committed to monitoring the implementation of the recommendations arising from this inquiry. Throughout this process concerns have continued to be raised regarding the lack of progress linked to particular recommendations directed at the operator which had aimed to improve the management of the landfill site and also strengthen communication with local residents. In September 2016, it was also reported by Council waste planning officers that there were concerns over the phasing of landfill operations and the general slow pace of restoration at the landfill site, in addition to some associated access issues. Such concerns led to further scrutiny of the respective regulatory roles of the Council and the Environment Agency in relation to the management of landfill sites generally.
4. The latest update on this matter was received in February 2017 via a special meeting held with the Environment Agency's Area Environment Manager for West Yorkshire. At that stage, we considered the details of an existing regulatory investigation linked to a marked increase in the number of odour reports made during the January period. This had resulted in the operator being issued with a Regulation 36 Notice in line with the Environmental Permitting (England and Wales) Regulations 2016. We noted that the Environment Agency had also communicated this latest development to local residents via its community newsletter, which we have attached as Appendix 1.
5. During this meeting we also received an update from the Council's Minerals & Waste Planning Team Leader regarding planning compliance matters. It was relayed that a planning application proposing to vary the extant planning permission for the landfill site would be submitted by 31<sup>st</sup> March 2017. The options available to the Council should the operator fail to submit an application

within the reasonable timeframe set by the Council was also discussed. By way of an update, the operator of the landfill site submitted a planning application (ref. 17/02450/FU) to the Council for consideration on 18<sup>th</sup> April 2017. This planning application seeks to vary condition 1 of the existing planning permission ref. 06/00542/FU to allow changes to the restoration plan and phasing all in line with a submitted Addendum to the Environmental Statement. The planning application is currently being considered by waste planning officers and a decision will be recommended to the North and East Plans Panel in due course. Members of the public have been invited to comment on the application by way of site notice and press advert. For the avoidance of doubt, Waste Planning Officers continue to attend the operator's Community Liaison Meetings.

6. Throughout the course of our monitoring, we have valued the attendance and input of local resident representatives, local Ward Councillors and officers within the Council's Minerals and Waste Planning Team. However, we have often been frustrated with the lack of commitment from the operator to engage in the Scrutiny Board's discussions on this matter. Issues have also been raised this past year in relation to the Environment Agency's capacity to continue to send appropriate representation to our formal meetings which has also frustrated the Scrutiny process.
7. As a Scrutiny Board we have therefore agreed to cease monitoring the outstanding recommendations arising from the previous Scrutiny Inquiry in recognition that this matter now warrants further escalation. We are aware that local residents have now taken this next step and engaged the local MP in escalating this matter at a ministerial level and also directly with the Environment Agency and the Department for Environment, Food and Rural Affairs (Defra).
8. However, during the course of our monitoring, a number of broader issues had also been identified in relation to the existing legislative and regulatory framework associated with landfill sites which we believe warrants further attention too. Our position statement therefore goes on to summarise our key observations in this regard, including our thoughts around what further action is needed to strengthen the current regulatory framework so that environmental issues linked to the management of landfill sites can either be alleviated or enforced more robustly in future.
9. The new Environmental Permitting (England and Wales) Regulations 2016, which only came into force on 1<sup>st</sup> January 2017, primarily consolidated and revoked the Environmental Permitting (England and Wales) Regulations 2010 and all of its subsequent amendments and therefore duties still broadly remain the same. We do acknowledge that some additional enforcement measures were added to the regulations in light of an earlier consultation by Defra in 2015 which focused on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management industry ([click to access Defra consultation response document](#)). However, it is evident from our findings that more still needs to be done.
10. Interestingly, we learned that Defra is expected to launch another consultation in the coming months around Waste Crime with a particular focus on operator

competence in terms of gaining an environmental permit and operating a site. We also learned that the Environment Agency will be undertaking a separate consultation with regard to its Strategic Review of Charges which seeks to reform the existing charging regime for 2018-2030.

11. In welcoming both consultations, we strongly urge the Council to actively respond to these and engage with Scrutiny to ensure that our observations are reflected within the Council's submissions.

**Key observations relating to the legislative and regulatory framework associated with landfill sites.**

- *A need for more robust checks around operator competence when granting environmental permits.*
12. It is vital that robust checks are undertaken in order to satisfy the regulator that an operator has the competence to meet the conditions of an environmental permit both before a permit is granted and also throughout the life of the permit.
  13. Following its 2015 consultation around waste crime, Defra concluded that *'it should be for the regulator to assess overall operator competence at the application stage, when there is a significant change to the nature of the operation or when there is a change in the structure or management responsibilities of the operator. Furthermore, operator competence is something that should be assessed on an ongoing basis by the regulator throughout the life of the permit and take into account operator compliance and other evidence of operator performance'*.
  14. In accordance with existing environmental legislation and regulations, we understand that the Environment Agency is expected to undertake checks associated with the adequacy of an operator's management system; their technical competence; their financial competence to run the company and also whether the operator has a poor record of compliance with previous regulatory requirements which are relevant to the permit. However, we were very concerned to learn that the Environment Agency is restricted to take into account other sources of intelligence that fall outside of the environmental permitting regime and assessment criteria even though we would regard such evidence as being vital when formulating judgments about an operator's competence. This includes any evidence relating to an operator's poor compliance across other regimes and even any previous financial fraud convictions.
  15. We would therefore like to see the assessment criteria surrounding operator competence broadened so that the regulator can be better placed to stop permits being granted when there is clear supporting evidence available to suggest a higher risk of operator incompetence.
  16. Whilst acknowledging that operators are also required to put in place an Environment Management Plan, we identified a need to also strengthen links between the Environment Agency and the International Organisation for Standardisation (ISO) in this regard. ISO provides practical tools for companies

and organisations to manage their environmental responsibilities, with the ISO 14001:2015 and its supporting standards around environmental systems assisting operators to achieve this through its Environmental Management Plan. However, whilst we appreciate that ISO provides an element of independent assessment, we believe that there should be greater input from the regulator to also inform the quality and robust monitoring of Environment Management Plans.

➤ *A need for greater resources to undertake robust monitoring and enforcement of environmental permit breaches.*

17. Whilst the new Environmental Permitting (England and Wales) Regulations 2016 has brought in additional enforcement measures, it is evident that the Environment Agency is still struggling to pursue such measures within existing resources.
18. Within the Yorkshire area, there are approximately 320 landfills which the Environment Agency is responsible for regulating. Of these, 33 are classed as high priority and 10 are taking up significant resources due to environmental risk, including Peckfield Landfill Site. We understand that the Yorkshire landfill team is based around existing affordable structures as allocated by Government Grant in Aid and Charge Income funding. However, we do not believe that the current level of resource is enough, particularly when there is pressure on the regulator to engage warranted Environment Agency Officers in gathering significant amounts of evidence in order to demonstrate a permit breach and additional pressure to compile a case for prosecution.
19. We therefore believe that additional resources should be achieved through appropriate fees and charges, with the cost of regulatory effort being recovered from the operator.

➤ *A need for permit charges to be more closely linked to the cost of regulation.*
20. The existing Environmental Permitting (EP) Charging Scheme came into effect from 1 April 2014. It covers the different types of operations that require a permit under the Environmental Permitting Regulations as well as various other charges.
21. The Environment Agency will prioritise its efforts into the higher risk and poorly performing sites. As such, it uses a risk assessment tool – the Operational Risk Assessment (Opra) – to provide an objective and consistent assessment of the environmental risk of operating a regulated facility. Linked to the Opra tool, scores are calculated through a Compliance Classification Scheme (CCS) and used to determine a lettered band from which an adjustment percentage is derived and applied to the subsistence charge. Opra compliance rating band F indicates situations where operators have the poorest level of compliance. This relates to waste facilities and installations which have 150 CCS non-compliance points or more in a calendar year will therefore see their annual subsistence charge adjusted to a rate equivalent to 300% of the base charge. However, we note that this maximum charge only equates to £12,230 a year.

22. The objective of the charging scheme is to make the level of regulatory effort proportionate to the environmental risk of the permitted activity, and for this to be reflected in the regulator's charges. In this way, well managed/low hazard activities present less of a risk and are therefore charged less, with higher risk activities being charged more. The charging scheme was designed to encourage good environmental performance and meet the objective of cost reflectivity, where the level of charge reflects the level of regulatory effort. However, it is clear that the current level of fees and charges linked to the poorest level of compliance does not reflect the significant levels of regulatory effort required.
23. In recognition of this, we are pleased to note that the Environment Agency will be undertaking a consultation with regard to the Strategic Review of Charges, which seeks to reform the existing charging regime for 2018-2030. In doing so, the Environment Agency will be reviewing the way it regulates linked to the charges set in order to make it as easy as possible for businesses to do the right thing and also ensure that charges are more closely linked to the cost of regulation.
  - *A need to include effective community engagement by the operator as a condition of their permit.*
24. In relation to Peckfield Landfill Site, it is clear that one of the biggest frustrations of local residents is the lack of proactive communication between the operator and residents. This has resulted in the Environment Agency taking on many of the liaison activities which would normally be expected to be undertaken by the operator. The 'Memorandum on the operation of Liaison Committees for mineral working, waste management and energy sites' forms part of the operators planning conditions. As such, an earlier recommendation was made by Scrutiny for planning officers to revisit this to see if it can be strengthened to ensure greater commitment from operators.
25. In April 2016, the Environment and Housing Scrutiny Board was notified that the Peckfield Liaison Committee had worked with the Council to revise the Memorandum. A copy of this Memorandum was shared with the Scrutiny Board and so this recommendation was signed off. However, we believe that the wording of the Memorandum still warrants further tightening in terms of making it very clear that it should be the 'competent site operator' that attends the liaison committee meetings in order to respond appropriately to issues and concerns raised by the committee.
26. In moving forward, we would also like to see effective community engagement by the operator included as a condition of their environmental permit so that any lack of effective community engagement can be classified as a formal breach of the permit.
27. Linked to this, we are also convinced that the future strength of local government scrutiny lies in its outward looking nature, including assessing the role of others (businesses, voluntary and community groups, and other public sector bodies) in delivering outcomes for local people. However, existing legislation does not provide for local authority scrutiny to have a recognised and legitimate role in scrutinising external partners and particularly other public sector bodies when

their actions have an impact locally. As such, we have to rely on the goodwill of external partners to engage with scrutiny and this can often frustrate the scrutiny process whenever invitations are declined.

28. As a Council, we have therefore raised this issue more broadly in our submission to the Communities and Local Government (CLG) Committee inquiry into overview and scrutiny in local government. However, we would also welcome specific consideration of the environmental legislation and regulatory framework in terms of strengthening the democratic accountability of the Environment Agency and also private waste operators through local government scrutiny.

➤ *A need for more secure financial provisions.*

29. Operators holding a permit for landfill or mining waste operations are required to make and maintain specific financial provision for their operations. Following its 2015 consultation around waste crime, we note that Defra concluded that *'Intelligence from the regulators suggests some landfills are entering into the closure phase but still have essential site infrastructure to install. Given income from waste inputs will have ceased by this point, the Government is concerned that the financial provision made by landfill operators may not be sufficient in such circumstances. The Government will discuss with the regulators and consider whether changes to the guidance on financial provision for landfill operations is required'*.
30. It is vital that there are sufficient funds set aside to protect the public purse from potentially expensive clean-up costs associated with orphaned and abandoned waste sites. We therefore fully support the need to review existing guidance surrounding financial provisions for landfill operations as we have already raised concerns regarding the security of financial provisions made by operators and would particularly like to see such provisions put in place outside of the liquidation regime in order to safeguard its security.
31. Linked to this, we note that within its consultation response, Defra also commits to *'examining with the Insolvency Service how to make better use of existing legislation that enables the directors of companies that repeatedly flout the law to be disqualified. The Insolvency Service is also examining proposals under which company directors may be required to compensate those affected by their actions or negligence under certain circumstances. Defra will continue to engage with the Insolvency Service on this issue and assist in the development of policy to ensure rogue company directors are as far as possible made responsible for their actions'*.
32. Whilst acknowledging that such financial provision agreements are generally linked to the operating permit and therefore made with the regulator, we would like to see additional financial safeguards put in place as part of local authority planning policy too. In relation to Mineral Planning, we learned that the National Planning Policy Framework already gives clear guidance that should any exceptional circumstances arise which would prevent a track of land from being restored to a beneficial after use then there are certain conditions where the local authority could seek monies through a bond to hold until the development is

complete. Unfortunately, the NPPF does not recite the same wording for waste planning. Linked to our previous comments around undertaking robust checks and risk assessments regarding operator competence, we would like to see such guidance strengthened within waste planning policy and regulation too.

➤ *A need for robust and transparent Environmental Sentencing Guidelines.*

33. Finally, we also recognise the vital role of the judicial system in helping to deter waste crime and poor performance in the waste management industry. As such, we would welcome greater transparency and consistency surrounding penalty tariffs and the need to ensure that these better reflect the seriousness of an environmental offence as well as the turnover and profit of the organisation involved.

## **Conclusion**

34. Our ongoing monitoring and scrutiny of matters relating to the management of one particular landfill site has led us to identify weaknesses within the overall legislative and regulatory framework associated with landfill sites. These need urgent attention if we are to tackle waste crime and entrenched poor performance in the waste management industry as this is causing considerable stress for those communities that are directly impacted and also placing significant pressure on the regulator.
35. We will therefore be sharing our position statement with the Chief Executive of the Environment Agency and the Secretary of State for Environment, Food and Rural Affairs as well as helping to inform the Council's submissions to forthcoming consultations by Defra and the Environment Agency on this matter.
36. Whilst agreeing to cease monitoring the outstanding recommendations arising from the previous Scrutiny Inquiry in Peckfield Landfill Site, our commitment to pursue the broader issues set out within our position statement will also involve maintaining a watching brief surrounding this site.