

## Eco Park

### Judicial Review Position – 1 February 2013

The permit was issued by the Environment Agency (EA) on 8 October 2012. There is a three month window of opportunity where decisions may be challenged in the High Court. The Council considered the permit and sought advice asking specialist environmental counsel to consider 12 different topic areas. Many of these areas were in fact highlighted by residents in their responses to the permit consultation.

The areas were:

- The requirements for a permit under the Waste Framework Directive have not been met*
- Permit is not in accordance with planning permission*
- Considerations of hazardous waste, waste oil etc*
- Responsibility for fire explosion and toxic hazard*
- Precautionary principle – Dargavel, Binn Farm (South Lanarkshire) and the Scottish Environmental Protection Agency (SEPA)*
- Provisions regarding the boiler by-pass vents are illogical and not Best Available Technique (BAT)*
- Gas flare is not in accordance with EA guidance*
- Batch oxidisation is not BAT*
- Relying on Health Protection Agency (HPA) advice is misguided because it does not relate to gasifiers only well run incinerators*
- Perverse to allow in Air Quality Management Area (AQMA)*
- The EA has misdirected itself on a key point of European legislation, namely whether an operation is disposal or recovery*
- Application based on conflicting data which no decision maker could reasonably take into account (water, carbon balance, gasoil etc)*
- Consultation*

Counsel advised on those parts of the instructions which seemed to give the strongest grounds for challenge. On 14 December 2012 the Council sent out a pre-action protocol letter which was sent to the Environment Agency and the interested parties (Surrey County Council and SITA Surrey Ltd).

The pre-action letter concentrated on three different areas:

- (1) The legality of the conditions
  - a. Abnormal operations
  - b. The vents
  - c. Inconsistencies with planning permission
- (2) The general structure of the permit and compliance with European law
- (3) The technology and whether it was Best Available Technique

The deadline for a full response was given - 4 January 2013. The Environment Agency responded on 27 December 2012 to say that it required more time and suggested that it would respond by 18 January 2013. The Council agreed but in order to protect its position the Council had to make an application for Judicial Review on 7 January 2013. The proceedings were generally stayed until 25 January 2013 to allow for the EA to make its response and for the Council to consider it by 25 January 2013.

On 18 January 2013 the EA responded to the Council's pre-action letter. This was a detailed response. Following discussion with counsel the Council concluded that it was unable to proceed on some of the issues which it had identified in its 14 December 2012 pre-action letter. However the EA had failed to satisfy the Council on two grounds:

1. Vents - and whether their use constituted abnormal operations. The EA said not but the Council said that they did. This is important because of the 60 hour annual time limit on unmeasured and unrestricted emissions to air because of abnormal operations.
2. The 60 hour limit. The Council disputed the way in which the EA had put conditions on the operation of the 60 hour limit.

The interested parties had little to add in their responses on 18 January 2013, other than they agreed the response given by the EA and pointed out that the proceedings were unnecessary because an application for a new permit was shortly to be made involving a new form of gasification plant.

The Council therefore wrote to the EA and the interested parties on 24 January 2013 indicating that it would proceed with the Judicial Review unless it could get assurances on the two matters which concerned it.

The EA and interested parties were not able to give the assurances in the required form on 24 or 25 January 2013 and so on 25 January 2013, the Council applied to Court for a hearing to make the application for Judicial Review.

Over the course of 28 and 29 January 2013, the Council secured assurances as follows:

- Surrey County Council and SITA to write to the Court to confirm that the permit (in relation to the gasification plant) will not be relied upon unless and until a fresh decision is made by the Environment Agency pursuant to a further variation application providing for the adoption of a different form of technology, so as to make this challenge academic.
- If the varied permit raises the same or similar issues that remain of concern for Spelthorne Borough Council as set out in its letter dated 24 January 2013, the fact that this application for permission to apply for judicial review has been withdrawn will not be relied on by any party to prevent the points in that letter being raised on any revised permit.

It was also agreed that the Council would play a constructive role in the consultations for the new permit.

As of 30 January 2013, Surrey, SITA and the EA have now agreed those terms and written to the Court to say so. Spelthorne Council has seen those assurances and as a result Spelthorne has discontinued the Judicial Review.