



1st July 2019

To the Environment Agency, Enforcement.

enquiries@environment-agency.gov.uk

Dear Sir/Madam,

Re: Waste Regulations 2011. Regulation 37. The enforcement of Part 5 (Duties, waste management) Gloucestershire County Council (GCC) and UBB Ltd. Waste Incinerator. Due to be commissioned in July 2019 in apparent breach of Regulation 12, waste hierarchy

We note that you are the enforcement agency for this law. We are aware of clear evidence that Gloucestershire County Council (GCC) and its chosen operator, UBB Ltd, plan to operate the incineration plant at Javelin Park in breach of their obligations under the Waste Regulations, particularly regulation 12.1. We ask that you urgently investigate this matter and issue the necessary notices to GCC, UBB or both. In particular we would ask that you consider issuing:

- 1) A 'stop notice' under Regulation 39, to immediately stop all commissioning trials and not to receive residual waste until this matter is properly investigated. This should include requiring the following actions as steps to remedy the contravention of the waste hierarchy resulting from the commissioning trials:
 - a) All residual waste to be sorted (pre-treated) prior to incineration to remove recyclable material.
 - b) The contract terms (between GCC and UBB) should be amended so as to:
 - i) encourage waste reduction, reuse and recycling (since the current contract terms have the opposite effect, as discussed below).
 - ii) ensure that future enhancements in waste management and treatment options are not "locked out" through a 25 year, minimum quantity contract to incinerate.
- 2) A 'compliance notice' under Regulation 38, in respect of the commissioning trials and the subsequent planned operation of the facility, requiring it not to receive residual waste until this matter is properly investigated. This should include the same requirements as described in the sub-bullets above.

If you do not investigate the apparent breaches outlined below, or if you investigate and opt not to issue notices as described above, can you please respond immediately, setting out your reasoning.

This letter is sent on behalf of Community R4C Ltd. We are a not for profit, community owned business established to promote circular economy principles in Gloucestershire. You will understand therefore that we are deeply concerned about the successful implementation of the principles enshrined in the Waste Regulations. We are keen to support and encourage your work in this area, while recognising that this is a matter of law for which you are the enforcement body.

We ask that you urgently investigate the plans for the operation of the waste incinerator in Gloucestershire and the contract between GCC and UBB (Feb 2016) for this.

Time is of the essence. The plant has continued to be built while the new contract was kept secret. It is now close to commissioning trials, and will accept residual waste from the WCA's from July.

If you do not consider the investigation of the apparent breaches outlined, or the urgent issuing of notices as above is appropriate can you please respond immediately, setting out your reasoning.

Yours sincerely,

Tom Jarman
Director, Community R4C Ltd
email: tom@communityr4c.com Phone: 07966

Background follows



Re: Letter to EA 1.7.19 Waste Regulations 2011. Regulation 37. The enforcement of Part 5 Gloucestershire County Council (GCC) and UBB Ltd. Waste Incinerator. Apparent breach of Regulation 12, waste hierarchy

Background

- 1) GCC is the Waste Disposal Authority for Gloucestershire. As such, it is an 'establishment or undertaking which imports, produces, collects, transports, recovers or disposes of waste'.
- 2) UBB is a joint venture between Urbaser and Balfour Beatty that manages waste on behalf of GCC. Both UBB and the two partners in the joint venture are establishments or undertakings that import, produce, collect, transport, recover or dispose of waste.
- 3) The Waste (England and Wales) Regulations were made on 28th March 2011. Under Regulation 12, an establishment or undertaking that 'imports, produces, collects, transports, recovers or disposes of waste' has duty to 'take all such measures available to it as are reasonable in the circumstances to apply the following waste hierarchy as a priority order'.
- 4) The contract was signed in Feb 2016. It is for 25 years+ and will cost GCC some £650M over its lifetime. At the time when the contract was signed, both GCC and UBB were subject to the duty created under Regulation 12.
- 5) **There was no competitive tendering process prior to this contract award in 2016.** The contract was awarded in secret by GCC to UBB who had won a previous competitive process in 2013. The contract terms are similar to those agreed in 2013, however the cost has increased by £150M, a 30% increase in cost agreed in secret. This is a clear breach of procurement law which does not fit with any legal exceptions to the need to re-tender.
 - a) This is of relevance because the failures mean that GCC and UBB cannot rely on the tender process to demonstrate that they have taken "all such measures available to it as are reasonable" to comply with Regulation 12 (duty in relation to the waste hierarchy).
 - b) Indeed, there is ample evidence in Gloucestershire and elsewhere that alternatives that would presumably have been proposed in a competitive tender would have been far cheaper and these would have pushed waste further up the hierarchy.
 - c) The failure to tender properly meant that selection criteria for the supplier did not take proper account of the Waste Regulations 2011. The original tender process and selection criteria were set in 2009, i.e. prior to the regulation. Had a RFT / OJEU notice gone out in 2015 as is required under public procurement law, this would have needed to reflect the requirements of the waste hierarchy. There is evidence that the 2009 selection criteria did not give the prominence to the hierarchy that would have been required once the Regulations were made. This evidence includes GCC Cabinet papers (available on request) where they stated (in effect) "MBT would result in higher levels of recycling however this is not important".
 - d) Note that this failure to lawfully tender only became clear when GCC finally issued unredacted copies of the 2016 contract in December 2018 revealing the 30% cost increase, having previously refused to comply with Information Tribunal / Information Commissioner's Office rulings that they must do so. Had they have released this information sooner, it would have been possible for us to act more quickly. The Agency should not reward failure to comply with its obligations to disclose information by accepting any argument regarding the timeliness of this intervention.
 - e) The existence of a contract, especially one arrived at by means of a dubious process, does not release GCC or UBB from the obligations of Regulation 12.
- 6) The contract terms (revealed in December 2018) include:
 - a) A 25+ year term and contractual commitment of minimum residual waste tonnages
 - b) A minimum residual waste tonnage (initially 108,000 tpa) at a gate fee of c£190 (initially).
 - c) Additional "residual waste" tonnage to be incinerated at a marginal cost of c£17 per tonne.

Note that GCC's recycling credits system currently pays the Waste Collection Authorities (WCAs, i.e. district councils) c£70 per tonne for recycling collected. These terms mean that there is a perverse incentive to discourage waste reduction and recycling initiatives. First, there is a need to 'fill' the committed minimum quantity, even as waste reduction and recycling rates increase; secondly it becomes cheaper for GCC to burn than to recycle the additional waste that could be separately collected by WCAs. Once the minimum tonnage is reached, each tonne recycled costs GCC £53 more than each tonne incinerated, unless GCC can recoup these costs through the sale of material. The



contract itself therefore acts as a disincentive for GCC to promote recycling, as it is obliged to do under Regulation 12.

- 7) The issue of compliance with the waste hierarchy was considered through the lengthy and contentious planning process. The plant will operate marginally above the R1 threshold, with an efficiency close to 21% - just enough to qualify as 'recovery' rather than disposal. GCC has used this argument to say that, by diverting waste from landfill to recovery, the facility is in conformance with the waste hierarchy. However, the discussion of the waste hierarchy in the planning process is now outdated, and further consideration is merited due to changes in the relevant facts.
 - a) Although the plant is said to be 'CHP (Combined Heat and Power) ready', no user for the heat has been found; nor is one likely to be found, both for technical reasons and due to the location of the plant. Even if this was to occur the plant would still run at very low levels of efficiency.
 - b) The focus on moving waste from landfill to recovery clearly ignores the obligation to apply the hierarchy as a priority order, starting with waste prevention. The potential for additional recycling should have been given a higher priority, and should be given that priority by the Agency.
 - c) The plant incorporates no pre-sort facility and simply incinerates all residual waste from collection authorities. This is outdated and very poor practice. It is entirely feasible to remove recyclable material and material that should not be incinerated (including heavy metals) from the waste stream prior to incineration in order to comply with the waste hierarchy. Pre-treatment of waste is one of the measures recommended in the Mayor of London's Environment Strategy to enable London local authorities to meet an emissions performance standard for waste management. There is no reason why Gloucestershire could not do the same.
 - d) A deviation from the waste hierarchy is permitted to achieve a better environmental outcome (Regulation 12.2), but the contract locks GCC in to a treatment arrangement barely above the recovery thresholds. It is now well understood that this type of poor-quality incineration (no CHP, no pre-sort, burning plastic) is likely to have a worse environmental impact than well managed landfill, especially as electricity generation is decarbonised. In practice, then, it might well be preferable under Regulation 12.2 for some material to be landfilled rather than subject to poor quality energy recovery, especially if this allows a greater proportion of the waste to be recycled.
- 8) There have been important developments in Government policy in the last six months that make the facility, and the 25-year lock in, still less appropriate.
 - a) Recognising the climate emergency we face, the Government is committing to reach zero carbon by 2050. The facility may well still be operational by that date.
 - i) Over 65% of the electricity generated by the Javelin Park Incinerator is likely to come from the burning of plastic that remains in the residual waste (see attached paper). This is highly undesirable from a carbon footprint perspective. Plastic is a fossil fuel (derived from oil) and burning in this way at efficiency levels close to 20% is far worse for CO2 emissions than even the worst coal fired power plants.
 - ii) We have not seen recent waste composition analysis; however, historical data shows that well over 50% of the residual waste to be treated is economically recyclable. There is a high level of plastics and electronic / WEEE in the residual waste. Clearly this material should be removed prior to incineration, or the plant's operation will be inconsistent with the Government's stated objectives.
 - iii) This contextual information should inform the EA's view on whether the facility is a reasonable measure to apply the waste hierarchy, or whether additional measures (such as pre-treatment) should be required.
 - b) The Government has issued a new waste strategy, in which it aims to achieve 65% recycling by 2035, and to take measures to reduce waste.
 - i) In 2017/18 GCC received a total of 304,138 tonnes of waste, including some 20,000 tonnes of non-household waste.



- ii) The 108,000 tonnes of capacity provided by the incinerator represents 36% of the waste received by GCC, even prior to the impacts of any waste prevention.
- iii) The incinerator contract therefore locks GCC into a position that will prevent it from fully contributing to meeting the Government's recycling targets.
- iv) This contextual information should inform the EA's view on whether the facility is a reasonable measure to apply the waste hierarchy, or whether additional measures (such as pre-treatment) should be required.

GCC may argue that the existence of the contract makes it costly or impractical to change the arrangements relating to the facility so as to better meet the requirements of the waste hierarchy. We contend that the EA should give this argument no weight. GCC and UBB were both subject to the requirements of Regulation 12 at the time when they entered into the contract, and should both have been aware of their duties under it. Having entered into a contract that makes it more difficult and expensive for them to fulfil their duty should not be an acceptable reason for continuing to breach it.