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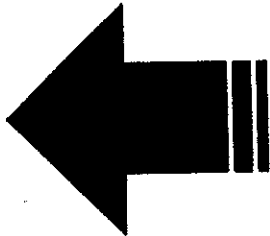
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Joint Circular from the
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26th July 1989

**Landfill Sites:
Development Control**

1. This Circular gives further advice to local authorities about the use of their planning powers in relation to landfill sites in England and Wales which may be generating harmful gases. It covers the consideration of planning applications for new landfills, and also the implications for the planning process of landfill sites generating gases close to existing development. The advice supplements that given in Department of the Environment Circular 21/87 (Welsh Office 22/87) about the development of contaminated land, including completed landfill sites. It supersedes the advice given in paragraphs 43 to 48 of Department of the Environment Circular 55/76 (Welsh Office 76/76) insofar as they relate to matters concerning landfill gas.

2. This Circular should be read in conjunction with Waste Management Papers Nos. 4 (revised), 26 and 27. Waste Management Paper No. 4 provides guidance on regulating the operation of waste treatment and disposal facilities, including landfill sites, through the use of disposal licences. Waste Management Paper No. 26 advises on the assessment, design, preparation, operation and restoration of landfill sites, including consideration of the problem of landfill gas. Waste Management Paper No. 27 provides a technical memorandum on the monitoring and control measures needed to deal with landfill gas based upon current knowledge and working experience.

3. The Secretaries of State consider that if local planning authorities and developers heed the guidance given in this Circular and in the Waste Management Papers referred to above, planning decisions should be taken on a basis which takes account of the risk to development from the migration of landfill gas.

Definition of landfill gas

4. The principal components of landfill gas are methane and carbon dioxide; other gases are present at trace levels. This gas may give rise to a variety of hazards if it migrates to and accumulates in property or

confined spaces. If generated in sufficient quantity the gas may form an explosive mixture with air, it can act as an asphyxiant and in particular circumstances it may be toxic. Leachate from waste may also migrate and generate gas some distance away from the landfill. A discussion of the properties of landfill gas is included in Waste Management Paper No. 27.

Surveys of the problem

5. Her Majesty's Inspectorate of Pollution (HMIP) wrote to all Waste Disposal Authorities (WDAs) in England and Wales on 18 December 1987 and asked them to:

- (a) review existing disposal licences to ensure that appropriate measures to control landfill gas were specified;
- (b) list active landfills, and those closed in the last 10 years, that were generating landfill gas and estimate the quantities involved;
- (c) indicate which of those sites were close to housing or industry;
- (d) indicate which closed sites had been subject to any redevelopment involving construction, or for which such planning consent existed; and
- (e) describe the measures taken to control gas through disposal licence conditions or by site operators or developers.

6. The results of this survey suggested that there were about 1,400 active and closed sites which could be sources of problems, about half of them within 250 metres of housing or industry. Many were being used for agricultural or public open space purposes. It was difficult to define the scale of the problem precisely, because records were incomplete and many closed sites had not been identified. Accordingly, HMIP wrote again to WDAs asking them to complete their review of licences and surveys relating to those sites, and to report as soon as possible on the progress made. The local authority associations were also involved in discussions to assist in improving the quality of the information supplied.

7. Subsequently WDAs made a fuller assessment of potentially difficult sites, based on their own records, and started programmes of monitoring and gas control. As a result some 825 sites were thought to require closer attention. HMIP has now sent the results of its findings to WDAs, together with additional records of older sites operated prior to the introduction of disposal licensing under the Control of Pollution Act 1974 (COPA).

Powers and Responsibilities

8. The main statutory powers which provide control over landfill sites are the Planning Acts and COPA. The Public Health Acts, the Occupiers Liability Act 1957, the Health and Safety at Work etc Act 1974, the Building Regulations 1985, which relate to the precautions that need to be taken when building work is carried out on contaminated land, and the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 will also be appropriate in certain situations. In addition to statutory remedies, emissions from landfill sites may, in certain circumstances, constitute a public or private nuisance in common law.

9. In the shire counties of England both development control of waste disposal sites and their licensing are functions exercised by county councils. In Wales, district councils are responsible for both, except where a development control decision is part of a permission for mineral workings, which is a county council function. In these cases, the county council have responsibility for development control, the district council for site licensing. Development control in National Parks is the responsibility of the National Parks Committees, except in the case of the Lake District and Peak District National Parks which have joint planning boards. In the metropolitan areas of England, responsibility for development control of waste disposal sites lies with the district councils, but licensing is also a district council responsibility only in the Tyne and Wear, West Yorkshire, South Yorkshire and West Midlands areas; in London, Greater Manchester and Merseyside, specific statutory authorities are responsible for licensing. The enforcement of public health legislation and the Building Regulations are district council functions in both England and Wales, with some responsibility for Building Regulations being taken by Approved Inspectors.

Consultation

10. Article 18 of the General Development Order 1988 (the GDO) requires a local planning authority to consult the waste disposal authority concerned before granting planning permission for development within 250 metres of land which is (or has been at any time in the 30 years before the relevant application) used for the deposit of refuse or waste, and which has been notified to the planning authority by the waste disposal authority. As stated in DoE Circular 22/88 (Welsh Office 44/88), the consultation requirement aims to ensure consultation with waste disposal authorities on development proposals near landfill sites which are likely to emit gas. The onus is upon waste disposal authorities to identify sites and to notify them to the local planning authority. Where an authority is both the waste disposal and the local planning authority, effective liaison between the departments concerned is essential. Where landfill sites are proposed near existing buildings, district councils in England have the opportunity to comment on county matter applications under Article 20 of the GDO. The statutory requirement is a minimum, and local planning authorities are advised to consult on any suspect sites outside the criteria set out in the GDO. Local planning authorities should take full account of the information or advice they receive following these consultations.

New landfill sites

11. There can be no hard-and-fast rule about the appropriate distance between new landfill sites and existing development in relation to the possible migration of landfill gas. A proposal for a site as close as 250 metres to other development will require special attention. It is essential that there should be close consultation between those responsible for disposal licensing and for land use planning, so that full account is taken both of the current and future pattern of development in the vicinity of any site, and of the after-use of the site following its completion as a landfill. In order to determine a planning application for a new landfill site, and to draw up relevant conditions if permission is granted, information will usually be needed on the source, types and quantities of wastes likely to be deposited, and on the intended duration of the

operations. Waste Management Paper No. 26 provides guidance on what matters should be considered in establishing and operating a landfill site.

12. In the case of applications for new landfill sites, the planning authority will need to consider whether the proposed development is of a type listed in Schedule 1 or Schedule 2 to the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988 and, if the latter, whether it will require an environmental assessment (EA) in accordance with those Regulations before planning permission may be granted. DOE Circular 15/88 (Welsh Office Circular 23/88) describes the procedures to be followed where EA is required, and paragraph 23 of Appendix A to the Circular gives some criteria for assessing whether landfill sites are likely to be candidates for EA.

13. Gas controls at proposed landfill sites can be achieved both through the licensing provisions of sections 3-11 of COPA, and through conditions imposed on a planning permission under the Town and Country Planning Act 1971 (the 1971 Act). Conditions can be placed on waste disposal licences to require the installation of adequate gas management systems. Waste Management Papers Nos. 4 (revised), 26 and 27 give guidance on disposal licence conditions. Conditions imposed on planning permissions can also refer to the management of gas, and these are particularly relevant to the management of gas after the site has been closed (so long as there continues to be limited power to control through disposal licensing). DoE Circular 1/85 (Welsh Office 1/85) gives advice about planning conditions.

14. Control can also be achieved by way of agreements under section 52 of the 1971 Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or similar powers. Such agreements are binding on successors in title but, by their nature, developers cannot be forced to enter into them. Further advice is given in DoE Circular 22/83 (Welsh Office 46/83) and Planning Policy Guidance Note 1. Where such agreements are made, they may provide more effective control than planning conditions.

Existing landfill sites

15. Gas control at current landfill sites can be obtained through the licensing provisions of Sections 3-11 of COPA. Any conditions attached to such licences may be modified or supplemented in the light of working experience without attracting a liability to pay compensation. There is provision for appeal to the Secretary of State against modification, however, and the modifications cannot be implemented until the appeal has been decided. Under Section 51 of the 1971 Act planning conditions can be imposed on an existing land use, or be modified, but there is a resulting liability to pay compensation. Written claims for compensation should be made to the local planning authority within six months of such conditions being imposed. The provisions of an agreement under section 52 of the 1971 Act or similar powers can normally only be modified with the agreement of the parties, unless the original agreement allowed for unilateral changes. Nevertheless anyone with an interest in the land concerned may apply to the Lands Tribunal under section 84 of the Law of Property Act 1925 for the modification or discharge of a restrictive covenant, including a restrictive covenant in a section 52 agreement.

Closed sites

16. At present after closure of a landfill site or surrender of a disposal licence, whether or not the site is redeveloped, the licensing provisions of COPA are no longer available. Control must largely rely on any conditions imposed on the original planning permission, or on the provisions of any relevant section 52 agreement. These should take into account the proposed or possible after-use of the site. Any further planning condition imposed by an order made under section 51 of the 1971 Act, designed to regulate the site after its closure, or any similar modification of an earlier condition, could entail a liability to pay compensation. Alternatively, new or modified controls could be sought through a new or modified section 52 agreement.

17. Current powers of control over gas emissions from closed landfills may be limited. However, there is an obligation on occupiers of land to ensure the safety of persons on or near their land under the Occupiers Liability Act 1957. District councils also have a duty under the Public Health Acts to survey their areas for nuisance and have powers to require abatement of a nuisance. Nuisances are defined by section 92 of the Public Health Act 1936, and certain emissions of gas from landfill sites will fall within that definition and be subject to the abatement provisions of that Act.

18. The limitations of control over post-closure management of landfill sites has been recognised. They have been included in wider consultation, concluded in March 1989, about proposed amendments to waste disposal law. These legislative proposals include a duty of care for all handlers of waste, and proposed powers to impose pollution control conditions on waste disposal licences which would apply until a final certificate of completion has been issued. In addition, there would be a specific responsibility for waste disposal authorities to monitor closed sites for landfill gas.

Redevelopment

19. The redevelopment of land requires planning permission. Where the redevelopment of a closed landfill site or of nearby land is involved, even the possibility of difficulties from migrating gas would be a material planning consideration. This might result in permission being refused, or warrant imposing appropriate conditions to manage any gas from the closed landfill, or to ensure that suitable precautions are taken with construction methods. Where the presence of gas has been discovered, or it is suspected that it may be present during the development of a site, investigations should be carried out to determine the source of the gas and apply any remedial measures to prevent its causing a hazard either during the course of the development or during subsequent use of the site. In this context, developers and planning authorities should be aware of Circular 21/87, Waste Management Paper No. 27 and the Guidance Notes of the Inter-Departmental Committee on Redevelopment of Contaminated Land (ICRCL). If the landfill site is not included in the application, but is nonetheless under the control of the applicant, gas management conditions could be extended to that site. It may be possible to secure an agreement under section 52 of the 1971 Act to deal with the management of migrating gas before granting permission to develop the land in question.

20. The Building Regulations 1985 (Schedule 1 Part C) require precautions to be taken to avoid danger to health caused by substances found on or in the ground to be covered by a building. Approved Document C accompanying the Regulations includes some guidance on what should be done.

General

21. Local planning authorities should exercise due caution in granting permission for development or redevelopment on or near landfill sites. Permission should not be granted unless reliable arrangements can be made to overcome the danger of migrating gas. In some cases this may require consideration of the removal of the gas-generating material. Equally, authorities should address the problem of existing developments on or near landfill sites, and decide whether the circumstances warrant action under section 51 of the 1971 Act to require the use to be discontinued, to impose any conditions on the continuation of the use, or to alter or remove any buildings or works.

22. Local planning authorities will also wish to be satisfied that the developer has taken account of the possibility that gas might migrate from a landfill. They will wish to inform themselves of the steps that will be taken to ensure that gas cannot migrate into property or accumulate in confined spaces. Specialist advice will usually have to be sought by the developer in providing a design, and constructing in a way that gives an adequate degree of protection against landfill gas. In a review of the Building Regulations, consideration is being given to the need for additional guidance in relation to those sites where development is appropriate. The guidance would include precautions to be taken when a building is being constructed on a site which might be affected by landfill gas so as to avoid the risk of explosion.

23. Planning Policy Guidance Note 3 makes clear that planning authorities in England, in ensuring the availability of a 5 year supply of land for housing, should take realistic account of physical constraints on the release of land, and should ensure that "land is not counted as being available if it is subject to legal or other constraints that mean that it is unlikely to become available to the housebuilding industry for development within the 5 year period". (Advice on the availability of land for housing in Wales is given in WO Circular 47/84.) The confirmed or suspected presence of landfill gas may be such a constraint, and planning authorities will need to take account of the results of the survey work referred to earlier in this Circular, and may also need to consult the waste disposal authority, before assessing the potential for housing development near landfill sites. Any constraints on the development potential of a site would need to be taken into account in assessing the availability of land which already has planning permission, as well as land not yet released for development.

24. For the longer term, in preparing and reviewing development plans local planning authorities should take full account both of the likely requirement for landfill sites in their areas and of the implications of their presence for other types of development in the vicinity. (Further advice is given in the memorandum accompanying Circular 22/84 (Welsh Office 43/84), and in the annex to Circular 21/87.) Plan preparation will require close consultations between county and district councils in the

non-metropolitan areas, and with authorities responsible for disposal licensing, to assess the provision that can safely be made for other types of development in proximity to landfill sites.

Expenditure and manpower implications

25. Local authorities already make use of the statutory provisions referred to in this Circular. They have long been responsible for waste management and for development control in relation to landfill sites. The need now to pay special regard to the problems of landfill gas should be reflected in the relative priorities for allocating existing resources for these subject areas. The guidance in this Circular should not put an additional burden on authorities. Extra costs for any remedial measures are outside the scope of this Circular, and would require consideration by local authorities in relation to the ownership and particular circumstances of a site.

R S HORSMAN, *Assistant Secretary*

J C LEWIS, *Assistant Secretary*

Publications referred to in the Circular

A. CIRCULARS

DOE 55/76 (WO 76/76)

Control of Pollution Act 1974—Part 1 (Waste on Land) Disposal Licences.

DOE 22/83 (WO 46/83)

Town and Country Planning Act 1971

Planning Gain

DOE 22/84 (WO 43/84)

Memorandum on Structure and Local Plans

DOE 1/85 (WO 1/85)

The use of conditions in planning permissions

DOE 21/87 (WO 22/87)

Development of Contaminated Land

DOE 15/88 (WO 23/88)

Environmental Assessment

DOE 22/88 (WO 44/88)

General Development Order Consolidation

B. WASTE MANAGEMENT PAPERS

Landfilling Wastes, Waste Management Paper No. 26. A Technical Memorandum for the Disposal of Wastes on Landfill Sites, Department of the Environment 1986.

The Licensing of Waste Facilities, Waste Management Paper No. 4. A Revision of Waste Management Paper No. 4 (1976) to provide a technical memorandum on the licensing of waste facilities including a review of relevant legislation. Her Majesty's Inspectorate of Pollution 1988.

The Control of Landfill Gas, Waste Management Paper No. 27. A technical memorandum on the monitoring and control of landfill gas. Her Majesty's Inspectorate of Pollution 1989.

C. PLANNING POLICY GUIDANCE NOTES (PPG's)

PPG1 General Policy and Principles (joint DOE/WO publication)

PPG3 Land for Housing (DOE publication)

D. THE INTER-DEPARTMENTAL COMMITTEE ON THE REDEVELOPMENT OF CONTAMINATED LAND (ICRCL) PAPERS.

Copies of ICRCL papers can be obtained from

Department of the Environment

Distribution Unit

Building 3

Victoria Road

South Ruislip

Middlesex

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