

# 'Piggybacking' waste case has significant implications for landfills throughout the UK

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The English Court of Appeal case dealt with the issue of a closed landfill and the desire of the applicant to open a separate new part on the landfill site which partially overlay the closed cell and is known as 'piggybacking'. The Court of Appeal case arose from an appeal against a judgement of Collins J dated 4 April 2007 whereby he made two declarations:

1. "As a matter of law, a landfill permit may be granted pursuant to the Landfill Regulations for the operation of a separate landfill which partially overlies a closed cell containing previously deposited waste (a 'piggybacking' landfill).
2. Where an installation or part of an installation as a landfill includes a closed cell which is discharging and will continue to discharge a List I substance into groundwater or a List II substance such as to cause pollution of groundwater a landfill permit cannot as a matter of law be granted for that landfill as the landfill permit would thereby permit those discharges to be made from the landfill contrary to the Groundwater Regulations."

The Environment Agency appealed against the first declaration which was known in the court case as the 'installation issue' and the appellants Anti Waste Limited appealed against the second declaration which was known as the 'groundwater issue'.

Anti Waste Limited sought to landfill the waste they deposit so that it would overlap that in the existing closed cell or to become part of it. They proposed an angled liner which was strong enough and impervious so as to prevent leeching from the new waste through the old and compression of the old causing additional leeching from it therefore intending that the new cell would be independent from the old closed cell. This is known as piggybacking. It was the Environment Agency's contention that piggybacking is not permitted by the applicable directives and regulations.

Lord Justice Pill held "application is made for a permit for an installation which involves identifying a stationary technical unit. That can be done by identifying a space in which the scheduled activity can be carried out independently as a functionally self contained operation. It does not fail to meet the requirement because of the likely impact in other areas including closed cells. That impact is very relevant to whether a permit should be granted, but there is no requirement to demonstrate an absence of such impact before an application for a permit can be considered." Furthermore "the need for an integrated approach to pollution control does not require an applicant to include within his area of application any closed cell on which the new activity might have an impact. That impact, if any, can be considered during the application procedure and does not place a bar upon an application."

The judge held in relation to the groundwater issue that "on the point of statutory construction he agreed with the appellants. A permit which does not require the ending and prevention of an old discharge does not "permit" that discharge within the meaning of Regulation 4 of the Groundwater Regulations. The regulations contemplate a discharge, direct or indirect, which results from the activity to be authorised and its consequences but not a discharge extraneous in a sense that it is unrelated to the new activity." Lord Justice Sedley and Lord Justice Rimmer agreed with Lord Justice Pill's reasons and Lord Justice Sedley stated that "a piggybacking management of cells does not necessarily disqualify from the grant of a permit." Which is why he found it incomprehensible that the declaration was being fought over. The importance of this case lies in its clarification for all those making piggybacking applications in landfill cells in Northern Ireland, that they cannot be ruled out ab initio.

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