

# Concerns Arising in Relation to the New Barnfield Proposal

This is a briefing paper from Herts. Without Incineration (HertsWOW) to the Overview and Scrutiny Committee of Hertfordshire County Council  
Ref.: Response of the Environment & Commercial Services Department  
Note: This addresses main points in the Report rather than the Appendix.  
Based on a draft by Shlomo Downen, UK Without Incineration (UKWIN)  
Edited by John Webb, Herts. WithOut Waste (HertsWOW), 23 May 2012

## a. Public Borrowing vs. Private Finance Initiative (PFI)

PFI offers bad value for money - see: <http://ukwin.org.uk/resources/campaign-material/quote-bank/#WastePro>, for example: "Although the technology may be bankable, PFI is very expensive for the client." – Richard Turner, Viridor (Director of Energy from Waste). HCC have not produced an up-to-date costing of the PFI option in comparison with normal public borrowing (through Public Works Loan Board, PWLB), and have not given any justification or explanation of their claim that the latter would not entail lower costs. The House of Commons Treasury Select Committee estimated that contractors' costs of finance through the PFI is about 8%, which much greater (by at least double) than the PWLB's rate for public finance for Councils. The Select Committee's recent report in 2011 severely criticised PFI schemes which they considered to be very costly, with poor value for money. They raised severe questions about PFI schemes and in particular whether PFI schemes could yield efficiency savings to offset their extra financing costs. They recommended that the Value for Money assessment process should be subjected to scrutiny by the National Audit Office (NAO). Consequently HCC need to be able to show clearly and transparently the costs of their waste management options under PWLB vs PFI, with and without any Defra subsidy, so as to be able to answer adequately the Select Committee's questions and likely forthcoming scrutiny. The loss of PFI Credits would be far outweighed by the removal of massive repayments (paying well over the odds for expensive debt).

## b. Financial liability re supply of feedstock

HCC have not calculated the financial liability (in relation to the PFI contract) should the Council be unable to supply sufficient incinerator feedstock. Considering the trends involving exports of Refuse Derived Fuel (RDF) and existing and planned incineration overcapacity (see: <http://ukwin.org.uk/2012/05/17/rotterdam-incinerator-closed-due-to-overcapacity/> and associated links) it is not so far-fetched to anticipate a shortfall of feedstock during the lifespan of the contract for such a large incinerator. Even if feedstock could be sourced, this may require very low gate fees, or even no gate fees. That has already been the case at Nottingham's Eastcroft facility, where even rival waste companies were offered capacity for burning waste free of charge to maintain feedstock levels. Any money invested in availability fees that are "redeemed" by the Council due to third party use of the facility will presumably be heavily dependent on the gate fee that those third parties will pay (and the sharing mechanism for such gate fees), though this does not seem to have been discussed at all in the Report.

Saying: "should the County Council be unable to supply this contract minimum, there are mechanisms within the contract that mean that the County Council should not be financially disadvantaged" is not the same as saying "should the County Council be unable to supply this contract minimum, there are mechanisms within the contract that mean that the County Council would not be financially disadvantaged", nor is it the same as providing assurance that the Council would not be disadvantaged under any circumstances, as the risk falls only to the contractor, nor is it the same as providing financial liability calculations (e.g. in a "worst case scenario" where no third party waste could be acquired).

Simply put, if not enough waste is sent to the incinerator, what is the Council's liability?

## c. Potential for an Incineration Tax

The statement, in the Response of the Environment & Commercial Services Department, that: "There is no evidence to suggest that the Government has any intention of introducing an incineration tax"

suggests that HCC Waste Officers are unaware of the Government's commitment to addressing "market failures" associated with waste policy, as expressed in the June 2011 Review of Waste and Waste Policy, nor of the Government's identification of incineration as resulting in a market failure (in Defra's Economics of Waste and Waste Policy report), and the identification of taxation as a potential mechanism for correcting such a market failure (in the Waste Review and elsewhere). Section 4 of [http://ukwin.org.uk/files/pdf/UKWIN\\_June\\_2011\\_Waste\\_Review\\_Briefing.pdf](http://ukwin.org.uk/files/pdf/UKWIN_June_2011_Waste_Review_Briefing.pdf) provides evidence that the Government may have intentions for an incineration tax.

The Waste Officers failed to calculate the financial liability for the Council should the Government follow through on its commitment to correct the market failure by introducing an incineration tax. We need clarification of what the contract says about any such liabilities arising from legislative changes, which should fall to Veolia not HCC since they are outside HCC's control and are part of the economic environment within which Veolia (as a nationwide company) has to operate and take account of. A further question that arises is whether Veolia should in any case be subject to paying the incineration tax on third party waste. The HCC need to set out for the Overview and Scrutiny panel the position regarding the possible level of such liabilities and where they would currently fall.

Our reading of <http://www.hertsdirect.org/docs/pdf/r/schs.pdf> Schedule 19 Section 6 is that if Veolia receive lower Third Party Income as a result of an incineration tax then HCC would compensate them (i.e. HCC would ensure that Veolia were not out of pocket by paying the money that Veolia were expecting from third parties, but would not get due to an incineration tax). Section 6.1 states that the local authority "...shall...compensate the Contractor for the Third Party Income that would otherwise have been receivable but for the occurrence of a Qualifying Change in Law".

#### **d. Up-to-date cost comparison of alternative processes**

HCC need substantively and transparently to update their evidence that was behind their recommendation to Cabinet in October 2008 to go for EFW, on the full cost comparison between Energy from Waste (EfW) vs Mechanical Biological Treatment (MBT) and Advanced Thermal Treatment (ATT) singly or in different combinations. This needs particularly to take account of recent important developments and changes since then including:

1. Concerns in (a.) above about the high financing costs by PFI of the big capital expenditures required for EfW
2. Concerns in (b.) above about recent developments in planned and existing incineration capacity and the supply of incineration feedstock that reduce the price that could be obtained for incinerating such brought-in wastes and hence raising the net costs of managing Hertfordshire's wastes at such a large incinerator as that currently proposed for New Barnfield.
3. Evidence, points and concerns raised during the independent examination of HCC's draft Waste Management Strategy which altered its evidence base (e.g. regarding data on net waste arisings) and its recommendations.
4. Extra costs of measures and actions subsequently taken in the wake of the decision to go for the proposed incinerator at New Barnfield (e.g. costs of relocation of the special needs school etc.).
5. Recent experience of incinerators in practice not working well (e.g. at Sheffield) and turning out to be bad investments and major liabilities for the local community (e.g. at Stoke).
6. Recent developments and considerations in the developments in the effectiveness and efficiency of the alternative technologies (e.g. MBT) such as Birmingham City Council's current active proposal for a series of small plants as opposed to one big incinerator. Also note the success of the recent development of recycling schemes by the districts and boroughs in Hertfordshire.
7. Defra's recent supplementary guidance in 2009 on how to allow for uncertainties, which stresses the need to pay particular attention to examining the potential for costly errors in any irreversible capital options (such as a large scale incinerator). This includes the costly errors of undermining such development and application of technological advances. In line with Defra's guidance, there should be due consideration of a phased introduction of alternative smaller treatment plants closer to waste arisings and higher up the waste hierarchy. This would expand as and when the need arises and allow for learning from the initial plants so as to increase the efficiency of subsequent plants.

All in all we urgently need a substantive, careful, transparent and up-to-date review and scrutiny of the entire proposal.

## FURTHER REFERENCES

Key risks: Note that the explanation of key risks for the Herts. waste PFI (available from: <http://www.hertsdirect.org/docs/pdf/h/hwpp.pdf>) states: "Although market standard and compliant with SoPC4 and WIDP, the Authority retains the risk of Qualifying Changes in Law. The Contractor's Share for general changes in Law with a capital expenditure implication is capped at £XXXXXX [redacted] which is considered by the Authority to represent value for money. An acceptable Waste Law List has been settled".

"Qualifying Change in Law" is defined at: <http://www.hertsdirect.org/docs/pdf/r/schs.pdf> and includes: (d) any Legislation or Guidance coming into effect after the date of this Contract giving effect to any of those documents or policies listed in the Waste Law List.

The Waste Law List is Schedule 14 of <http://www.hertsdirect.org/docs/pdf/r/schs.pdf> and includes many things, all of which would result in liability falling to HCC and not to Veolia, including, for example: "66. The UK Government's (the coalition) programme for government published on 20 May 2010, in respect of waste, planning, energy and climate change" - which included a promise of more green taxes - so, arguably, an incineration tax could implement the Coalition Agreement, page 31 of which states: "We will increase the proportion of tax revenue accounted for by environmental taxes. " Source:

[http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition\\_programme\\_for\\_government.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf).

General references can be found on the UKWIN Case Studies page at: <http://ukwin.org.uk/resources/case-studies/>

References for Sheffield also include: <http://ukwin.org.uk/2008/07/17/did-mcdonalds-give-sheffields-incinerator-indigestion/> and <http://ukwin.org.uk/2009/12/01/sheffield-to-recycle-more-and-let-veolia-burn-from-further-afield/>

For Stoke, see: <http://www.letsrecycle.com/news/latest-news/councils/stoke-faces-bill-for-sending-less-waste-to-efw>

For German overcapacity, see: <http://ukwin.org.uk/2012/05/17/rotterdam-incinerator-closed-due-to-overcapacity/> and <http://www.letsrecycle.com/news/latest-news/legislation/commission-calls-for-move-up-waste-hierarchy>