

Case Name: *Friends of the Earth Ltd, R (On the Application Of) v Cuadrilla Bowland Ltd* [2019] EWHC 25 (Admin) (11 January 2019)

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Commentary: A rolled-up hearing for permission to apply for judicial review and hear the challenge of a decision of the Environment Agency ("EA") to grant a variation to the environmental permit granted to the Interested Party ("Cuadrilla") relating to mining waste activities involving hydraulic fracturing in Lancashire. Permission was granted for the judicial review but the claim was dismissed.

The site is one of the first shale gas exploration sites to receive planning permission in the UK (granted in October 2016). In January 2015 Cuadrilla was granted a permit under the Environmental Permitting (England and Wales) Regulations 2010, following consultation. In June 2017 Cuadrilla applied to vary the permit in five ways, including a change to the maximum daily discharge to be consistent with the original Waste Management Plan ("WMP") for the hydraulic fracturing stage. After a consultation (in which the Claimant made representations) the Environment Agency issued a varied permit notice.

The Claimant's grounds of challenge were that the EA breached the requirements of the Environmental Permitting (England and Wales) Regulations 2016/1154 and the Mining Waste Directive (2006/21/EC) (the "Directive") by failing to:

- a) give adequate consideration as to whether electrocoagulation would constitute "best available techniques" ("BAT") for treatment and re-use of flowback fluid as part of the permitted activities under the varied permit; and
- b) encourage the use of the emerging techniques at the site when deciding whether to grant the variation.

It was also claimed that the EA failed to consider the Claimant's representations during the consultation process that electrocoagulation was BAT for managing flow-back fluid.

It was held that the Directive contains general requirements but none which mean that the EA is required to reassess every aspect of an operation on each occasion that an operator seeks a variation of an existing permit. There is a process under Article 5(4) of the Directive which provides for the WMP to be reviewed and this is the process by which it is updated and any changes to the BAT are taken into account. Accordingly, the EA was not required to reconsider or review the WMP in this case, there being no substantial changes to the operation of the waste facility. The Directive just requires the permit to be refused if it contradicts the WMP which it did not.

The EA was not under a duty to reconsider electrocoagulation as BAT as suggested in the Claimant's representations in the consultation and nevertheless it is highly unlikely that the outcome would have been substantially different had the EA given this full consideration.

Case summary prepared by Town Legal LLP