

Environment, Planning and Transport Committee

[Draft] Committee Report

Independent Investigation: Nantygwyddon Landfill Site

Foreword

[Add text]

RICHARD EDWARDS AM

Chair, Environment, Planning and Transport Committee

February 2002

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Introduction

Our focus

1.1. Residents living in the vicinity of the Nantygwyddon landfill site in the Rhondda have for several years expressed concerns about odours, fumes and other emissions emanating from the landfill site, which they believe adversely affect not only the amenity of their community, but also their health and that of their unborn children. A variety of concerns have been raised about the planning, design, management, and regulation of the site since its establishment in 1988.

1.2. In July 2000 the National Assembly resolved to cause an independent investigation into the Nantygwyddon landfill site, looking into those health, environmental and planning issues relevant to the exercise of its functions. We were asked, in liaison with the Minister for Environment, to conduct the investigation with the assistance of an independent investigator. When considering how best to discharge this task, we agreed to focus on identifying lessons for the future by assessing how the establishment, management and regulation of the site compared with guidance in place at the time, as well as current best practice. The **resolution** of the National Assembly is reproduced at **Annex 1**.

Our approach

1.3. Our guiding principles have been openness and transparency. Our instruction from the Assembly was that the investigation should be held in public - except in exceptional cases where this could prejudice the outcome of the investigation - and that we and our investigator would meet and take evidence locally. We have followed this instruction faithfully and have maintained a public record of all evidence received by the investigation, whether it was heard in person in public, or received in writing. The approach adopted by our Independent Investigator, with our approval, has been that evidence offered only "in confidence" should not be taken into account.

1.4. Our investigation got underway in October 2000 with two meetings of the Committee in the Rhondda, the first where we heard an outline of the concerns of local residents, the second where we heard from the public bodies and organisations involved in the establishment, management and regulation of the site. Transcripts of the meetings can be found on the National Assembly website www.wales.gov.uk

1.5. We advertised for an Independent Investigator to assist us with taking evidence and analysing the issues. David Purchon was appointed following an open competition. His previous experience included serving as President of the Chartered Institute of Environmental Health, as adviser to the Chief Medical Officer for England on improving public health and managing communicable disease, and as Director of Environmental Services at Sheffield City Council. The detailed **terms of reference**, which we framed setting out the particular issues that we required the Independent Investigator to consider are reproduced at **Annex 2**.

1.6. The Independent Investigator commenced his work in November 2000, and over the year heard oral evidence totalling 36 days and examined written evidence submitted to the investigation. He reported progress to us four times. Following his final analysis of the evidence, the Independent Investigator presented his report to us at a meeting of the Committee in the Rhondda in December 2001. The **recommendations** that his report contained are reproduced at **Annex 3**.

1.7. We bore in mind the fact that ultimate responsibility for the investigation rested with us and

so, before reaching any conclusion, we invited all those involved in the investigation to comment on the Independent Investigator's report. **Responses** were received from those listed in **Annex 4**. In January 2002 we made a particular point, in view of their key roles, of questioning representatives of Bro Taf Health Authority, Environment Agency Wales and Rhondda Cynon Taf County Borough Council (CBC) on their responses to the report. A transcript of the meeting can be found on the National Assembly website www.wales.gov.uk

1.8. We considered the Independent Investigator's report and all the responses to it in February 2002, before agreeing our report and recommendations to plenary.

Our consideration of the Independent Investigator's report

1.9. In Chapter 2 we outline our consideration of the Independent Investigator's report in the light of the responses to it. For ease of reference we have grouped the Independent Investigator's recommendations into site specific and general recommendations, and have set out some points of clarification together with our assessment of the recommendations. (This grouping is not intended to imply any degree of priority and is not a rigid division. Recommendation 16.6, whilst it relates specifically to the area around Nantygwyddon, would undoubtedly be of great general interest if accepted and acted upon.)

Our recommendations

1.10. We accepted in full the recommendations of the Independent Investigator. The points of clarification outlined in Chapter Two help to understand our reasons for doing so, but are not intended to add to or subtract from those recommendations. **Our formal recommendations** to plenary are at **Chapter Three**.

Lessons for the future

1.11. Our investigation has been innovative and has set a precedent for the work of the subject committees of the National Assembly. This type of investigation could not have taken place prior to devolution, and we believe that it shows the National Assembly working at its best, through addressing issues of local concern that are of wider significance to the whole of Wales. Now that the investigation is complete, we plan to review the process to identify lessons for any future investigations, and will be inviting the views of all those who took part.

Consideration of the Independent Investigator's report

Independent Investigator's report

2.1. The Independent Investigator presented his report to us at a meeting of the Committee in

Treorchy on 12 December 2001. His **recommendations** are reproduced at **Annex 3**. The report is divided into sections corresponding to the terms of reference for the investigation. Emerging findings are to be found within each section, with conclusions at section 15 and recommendations at section 16. Further detailed information and studies form appendices to the report. A full copy of the report can be found on the National Assembly website www.wales.gov.uk

Responses to the Independent Investigator's report

2.2. We invited all those involved in the investigation to respond to the report by 10 January 2002, and **responses** were received from the individuals and organisations listed at **Annex 4**. Some respondents, principally the public bodies and site operator, highlighted points which they saw as factual inaccuracies in the report, and asked that they be corrected, or asked for further clarification on the Independent Investigator's recommendations. Others drew the Committee's attention to omissions that they considered relevant to the consideration of final conclusions and recommendations. Some respondents, primarily local residents, suggested further recommendations and areas for investigation.

2.3 We ask that these responses (marked * in Annex 4) be read alongside the Independent Investigator's report. The nature of the investigation and in particular the importance which we have attached to simplicity, accessibility and promptness, means that it has been neither possible nor desirable to identify and resolve all inaccuracies or other areas of disagreement. We have however given careful consideration as to whether the points made by respondents, even if justified, call into question the Independent Investigator's conclusions and recommendations. We are satisfied that they do not.

2.4. On 23 January 2002 we questioned representatives of Bro Taf Health Authority, Environment Agency Wales and Rhondda Cynon Taf CBC on their responses to the Independent Investigator's report. A transcript of the meeting can be found on the National Assembly website www.wales.gov.uk

Consideration of the report and responses

2.5. On 6 February 2002 we considered the Independent Investigator's report and responses to it. We grouped the recommendations of the Independent Investigator into those that were site specific (i.e. related to the Nantygwyddon landfill site), and those that called for more general action. Questions were put to the Independent Investigator on his recommendations, based on our own assessment of his report, and the responses to it. Our discussion of his recommendations, and points of clarification, are summarised below.

Site specific recommendations (16.1 to 16.6, 16.10, 16.12)

An end to household waste disposal at Nantygwyddon (16.1)

2.6. The Independent Investigator clarified that he recommends an end to the disposal of household, biodegradable and putrescible waste - he does not recommend an end to the disposal of inert, inorganic commercial and industrial waste at Nantygwyddon. He has suggested recycling and composting of biodegradable waste as alternatives to waste disposal (section 8 of his report).

2.7. The Independent Investigator confirmed that this recommendation should be implemented as soon as possible. We note that Rhondda Cynon Taf CBC's Waste Disposal Strategy proposes closure of the site within two years, but that disposal of household waste at Nantygwyddon ceased in December 2001, following the presentation of the Independent Investigator's report to us.

2.8. We welcome the progress made by Rhondda Cynon Taf CBC to introduce recycling schemes in their area, and support the involvement of local residents in the process. Given the commitment of local residents, in particular the action group Rhondda Against Nantygwyddon Tip (RANT), to raising awareness of the issues associated with landfill, we consider that their expertise, energy and enthusiasm should be harnessed in promoting greener alternatives to landfill locally.

Swift completion of phase 1 (16.2)

Commission an authoritative stability study (16.10)

2.9. We sought further guidance from the Independent Investigator on his recommendation for an authoritative stability study, in particular the methodology and relationship of a new study to the regular stability studies required as part of the site licence. He stressed that he did not have the technical expertise to form any view on the stability of the site, but that what he had observed led him to advise that there were legitimate concerns which needed to be addressed by an independent authoritative study, which should be undertaken to address the issue once and for all. Such a study should go beyond the usual desk-based approach, and take samples from the site. We consider that this study should be undertaken as part of the project to complete phase 1 of the site.

Design, implement, monitor and review landfill gas management system (16.3)

Treat leachate on site (16.4)

Maintain water collection and management until successful "planting" (16.5)

2.10. We note the progress made by the site operators Amgen Rhondda Ltd. to implement a

landfill gas management system. (Amgen Rhondda Ltd. staff inspect, maintain and operate a gas extraction system and flare unit on a daily basis. Relevant parameters are recorded daily, entered in the site diary and forwarded to the Environment Agency). However, we stress the need for full transparency of monitoring information, with landfill gas and other data accessible to the public (e.g. via a website), in 'real time'. We also consider that the Environment Agency should ensure that monitoring standards are maintained throughout the remediation of the site.

Commission specific health studies around Nantygwyddon (16.6)

2.11. We endorse this recommendation. There is currently a limited general understanding of the links between the environment and public health, and a poor research base in Wales. We understand that several studies are underway to collect public health data and draw links with environmental data, and suggest that the Chief Medical Officer and Welsh Assembly Government consider how these can be built on to address concerns in the Nantygwyddon area. The Independent Investigator suggested that Professors Palmer and Coleman of the Welsh Combined Centres for Public Health be invited to undertake further research into potential health effects around Nantygwyddon.

2.12. It is crucial that local residents be involved in drawing up the terms of reference for the studies, and be involved during all stages of the research. It is also important that Bro Taf Health Authority (or proposed successor Local Health Board) form part of the partnership, so that the studies can have access to the necessary health data, inform local public health protection, and have the confidence of health professionals, as well as local residents. This will help ensure that residents living near Nantygwyddon at last have authoritative information relating to their health concerns, of a kind that commands their confidence. We consider that in future, local residents should not have to fight for such research to be undertaken - see 'general recommendations' below (recommendation 16.15).

Scrutinise trading and financial affairs of Rhondda Waste Disposal Ltd. (16.12)

2.13. We endorse the Independent Investigator's recommendation, and express our disappointment that the Administrator of Rhondda Waste Disposal Ltd. did not release documents to our investigation that may have clarified the trading and financial affairs of the company.

General recommendations (16.7 to 16.9, 16.11, 16.13 to 16.16)

Issue mandatory guidance to the Environment Agency on openness and transparency, and press for removal of 'commercial confidentiality' as a barrier to public accountability (16.7)

2.14. We fully support this recommendation. The Environment Agency should ensure that their decision-making processes are entirely open and transparent, and be open to the maximum

extent *permitted* by law, rather than the maximum extent *required* by law. We suggest that Environment Agency Wales in consultation with the Welsh Assembly Government draw up a Code of Practice on openness and transparency, to supplement the Agency's Customer Charter, which should be based on the National Assembly's Code of Practice on Public Access to Information

2.15. Some information was withheld from our investigation due to 'commercial confidentiality'. We note that the Environmental Protection Act 1990 confers the protection of commercial confidentiality to certain company records, whether or not they relate to private companies, and in our view this is unacceptable. We consider that where waste disposal companies are publicly owned and funded that commercial confidentiality should not apply. We suggest that the Welsh Assembly Government press the UK Government to drop this provision from the Environmental Protection Act, and in the meantime invite all local authorities in Wales to ensure the publication of all relevant information, whether 'commercially sensitive' or not, relating to the affairs of waste disposal companies.

2.16. We invite the Environment Agency to consider ways of working in partnership with local communities when considering issues of local concern. Whilst we agree that the Agency should continue to work with industry to maintain and improve environmental standards, the Agency should be *and be seen to be* the champion of the people. We call on the Board of the Environment Agency to give proper consideration to our report and recommendations, and wish to record our disappointment at the way in which the Agency commented on the Independent Investigator's report in the press and media prior to its consideration by us.

Consider best use of formal impact assessments for waste disposal plans (16.14)

Consider securing the principle of producer responsibility for waste minimisation, re-use and recycling in Wales (16.16)

2.17. We suggest that, as part of the work being undertaken on the Wales Waste Strategy, the Welsh Assembly Government work with community groups, local authorities and other public bodies to develop means of better using formal impact assessments to consider the impact of waste disposal projects on local communities. Public authorities should also work in partnership with the local communities to determine acceptable levels of risk associated with waste disposal sites, and agree communication and education strategies to ensure that informed decisions can be taken.

2.18. We fully support the call for producers to take responsibility for waste minimisation, re-use and recycling, and see this as key to delivering the National Assembly's Waste Strategy. Recycling will reduce the percentage of waste sent to landfill, but if the volume of waste produced grows, there may be little reduction in the overall volume sent to landfill. Waste reduction is vital, together with development of greener methods of waste disposal. We

strongly feel that the emphasis should be on producers to reduce waste, re-use and recycle reclaimed waste – which would account for the majority of waste sent to landfill.

Consider means of commissioning independent research and risk appraisal by communities (16.15)

2.19. The residents living near the Nantygwyddon landfill site have fought an active campaign to have their concerns about the health effects of the site recognised and investigated by public authorities. We consider that local communities should have machinery for formally requesting that independent research be commissioned, where the public authorities do not have the resources, or are unwilling, to do so on their behalf. We suggest that the Chief Medical Officer and Welsh Assembly Government work with local community groups and health authorities (or proposed successor Local Health Boards), and other public authorities to consider the best way to implement this recommendation.

Support the principle of public accountability (16.8)

Consider and improve accountability for securing documents of abolished authorities (16.9)

Review EU grant criteria, audit and repayment on transfer of assets (16.11)

2.20. We endorse these recommendations.

Consider the human rights implications of use of legal sanctions by public and quasi-public bodies against protestors (16.13)

2.21. We endorse this recommendation.

Our recommendations

2.22. Our **recommendations** to plenary are summarised in **Chapter 3**.

Summary of recommendations

3.1. We endorse the Independent Investigator's recommendations. Explanation of our reasons for doing so are set out in the points of clarification outlined in Chapter Two. Our recommendations to the National Assembly are as follows (the Independent Investigator's recommendation numbers are shown in brackets).

Site specific recommendations

Recommendation 1 - that there should be an end to household waste disposal at Nantygwyddon (16.1 for Rhondda Cynon Taf CBC).

Recommendation 2 – that:

- the phase 1 area should be swiftly completed to suitable finished levels to ensure a sound, stable landform and reasonably impervious cap (16.2 for Amgen Rhondda Ltd. and Rhondda Cynon Taf CBC).
- the National Assembly commission an authoritative stability study of Nantygwyddon (16.10).

Recommendation 3 – that:

- a landfill gas management system be devised, implemented, monitored and regularly reviewed, to include real time recording of flare temperature, gas residence time and complete combustion monitoring instruments (16.3 for Amgen Rhondda Ltd. and Environment Agency Wales);
- leachate be treated on site before discharge (16.4 for Amgen Rhondda Ltd.);
- until the landfill is successfully "planted" with vegetation surface water collection and management be maintained (16.5 for Amgen Rhondda Ltd.).

Recommendation 4 - that specific health studies related to person/dose/substance(s) be commissioned involving blood, urine and fat sampling/testing and analysis. Results should be published with independent expert commentary as soon as possible. These tests and analyses need to be undertaken in the context of ambient and site specific pollution data. Attempts should be made to plot low birth weights in the vicinity of the Nantygwyddon site as soon as possible (16.6 for the National Assembly for Wales).

Recommendation 5 - that when the financial information about the trading and contractual affairs of Rhondda Waste Disposal Ltd. is available to Rhondda Cynon Taf CBC, it should be subjected to the closest scrutiny, and that if evidence of wrong doing emerges it should be pursued with vigour, so that individuals are held to account for their acts and omissions when exercising stewardship of public money (16.12).

General recommendations

Recommendation 6 - that the National Assembly issue mandatory guidance to the Environment Agency Wales to require all the openness and transparency permitted by current legislation and furthermore press UK government to espouse freedom of environmental information generally and certainly removing "commercial confidentiality" as a barrier to public

accountability (16.7).

Recommendation 7 - that the National Assembly:

- consider how formal impact assessment (environmental, health and financial) can best be used in Wales to properly consider the implications of plans, programmes and projects concerning waste disposal (16.14);
- consider how they may best secure the principle of producer responsibility for waste minimisation, re-use and recycling in Wales (16.16).

Recommendation 8 - that the National Assembly consider how communities may seek independent research and health risk appraisal to allay their fears and respond to inactivity or failure by the regulatory/health protection bodies (16.15).

Recommendation 9 - that the National Assembly:

- support the principle of public accountability for the "public pound" (16.8);
- consider and improve accountability for securing files upon the proposed abolition of a public authority (16.9);
- review EU grant criteria, audit and the prospect of repayment if a grant aided asset is transferred with no public finance benefit (16.11).

Recommendation 10 - that the National Assembly, after obtaining any necessary legal and other advice, considers the human rights implications of the use of legal sanctions by public or quasi-public bodies to restrain the activities of officers of organisations such as RANT who organise protests against those bodies (16.13).

Annex 1

Resolution of the National Assembly

On 4 July 2000 the National Assembly passed the following resolution:

The National Assembly resolves to cause an independent investigation to be held into the Nantygwyddon landfill site, looking into those health, environmental and planning issues which

are relevant to the exercise of its functions; and calls upon Rhondda Cynon Taff County Borough Council, and other interested parties to participate fully in this investigation; and instructs the Secretary for the Environment, Planning and Transport to proceed accordingly in liaison with the Environment, Planning and Transport Committee.

In accordance with the powers granted to it in section 40 of the Government of Wales Act 1998, the National Assembly endorses the principle that such an investigation should be conducted by the Environment, Planning and Transport Committee with the assistance of an independent investigator. Furthermore, the National Assembly calls on Rhondda Cynon Taff County Borough Council, and other interested parties, to participate fully in the investigation.

The presumption is that the investigation should:

- be held in public, except where it was considered that this would prejudice the outcome of the investigation;*
- meet and take evidence locally, where appropriate;*
- ensure that all interested parties have an opportunity to present oral, as well as written, evidence to the investigation;*
- be able to recommend further action including, if necessary, a public inquiry in accordance with section 35(1) of the Government of Wales Act 1998;*
- be able to make specific recommendations for subsequent consideration in Plenary.*

Annex 2

Terms of reference

On 13 September 2000 the Committee adopted the following terms of reference for the investigation.

INDEPENDENT INVESTIGATION - NANTYGWYDDON LANDFILL SITE

The primary focus of the investigation is to be forward looking, seeking to identify lessons for the future, both in relation to the site and in relation to waste management issues more generally.

To identify lessons for the future the investigator will need to:

- review the history of the establishment and management (including financial) of the site - including the reasons for the choice of Nantygwyddon;
- establish what constitutes current best practice for the management of landfill sites;
- assess how the establishment, management and regulation of the Nantygwyddon landfill site measures up against that benchmark as well as against best-practice guidance at the time decisions were taken;
- if necessary, identify lessons for the future operation of the Nantygwyddon landfill site, and any additional investigations or actions necessary at Nantygwyddon;
- identify any general lessons for the future of waste management in Wales;
- consider the suitability or otherwise of the location in the light of planning guidance available now and at the time planning permission was given;
- consider the design of the landfill site and the role played by promoting and regulatory bodies in determining that design;
- collate allegations of adverse health effects attributed to the site and evidence of ill-health and specific diseases in the local population;
- establish what systems have been in place in the health authority, local authority, the Welsh Office and National Assembly for Wales to respond to concerns expressed regarding ill-health in relation to the Nantygwyddon Landfill site;
- identify and assess responses made since the landfill site opened in respect of the health concerns of local people and the interdisciplinary liaison undertaken. This to include GPs, the Environment Agency, the health authority, local authority and by the Welsh Office and National Assembly for Wales;
- assess investigations/research undertaken to inform action by GPs, the health authority, local authority and by the Welsh Office and National Assembly for Wales and how this has been communicated to local residents and other interested parties;
- make progress reports to EPT Committee of the National Assembly for Wales, after two and four months of starting the investigation;

- report findings, conclusions and recommendations to the EPT committee within six months of starting work.

Environment, Planning and Transport Committee

13 September 2000

Annex 3

Independent Investigator's recommendations

On 12 December 2001 the Independent Investigator, David Purchon, presented his report to the Committee, his recommendations were as follows (see section 16 of his report). A copy of the full report is available on the National Assembly website www.wales.gov.uk

16.1 I recommend that there should be an end to household waste disposal at Nantygwyddon.

16.2 I recommend that the phase 1 area should be swiftly completed to suitable finished levels to ensure a sound, stable landform and reasonably impervious cap. I would suggest that the authorities consider the merits of using the currently untipped area to complete the "reclamation" of the Gelli coal spoil tips, and perhaps other similar prominent tips in the immediate area, seeking to achieve a land form compatible with the topography of the vicinity. I am concerned about the intended gradient of finished slope levels.

16.3 I recommend that a landfill gas management system be devised, implemented, monitored and regularly reviewed, this to include real time recording of flare temperature, gas residence time and complete combustion monitoring instruments.

16.4 I recommend that leachate be treated on site before discharge.

16.5 I recommend that until the landfill is successfully "planted" with vegetation surface water collection and management be maintained.

16.6 I recommend that specific health studies related to person/dose/substance(s) be

commissioned involving blood, urine and fat sampling/testing and analysis. Results should be published with independent expert commentary as soon as possible. These tests and analyses need to be undertaken in the context of ambient and site specific pollution data. Attempts should be made to plot low birth weights in the vicinity of the Nantygwyddon site as soon as possible.

16.7 I recommend that the National Assembly issue mandatory guidance to the Environment Agency Wales to require all the openness and transparency permitted by current legislation and furthermore press UK government to espouse freedom of environmental information generally and certainly removing "commercial confidentiality" as a barrier to public accountability.

16.8 I recommend that the National Assembly support the principle of public accountability for the "public pound".

16.9 I recommend that accountability for securing files upon the proposed abolition of a public authority be considered and improved.

16.10 I recommend that the National Assembly commission an authoritative stability study of Nantygwyddon.

16.11 I recommend a review of EU grant criteria, audit and the prospect of repayment if a grant aided asset is transferred with no public finance benefit.

16.12 I recommend that when the financial information about the trading and contractual affairs of Rhondda Waste Disposal Ltd. is available to RCTCBC it should be subjected to the closest scrutiny and that if evidence of wrong doing emerges it should be pursued with vigour so that individuals are held to account for their acts and omissions when exercising stewardship of public money

16.13 I recommend that the National Assembly, after obtaining any necessary legal and other advice, considers the human rights implications of the use of legal sanctions by public or quasi-public bodies to restrain the activities of officers of organisations such as RANT who organise protests against those bodies.

16.14 I recommend that the National Assembly consider how formal impact assessment (environmental, health and financial) can best be used in Wales to properly consider the implications of plans, programmes and projects concerning waste disposal.

16.15 I recommend that the National Assembly consider how communities may seek independent research and health risk appraisal to allay their fears and respond to inactivity or failure by the regulatory/health protection bodies.

16.16 I recommend that the National Assembly consider how they may best secure the principle of producer responsibility for waste minimisation, re-use and recycling in Wales.

David W. Purchon

12 December 2001

Annex 4

Responses to the Independent Investigator's report

The Committee invited all those taking part in the investigation to comment on the Independent Investigator's report. Responses were received from the individuals and organisations listed below.

Public Bodies:

Bro Taf Health Authority*

Environment Agency Wales*

National Assembly for Wales (Welsh Assembly Government)*

Rhondda Cynon Taf CBC*

Organisations:

Amgen Rhondda Ltd. (site operators)*

Environmental Services Association*

Friends of the Earth*

Institute of Waste Management*

Ove Arup and Partners Ltd .*

Individuals:

June Bacon

Victor J Collier*

Jim Davies

Gwyn Evans*

MD Evans*

M Hann

Mansal Mason*

Garrod Owen*

Rhondda Against Nantygwyddon Tip (RANT)

Mike Ryan

Heather Sutton

Gareth R Thomas

Joan Thomas

William M Thomas

Andrew Tree*

Dr D Van Steenis*

Graham Wayman

* These responses should be read together with the Independent Investigator's report, as they include points which respondents see as factual inaccuracies in the Independent Investigator's report, and have asked be corrected, or omissions that they considered relevant to the

consideration of conclusions and recommendations.