



Opencast Coal Restoration: Effective Regulation Response from Environmental Protection Scotland February 2014

Environmental Protection Scotland brings together individuals and organisation across the public, private and voluntary sectors to discuss and promote ideas, knowledge and solutions to achieve our aims of a cleaner, quieter, healthier, sustainable Scotland. We are a registered charity that informs debate, provides impartial advice and policy updates based on sound science and research in the fields of air quality, land quality and noise.

Governed by a Board of Trustees and supported by Expert Advisory Groups (EAGs) our structure enables us to take a progressive and pragmatic approach to the issues which concern us and, on behalf of our wide and extensive cross-sector membership, to promote integrated and effective policy-making which supports sensible and workable solutions to pressing environmental challenges. Our EAGs represent a wide spectrum of our members and are chaired by experts in their field and seek to build stronger alliances and support better collaboration between government, practitioners, legal experts and researchers.

Our land quality work aims to encourage the sustainable management of land and resources that is protective of human health, the water environment, ecology, heritage and property. By providing continuity, our Land Quality EAG promotes a better understanding of land quality and policy to the public and regulators.

The comments we provide below are in relation to the environmental aspects of restoration.

Comments

1	<p>Environmental Protection Scotland considers the proposed Scottish Planning Policy text (as stated in para. 3.5 of the consultation document) is almost fit for policy however we request one amendment to the text:</p> <p>“Consents should be associated with an independent guarantee...” should become “Consents must be associated with an independent guarantee”.</p> <p>We appreciate that current legal cases are outwith the scope of this consultation but through changing the text from “should” to “must”, it would ensure that monies are set aside for restoration when a site is closed for whatever reason; this is merely an extension of the ‘polluter pays’ principal and the public purse should not be burdened.</p>
2A	<p>Environmental Protection Scotland feels that more information is required before an informed answer can be made particularly in the light of a yes vote in the September</p>

	<p>referendum, e.g. how would an independent Scotland afford a similar scheme? Outwith that, our answers are below.</p> <p>No.</p> <p>Environmental Protection Scotland agree that there needs to be more effective monitoring of how guarantees are managed and reviewed. We further agree that it is not up to the Scottish or UK Governments to underwrite restoration obligations; both the UK and Scottish Governments do not have ring fenced funding for the remediation of contaminated land. As restoration would have to be carried out with remediation in mind, i.e. ensuring that there are no pollutant linkages, restoration is an extension of remediation.</p>
2B	<p>Yes and No.</p> <p>If a UK Guarantees Scheme is established it should only be used as a last resort but the onus remains with site operators and not the taxpayer. Under any Guarantee and Imbursement Agreement, a company agrees to reimburse any payment under the UK Guarantee, however this would not happen if a company becomes insolvent.</p>
3A	<p>Yes.</p> <p>We note that the Mineral Product Association’s fund can only be accessed upon insolvency and it is our view that any coal restoration fund operates in a similar manner with the caveat that any restoration guarantee fund is sufficient to provide adequate cover.</p>
3B	<p>Yes.</p> <p>A mandatory levy should be established. This should be capped at a limit based on industry average restoration costs. Further to this, any monies ‘saved’ in the levy by a company should be ring fenced and not used during insolvency settlements – i.e. the monies in the levy are only used for site restoration and not to pay creditors. Any monies left following restoration should be returned to the site operator.</p> <p>We also feel that there should be an allocation of funds for the restoration of historic extraction sites. A benefit of this would be that with the removal of on-going detrimental environmental legacy would make people less adverse to current industry.</p>
4	No comment
5	No comment
6A	No comment
6B	<p>Yes.</p> <p>An independent service like the Independent Compliance Unit (ICU) mentioned in the consultation should be established however Environmental Protection Scotland would like to see the group being more inter-disciplinary than those who have “mining engineering</p>

	skills” particularly if the ICU’s remit is to include site restoration. We recommend that the ICU includes an environmental health officer with relevant contaminated land experience.
6C	The ICU should complete quarterly reviews of the site’s operating procedures and ensure that all restoration agreements (even if the site is still operational) is ongoing. This should be followed up by annual audits. The ICU should be funded by the relevant planning authority.
7A	Yes. The ICU should be a statutory consultee.
7B	Yes – if the ICU’s advice and recommendations are binding.
8	No comment
9	No comment
10	No comment
11A	Yes. The involvement of landowners may be an integral part of the aftercare and verification of restoration success.
11B	Yes. As above.
12 - 21	No comment

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RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Environmental Protection Scotland

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

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Forename

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate



(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick **ONE** of the following boxes

Please tick as appropriate

✓ Yes No

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate ✓ Yes No