

Comments on any other information submitted at D5

**UKWIN'S D6 COMMENTS ON
REP5-037 AND REP5-032**

**REP5-037: 9.23 - APPLICANT'S RESPONSES TO
DEADLINE 4 SUBMISSIONS AND RULE 17 REQUEST OF 14/02/23
REP5-032: DEADLINE 5 NPS TRACKER [REVISION 1] (CLEAN)**

Proposed Development:

North Lincolnshire Green Energy Park

Proposed Location:

**Flixborough Wharf, Flixborough Industrial Estate,
North Lincolnshire**

Applicant:

North Lincolnshire Green Energy Park Limited

Planning Inspectorate Ref:

EN010116

Registration Identification Ref:

20031828

MARCH 2023



INTRODUCTION

1. Below is UKWIN's response to Section 2 of REP5-037, which is the Applicant's response to UKWIN's Summary of ISH3 Oral Submission [REP4-045] and the Applicant's response to UKWIN's comments on any other information submitted at Deadline 3 [REP4-042].
2. UKWIN's response also comments on some related deficiencies in the Applicant's case set out within their Deadline 5 NPS Tracker [REP5-032].
3. UKWIN will continue to work with the Applicant on the Statement of Common Ground (SoCG) with respect to providing information on the balance between anticipated feedstock and anticipated capacity, feedstock composition, etc.
4. We currently anticipate jointly submitting a SoCG by Deadline 7, if not sooner, as the Applicant did not have the capacity to progress both the SoCG and the response to ExQ2 Appendix A in time for Deadline 6.

UKWIN RESPONSE TO REP5-037

5. Section headings below follow those in REP5-037, and unless otherwise stated comments from the Applicant relate to comments from REP5-037.

Projections of waste arising

6. We are disappointed that, having agreed at ISH3 that 22Mt for 2020 was a reasonable starting point, the Applicant now appears to relitigate this matter.
7. The Applicant now states that they "agree with UKWIN's [previously stated] view that 90% of residual waste would be available as fuel for EfW". However, they then go on to misunderstand and therefore misapply the position that UKWIN had taken prior to having accepted the Applicant's 22 million tonne starting point at ISH3.
8. As clearly set out in UKWIN's incineration overcapacity methodology document prior to ISH3 in REP2-111, UKWIN's "modelling start[ed] with the 27.8Mt figure for **municipal** residual waste in 2016 set out in the Government's Resources and Waste Strategy" (**emphasis added**), then UKWIN assumed this rose in line with population growth through to 2022 and then fell in line with the modelling carried out by Defra for their Environmental Targets consultation. UKWIN then used 90% of the resulting figures for our analysis.
9. In REP2-111, we also explained that the 'municipal' waste referred to in the Government's Resources and Waste Strategy "includes both household waste and business (Commercial & Industrial) waste that is similar to household waste".

10. This was based on the Technical Annex definition within the Resources and Waste Strategy, which explicitly defined 'Municipal Waste' as "Household waste, and waste (e.g. from businesses) which is similar in nature and composition to household waste". This definition does not limit the concept of municipal waste only to waste that is collected by local authorities.
11. We explained this broader concept of 'municipal waste' in further detail on the first page of our REP2-111 methodology document, stating that: "According to Defra statistics, the total amount of household residual waste managed in England in 2016 was 12.5Mt. However, incinerators can also burn business (C&I) waste. As such, the modelling starts with the 27.8Mt figure for municipal residual waste in 2016 set out in the Government's Resources and Waste Strategy. Around 55% of this [municipal] waste was business (C&I) waste that was similar in nature and composition to household waste".
12. Since then, Defra released their Environmental Improvement Plan 2023 (EIP). While this plan did not explicitly state the 2019 level of municipal residual waste, the per capita figure for 2019 can be readily derived from the information Defra provides within their EIP document. The relevant pages have been submitted alongside UKWIN's Deadline 6 submission.
13. Internal page 145 of the EIP states that: "The residual waste target is underpinned by the following interim targets, by 31 January 2028: ...Reduce **municipal** residual waste produced per person by 29%". (**emphasis added**)
14. EIP internal page 148 states: "Interim target 3: By 31 January 2028, the total mass of **municipal** residual waste in a year does not exceed 333 kg per capita". (**emphasis added**)
15. The EIP goes on to state: "Interim target 3 covers the narrower scope of municipal waste. **This is waste from households plus waste similar in composition to household waste, such as commercial waste.** We propose this target because it captures where current policy interventions, the Collection and Packaging Reforms, are focused. It also provides a reference point for the material-based interim targets, which currently can only be satisfactorily measured at a municipal level. **Achieving this target will reduce the total mass of municipal residual waste by 29% compared to 2019 levels**". (**emphasis added**)
16. The Applicant appears to fundamentally misunderstand EIP Interim Target 3, misinterpreting this Target to be one that pertains only to Local Authority Collected Waste (LACW) as distinct from the wider category of 'total municipal residual waste' which includes LACW and other waste of similar composition.

17. This misunderstanding is apparent from the Applicant's incorrect conclusion on electronic page 9 of REP4-020 that their 'Targets Met scenario' is consistent with EIP Interim Target 3, where they state: "...Interim Target 3: **Total municipal residual waste** not exceeding 0.333te/capita/yr by 31 January 2028. The updated RDF Supply Assessment in REP3-022 projects 0.20te/capita of **Local Authority collected waste** in 2027 in the Targets Met scenario (11.7mte and 58m people). The Applicant's position is that its Targets Met scenario projections are consistent with these interim targets". **(emphasis added)**
18. The Applicant's apparent conflation of LACW and total municipal residual waste seems to have led them astray, both in their own approach to meeting the Government's targets and in their mischaracterisation of UKWIN's position and the implications of applying UKWIN's historic '90%' approach to the latest Government figures.
19. The EIP makes it clear that the total municipal residual waste fall of 29% per person by 2027 compared to 2019 levels would reduce total municipal residual waste to 333kg per person.
20. This reveals that Defra's position set out in the EIP is that there was around 469kg of municipal residual waste per person in 2019, i.e. 469kg reduced by 29% is 333kg based on the following formula:
- $$[(\text{Starting Value} - \text{Final Value}) \div \text{Starting Value}] \times 100$$
- $$[(469 - 333) \div 469] \times 100 = [136 \div 469] \times 100 = 28.99786$$
21. The UK Government's Environmental Improvement Plan also includes a Municipal Residual Waste Reduction Target which is more ambitious than UKWIN had modelled for 2027 in REP2-111, because UKWIN's modelling predated the interim Municipal Residual Waste targets.
22. This means that not only does Defra now provide a figure for 2019 that is lower than their previous figure, but also that Defra now anticipates a more rapid fall in the years from 2019 through to 2027.
23. Defra's post-EIP figures shows that the Government is now anticipating Municipal Residual Waste in England to fall (in absolute terms, as distinct from per person) by around 27% between 2019 and 2027, which is greater than the fall of around 17% for that period that UKWIN had previously estimated prior to the adoption of the EIP's interim target.
24. The difference between the 27% fall in absolute terms and the 29% per capita fall is explained by the anticipated growth in population.

25. The difference between UKWIN's REP2-111 pre-EIP 17% decrease and Defra's post-EIP 27% decrease is summarised in the following table:

	Based on Defra Pre-EIP	Based on Defra Post-EIP
2019 municipal residual kte	28,018	26,399
2027 municipal residual kte	23,222	19,334
Decrease between 2019 and 2027	17.12%	26.76%

26. Applying a 90% 'scaling factor' to these figures generates the following results:

	Based on Defra Pre-EIP	Based on Defra Post-EIP
90% of 2019 municipal residual kte	25,216	23,759
90% of 2027 municipal residual kte	20,900	17,401
Decrease between 2019 and 2027	17.12%	26.76%

27. This highlights the extent to which UKWIN's REP2-111 residual waste predictions were conservative and shows the impact of UKWIN's estimates being constrained by staying within what Defra had stated at that time prior to their adoption of the EIP's 2027 interim target.
28. In light of Defra's current estimates of Municipal Residual Waste in England in 2019 and their announcement of the 2027 interim target UKWIN is content to accept that our previous estimate overstated likely historic and future feedstock and that it is entirely appropriate to now use lower figures based on the agreed 22Mt starting point and Defra's residual waste reduction targets.
29. As such, UKWIN concludes that the waste figures set out by UKWIN in our ExQ2 response should be the preferred basis for assessing the North Lincolnshire NSIP.
30. However, if the 90% scaling factor is to be used instead of the agreed 22Mt starting point for 2020 then, in line with UKWIN's previous methodology which the Applicant now appears to favour, this scaling factor should not be applied to the total residual waste figures of 437kg/capita in 2027 and 287kg/capita in 2042 but instead to the Government's *Municipal* Residual Waste figures of 333kg/capita in 2027 and 234.5kg/capita in 2042.
31. This would result in around 17.4Mt tonnes in 2027 and around 12.66 Mt in 2042 respectively, which are lower than the figures used in Afry's 'Targets met' scenarios.

32. As can be seen from Paragraph 2.8 of REP5-037, the Applicant incorrectly applied the 90% scaling factor to the total (rather than to the municipal fraction of the) residual waste arisings figure, stating at Paragraph 2.8 that: "Interim target 1 is that 'by 31 January 2028, the total mass of residual waste excluding major mineral wastes in the most recent full calendar year does not exceed 437 kg per capita. Applying the 90% scaling factor above implies 393kg/capita of residual waste available for EfW..."
33. For some reason, the Applicant's comment on Interim Target 3 (for reducing Municipal Residual Waste by 2027) further down Paragraph 2.8 does not show the impact of applying the 90% scaling factor to the Municipal target.
34. It is also notable that the Applicant's figure associated with Interim Target 3 on electronic page 8 of REP5-037 for 2027 of 12.1Mte is higher than the equivalent 2027 figure provided by the Applicant on electronic page 9 of REP4-020 (the SoCG with UKWIN) of 11.7Mte. The reason for this discrepancy is unclear.
35. It is notable that the 90% municipal residual waste figure of 17.4Mtpa for 2027 based on Defra post-EIP of 17,401ktpa is very similar to the figure used by UKWIN in our response to the ExA's ExQ2 response at Deadline 6 of 17.3Mtpa.
36. This is because both figures are based on a per capita reduction of 29% compared to a similar baseline figure.
37. This implies that, when using the correct factor of municipal rather than total residual waste, when applied in line with the Government's proposed trajectory, results in a similar result for 2027 to that achieved by UKWIN using the 22Mtpa starting point and accounting for historic RDF export not being included in that figure.
38. With respect to the Applicant's comments on whether or not there is in effect a requirement to demonstrate that there would not be incineration overcapacity, UKWIN notes that the Applicant has not provided a substantive response to the points made by UKWIN with respect to the relevant policy context found on electronic pages 14-17 of UKWIN's REP4-042.
39. To be clear, neither the Applicant's Planning Statement [REP2-017] nor their NPS Tracker [REP5-032] provide adequate response to these points.
40. UKWIN's case remains that, for this development, the proposed new incineration capacity for Lincolnshire would clearly result in incineration capacity and that granting planning permission that would result in or exacerbate incineration overcapacity would conflict with both extant and emerging Government policy.

Sustainable Aircraft Fuel (SAF)

41. The Applicant refers to the history of gasification in the UK, but this relates to gasification as a technology for producing energy rather than for producing fuel.
42. All of the waste-to-SAF projects that benefit from Advanced Fuel Fund support appear to be targeting household, industrial and commercial waste of the type that would otherwise be used as incinerator feedstock.
43. The Applicant notes that “the Altolto project website states that its feedstock will include ‘hard to recycle plastics’”, but this is not the whole story.
44. The Altolto webpage actually states that the waste-to-SAF plant would take "hundreds of thousands of tonnes per year of **household and office waste** (including hard-to-recycle plastics), left over after recycling, and convert them into cleaner burning, sustainable fuels for aviation and road use. Otherwise this waste would end up in landfill, **or be incinerated**". (**emphasis added**).
45. As such, hard-to-recycle plastics constitute only one element of the feedstock, and it is clear that the feedstock consists more broadly of waste that would otherwise be incinerated (as stated on the Altolto webpage).
46. This implies that the Altolto plant could be directly competing for feedstock with incinerators such as that proposed for North Lincolnshire and is not intended to rely only on “source segregated plastic or wood” as implied by the Applicant in REP5-037.
47. Indeed the Altolto plant expects their feedstock to consist of material that is “left over after recycling”, which echoes the North Lincolnshire Applicant’s description of the material that they anticipate using as feedstock.
48. Copies of the Altolto and associated Velocys webpages are submitted alongside this representation to enable the Examining Authority to judge for themselves how to interpret the Altolto webpage cited by the Applicant.

Carbon Capture and Storage (CCS) potential

49. The Applicant’s currently expressed position appears to be at odds with Afry’s approach of excluding operational incineration capacity from their analysis for facilities deemed by them to have low CCS potential.
50. While the Applicant has speculated at paragraph 2.19 on electronic page 10 of REP5-037 that “EfW facilities without CCS either ought not to be in operation beyond 2040”, we note their acknowledgment that this is simply their view on what they think Government policy might be in the future, or what might arise in response to future Government policy, rather than an actual expression of current UK Government policy.

51. We hope that, in light of the Applicant's current position, they will instruct Afry to fully consider all EfW capacity within the context of assessing whether or not there would be waste available for the proposed North Lincolnshire facility and whether their facility would result in incineration overcapacity, locally or nationally, once these facilities are also taken into account.
52. In this regard, we note that the Applicant has not disputed UKWIN's findings, set out in REP4-042 electronic pages 6-9, with respect to the impact of including EfW capacity without CCS potential based on the figures used in Afry's earlier evidence.

Non-R1 Capacity; Further comments on the commercial position on non-R1 and non-CCS capacity; and Commercial points

53. On electronic page 11, paragraph 2.23 of the Applicant's REP5-037, the Applicant correctly states that "UKWIN argues that the Applicant should include non-R1 facilities in the assessment [of waste fuel availability]".
54. That same paragraph then goes on to mischaracterise UKWIN's case by stating that: "The waste hierarchy clearly prioritises energy recovery over disposal. We do not accept the implication that an old inefficient facility lower down the waste hierarchy should be protected from competition from a modern efficient facility...".
55. The position advanced by UKWIN is not about whether 'other recovery' is higher in the hierarchy than 'disposal', nor whether or not older incinerators should be protected from competing with newer incinerators.
56. Instead, the crux of the case that UKWIN is advancing in this regard is about whether the top tiers of the waste hierarchy should be protected from the adverse impacts of EfW overcapacity.
57. That is to say, whether or not to prevent an overall excess of waste incineration capacity, regardless of whether that capacity occurs at the 'other recovery' or 'disposal' tier of the waste hierarchy.
58. The UK Government's position on that point is clear, which is that EfW overcapacity ought to be prevented, and the UK Government has not made an exception to allow incineration overcapacity which might harm the top tiers of the waste hierarchy in order to encourage the closure of non-R1 plants.
59. As such, the Applicant is proposing to adopt an approach to assessing waste fuel availability that would not adequately result in assessing the North Lincolnshire proposal's consistency with current and emerging national policy.

60. In line with the Government's policy of avoiding EfW overcapacity it is perfectly reasonable to include consideration of non-R1 capacity, as this capacity can contribute towards overcapacity which could, in turn, harm reduction, reuse and recycling.
61. UKWIN set out its position in this regard in REP2-108 electronic pages 10-12, where we explained how the inclusion of non-R1 capacity is necessary to ensure consistency with current UK Government policy and consistent with the Draft EN-3 statement that "proposed plant must not result in overcapacity of EfW waste treatment at a national or local level" not least because the Government has made it clear that non-R1 capacity remains a form of 'EfW waste treatment' capacity.
62. Furthermore, despite previous requests from UKWIN for the Applicant to substantiate their claims, the Applicant has still not demonstrated that any of the capacity that does not currently have R1 status would not be capable of obtaining it, nor that non-R1 incinerators would be likely to close in the event that there was incineration overcapacity. Whilst the Applicant has provided some speculation on these points, they have not supported these speculations with evidence.
63. As previously noted by UKWIN, while some feedstock providers might choose to send waste to a top-of-the-range facility, others might prefer the lower gate fees or closer proximity available to them by sticking with an established operator.
64. Indeed, in some cases there may even be contractual reasons why a feedstock provider would do so.
65. For example, Nottinghamshire County Council and Nottingham City Council have previously funded the refurbishment of the Eastcroft incinerator in exchange for discounted use of the renovated plant. Given that the Eastcroft scheme is relied on for Nottingham's heating network, the idea that such a plant would shut down in 2033 due to not being formally certificated as an R1 facility rather than obtaining such R1 certification seems farfetched.
66. The Applicant's speculation on closure therefore remains just that – speculation.
67. In light of this, the appropriate approach would be to include all existing R1 and non-R1 capacity in the analysis (with appropriate account taken of Edmonton being replaced by a newer and larger facility) and then, if the Applicant believes it to be justified, provide sensitivity analysis to show the impact of non-R1 capacity being excluded, rather than to "remove this capacity from the outset" in the supposed interests of "simplicity".

68. The Applicant states, on electronic page 12 of REP5-037, that “Replacing less efficient plants with newer plants, particularly if those plants are better placed for CCS, would have a clear carbon benefit”.
69. The Government has not put in place measures to close down existing plants in the event that newer plants come online, meaning that at present it is likely that the main result would be incineration overcapacity rather than newer incinerators displacing older incinerators.
70. However, if one were to speculate about future Government policy then we would say that the best environmental outcome would be achieved through an explicit moratorium on new incineration capacity that would remove the need for proposal-specific assessments of waste fuel availability.
71. Until an explicit moratorium on new incineration capacity is in place in England the requirement to carry out proposal-specific assessments of waste fuel availability remains, as do the Government’s clear desires to avoid incineration overcapacity and to prioritise the top three tiers of the waste management hierarchy.
72. Allowing new incineration plants to enter the market increases the risks of incineration overcapacity and can hamper efforts to achieve recycling and residual waste reduction targets, and the harm that this could cause to recycling could far outweigh any claimed carbon benefits, especially with respect to the North Lincolnshire plant where ‘full’ CCS is not guaranteed.
73. As set out by UKWIN on internal pages 9-10, 17, and 54-55 of our Written Representation [REP2-110], in addition to going against the Government’s explicit warnings about incineration overcapacity, the fact that overcapacity could harm the top tiers of the waste hierarchy also raises concerns about the North Lincolnshire proposal’s consistency with EN-3 (2011) paragraphs 2.5.67, 2.5.70, 2.17.3 and 2.17.4.
74. It is notable that the Applicant’s comments with respect to these parts of EN-3 on internal pages 122-125 of their NPS Tracker [REP5-032] relies heavily on an assessment that ignores much of the incineration capacity (and, as UKWIN has explained, overstates future arising compared to Government targets) to reach their conclusion that “the Project does not result in over-capacity of EfW waste treatment at a national or local level”.
75. These concerns are especially relevant in light of the conclusions in Wheelebrator Kemsley North (WKN) which stated that “...the projects would divert a significant proportion of waste from recycling rather than landfill”.
76. While the decision pertains to a different proposal in a different area, the WKN precedent notably shows that such a conclusion was able to be reached even prior to EN-3 (2021) and to the release of the Government’s latest residual waste reduction targets.

77. The refused WKN proposal was for an annual throughput of “up to 390,000 tonnes of Waste”, while the North Lincolnshire proposal is almost double this, with a stated capacity of up to 760,000 tonnes per annum.
78. UKWIN provided evidence with respect to what the WKN decision said about recycling impacts in electronic page 17 of our Written Representation [REP2-110], on electronic pages 17 of REP4-042, and on electronic page 5 of REP4-045.

Greenhouse Gas points

79. In light of the Applicant’s statement at paragraph 2.42 of REP5-037 on electronic page 14 that “The Applicant does not resile from the original GHG assessment presented in the ES”, we refer back to our previous points about how the Applicant concluded in their original GHG assessment [APP-054] that the benefits would be marginal and that under their sensitivity analysis the North Lincolnshire proposal could perform worse than landfill.
80. UKWIN has already set out its basis for extending that analysis, and we note that the Applicant has still not provided a substantive response to our submissions with respect to metals recycling despite this having been a matter raised at ISH1 more than three months ago.
81. We also note that the Applicant has not disputed UKWIN’s numerical calculations about how assuming metal recycling performance in line with other RDF incinerators would result in worse GHG performance.
82. It is interesting how the Applicant is now trying to frame their APP-054 assessment as having been on a ‘worst-case basis’, when that phrase only appears in APP-054 with respect to the handling of transport-related emissions.
83. Indeed, Section 8 of APP-054 is entitled “Assessment of **likely effects**” (**emphasis added**) and paragraph 8.1.1.2 on electronic page 42 of APP-054 claimed that the Applicant’s main conclusion represented the “approximate” benefit.
84. While there are some instances where assumptions were characterised in APP-054 as “conservative” or similar, it could be considered somewhat telling that the Applicant only started characterising their overall assessment as “worst case” after UKWIN provided evidence (which in many cases has not been disputed) that in a number of their assumptions, such as metals recovery, were not in fact ‘conservative’ and were instead likely to overstate the benefits of the proposed North Lincolnshire facility.

Landfill Gas Recovery Rates

85. With respect to landfill gas recovery rates, the Applicant appears to be arguing with itself rather than providing a meaningful response to points raised by UKWIN.
86. It was the Applicant, and not UKWIN, who saw fit to model the impact of different rates of landfill gas capture alongside electricity offset on electronic page 44 of APP-054, and it was the Applicant and not UKWIN who chose to include a 75% landfill gas recovery rate as part of their analysis.
87. While UKWIN is satisfied that the applicant was right to include a 75% landfill gas recovery rate as part of their analysis, it is bizarre to read the Applicant's characterisation of the 75% landfill gas recovery rate as if it were some sort of contrivance concocted by UKWIN.
88. As acknowledged by the Applicant in APP-054, the North Lincolnshire proposal could result in adverse GHG impacts under various different sensitivity scenarios, including but not limited to those relating to higher assumed landfill gas capture rates.
89. For example, on electronic page 44 of the Applicant's APP-054 we read how "...when the electricity generation displacement factor is reduced by 15%, to 0.315 t CO₂e / MWh, there is no longer a net carbon benefit for the Project". And on electronic page 44 of the Applicant's APP-054 we read how "...a 10% reduction in either the biogenic carbon content or DDOC results in a net increase in GHG emissions from the Project compared to the alternative baseline landfill scenario..."
90. If the Applicant's position is that they did not assess a reasonable range of sensitivities then that undermines the robustness of their assessment, not the validity of UKWN's comments on either deficiencies with the Applicant's approach or the implications of the conclusions reached by the Applicant's APP-054 assessment and its sensitivity analysis.

Other matters

91. We note that, in their Deadline 5 submissions, the Applicant appears not to have responded to the following sections of UKWIN's representation on the adverse climate impacts of the development set out in REP4-042:
 - a) Internal inconsistency regarding source and alternative fate of the RDF (electronic pages 20-22);
 - b) Conflating the terms 'renewable' and 'low carbon' (electronic pages 26-27);
 - c) Connecting to the East Coast Cluster (electronic pages 27-28); and
 - d) Metal recycling (electronic pages 28-29).

Energy Displacement Counterfactual

92. At the bottom of electronic page 16 of REP5-037 the Applicant states: “In paragraph 161 of REP4-042, UKWIN refers to the carbon-intensity of electricity generation and repeats its assertion as to the use of marginal consumption values provided by BEIS. The Applicant’s representative requested that UKWIN examine its justification of this reference, but it has not done so”.
93. UKWIN directs the Applicant to REP4-045 electronic pages 7-8 paragraphs 49-50 where we explained how “UKWIN noted at ISH3 that the BEIS marginal emissions factors are designed to be used when considering the impact of a sustained change in electricity demand, and that this can derive not just from a reduction in usage but also the introduction of new capacity such as from new incineration capacity. This means that the marginal emissions factors are clearly the appropriate counterfactual in line with BEIS guidance and previous statements from Defra. Having revisited the relevant guidance as suggested Mr. Aumonier, we confirm that this is the position as set out by BEIS in their ‘Valuation of energy use and greenhouse gas background documentation’ as noted on electronic pages 52 and 53 of REP2-110 and that we remain confident that the position previously set out in our evidence accurately describes the Government’s position as set out in relevant Government guidance”.
94. As noted on electronic page 50 of REP2-110, the matter is also covered in more detail by UKWIN in REP2-109. REP2-109 highlights the statement, which is still included in the current BEIS guidance, that the modelling for the marginal emissions factors is based on “changes to the grid electricity supply (from either **displacement with other generation** or a demand reduction)”. (**emphasis added**)
95. This statement appears on page 11 of ‘Valuation of energy use and greenhouse gas (GHG) emissions: Supplementary guidance to the HM Treasury Green Book on Appraisal and Evaluation in Central Government’ (January 2023) which is the very document referred to by the Applicant.
96. This makes explicit that the modelling for the Marginal Emissions Factors (MEFs) are relevant for demand-side reduction, e.g. through the provision of new incineration capacity.
97. This supplementary guidance, which supports UKWIN’s position, sheds light on why the Government’s original EfW Guide (published in February 2013) was subsequently modified by Defra (in February 2014) in response to comments by UKWIN and others.

98. The modification explicitly clarifies in Footnote 29 that, rather than using CCGT, “When conducting more detailed assessments the energy offset should be calculated in line with DECC guidance using the appropriate marginal energy factor” as set out in REP2-109.
99. Finally, we note that even if the Applicant is correct, that CCGT is the most appropriate comparator for displaced electricity generation, they have still not ruled out the prospect that this displaced electricity generation could be provided by CCGT with >90% carbon capture as per electronic pages 53-54 of REP2-110, nor have they shown how assuming the North Lincolnshire plant would displace abated (rather than unabated) CCGT would impact on the various sensitivity scenarios set out in in APP-054.

Regulation 12 of the Waste Regulations 2011 and Requirement 15

100. The Applicant’s response provides their perspective but does not resolve the concerns set out in REP4-045 nor does the Applicant dispute the core facts set out by UKWIN in REP4-045.
101. The Applicant’s proposed change to Requirement 15 has an improved aim but does not provide any confidence that the amended requirement would result in any significant prevention of material which could otherwise have been reduced, reused and recycled ending up as incinerator feedstock.
102. As such, it remains the case, as set out in REP4-045, that we can draw a strong distinction between the situation that existed at the time the Secretary of State was considering the equivalent Riverside requirement and the considerations that are relevant for the present proposal in terms of the anticipated impact of such a requirement in protecting the waste hierarchy.
103. For example, subsequent to the Riverside decision there have been changes in circumstances such as:
- a) the WKN precedent;
 - b) new Government statements and policies;
 - c) a new evidence base on overcapacity (which takes into account new policies and incinerators that have now entered construction or operation);
 - d) now having the benefit of seeing what such a scheme would actually look like, and how little protections such requirements can offer in practice to the waste hierarchy.

104. It is interesting that in the one area where UKWIN explicitly provided suggested improvements to Requirement 15, rather than accepting UKWIN's suggestion for increased transparency the Applicant instead opted to propose the removal of that element of the Requirement.
105. As previously set out by UKWIN, and as is shown by the EA's November 2022 Horsham Decision Document [REP4-044], when concerns have been raised with the Environment Agency about the potential adverse impact on recycling of a proposed incinerator, the EA has made it clear that this is a planning matter rather than a permitting matter.
106. As such, the Applicant's repeated reliance on the EA's permitting process to address material planning considerations is misplaced.
107. The Applicant has not provided an example of an EA permit that would require public disclosure of annual compositional analysis of the sort requested by UKWIN.
108. It is curious that the Applicant (on electronic page 20 of REP5-037) is dismissing applying Defra's methodology to such compositional analysis on the basis that this analysis would "support initiatives for the increase in recycling", as surely that is the point of imposing such a requirement.