

## **Divisions Affected – All**

# **DELEGATED DECISIONS BY DEPUTY LEADER OF THE COUNCIL WITH RESPONSIBILITY FOR CLIMATE CHANGE, ENVIRONMENT AND FUTURE GENERATIONS**

**10 OCTOBER 2024**

## **Incineration of Waste Upholstered Domestic Seating containing Persistent Organic Pollutants at Ardley Energy Recovery Facility**

**Report by Director of Environment and Highways**

### **RECOMMENDATION**

The Cabinet Member is **RECOMMENDED** to:

- a) **Approve the utilisation of the residual waste treatment contract for the treatment of Waste Upholstered Domestic Seating containing Persistent Organic Pollutants and,**
- b) **Delegate authority to the Director of Environment and Highways in Consultation with the Head of Legal Services and Deputy Monitoring Officer to enter into any necessary documentation with Viridor Oxfordshire Limited to secure such utilisation.**

### **Executive Summary**

1. From January 2023, The Environment Agency (EA) required all Waste Upholstered Domestic Seating containing Persistent Organic Pollutants to be treated in compliance with a series of Regulatory Position Statements.
2. Interim contract arrangements were secured for a 2-year period (expiring 31 December 2024) on the assumption that this would be a sufficient length of time for uncertainties around handling and treating Persistent Organic Pollutants and the Regulatory Position Statement to be resolved. These arrangements include the incineration of this waste at Ardley Energy Recovery Facility through a contract variation of the residual waste treatment contract.
3. A key decision is sought to approve utilisation of the residual waste treatment contract until new contracts are put in place following a procurement exercise for this and related services which is to be undertaken in 2025.

## Exempt Information

4. The report contains information in Annex 1 that is exempt and confidential as it includes matters related to the spend on this service that if in the public domain could prejudice the outcome of future procurements for this service.
5. The public should therefore be excluded during consideration of Annex 1 because its discussion in public would be likely to lead to the disclosure to members of the public present of information in the following category prescribed by Part I of Schedule 12A to the Local Government Act 1972 (as amended): 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).]; and since it is considered that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure would prejudice the commercial position of the parties involved and would prejudice the position of the authority to the detriment of the Council's ability to discharge its fiduciary and other duties as a public authority.

## Background

6. Since 1 January 2023 domestic soft seating containing Persistent Organic Pollutants (Persistent Organic Pollutants) has been banned from landfill in England and must be incinerated in accordance with Environment Agency guidance published in December 2022. The Persistent Organic Pollutants occur in upholstered furniture as they are contained in chemicals that were commonly used in fire retardants. Once released into the environment, Persistent Organic Pollutants persist for many years and can build up causing long term potential risks to the environment and health. Their use and disposal are governed by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2020.
7. Due to the short timescale between receiving the final guidance and the start of the landfill ban, temporary arrangements with our contractors were put in place for shredding and transport of Persistent Organic Pollutants waste collected by the district councils and at Household Waste Recycling Centres, and Viridor agreed to incinerate Persistent Organic Pollutants waste at Ardley Energy Recovery Facility under provisions in the residual waste treatment contract. At the time, Viridor indicated that they would be unable to accept whole Waste Upholstered Domestic Seating, requiring Oxfordshire County Council to shred them prior to delivery into the facility.
8. To utilise these provisions a contract variation was agreed with specific terms and conditions relating to the acceptance and treatment of upholstered seating. The variation includes provision for six-monthly reviews of the service and has flexibility to cease the service with one month's notice enabling the Council to enter other arrangements for the incineration of all or some of the waste should other appropriate suppliers become available at less cost.

9. In March 2024, a further Regulatory Position Statement was issued creating new and additional uncertainty and risk which was previously unforeseen and has the potential to create significant additional financial burdens in the handling and management of Persistent Organic Pollutants.
10. Following extensive Soft Market Testing earlier this year, potential suppliers raised significant financial risks if a tendering process is undertaken at the current time due the publication of a further Regulatory Position Statement. This may lead to additional requirements to control emissions from shredding operations, some of which appear undeliverable and may require considerable works, investment and cost from contractors to be compliant. This is unlikely to be definitively resolved until later in 2024 at the earliest. This is a shared risk as any costs incurred will be passed onto Oxfordshire County Council.
11. The temporary regulatory position statements issued by the Environment Agency about how Persistent Organic Pollutants waste is shredded also expire at the end of 2024, although currently it is uncertain whether there will be any changes to the guidance in light of the experience of handling this waste.
12. In addition to this, Defra has indicated that further materials/items (possibly including non-stick pans, carpets, mattresses, and tents) will be included within Persistent Organic Pollutants legislation, although a definitive date for this has yet to be published.
13. In light of this uncertainty and risk of significantly inflated costs due to the level of uncertainty, in discussion with legal and procurement colleagues the intention now is to delay procurement until 2025 (with new contracts to start in January 2026), and short-term arrangements will be extended to ensure compliant disposal until the Environment Agency can provide greater certainty on how site operators are required to manage the treatment of Persistent Organic Pollutants.
14. For incineration at Ardley Energy Recovery Facility under the residual waste treatment contract a key decision is required for spend under the contract variation until the end of December 2025.

## **Corporate Policies and Priorities**

15. As well as being legally bound to manage Persistent Organic Pollutants in line with the EA's Regulatory Position Statements, the extension of current arrangements meet the following Corporate Priorities: Put action to address the climate emergency at the heart of our work; Prioritise the health and wellbeing of residents, and; Work with local businesses and partners for environmental, economic and social benefit. In addition to diverting waste from landfill that emits methane, a powerful greenhouse gas, incineration of waste containing Persistent Organic Pollutants prevents the escape of these chemicals into the environment.

## Financial Implications

16. The cost of Persistent Organic Pollutants waste incineration is being met from the waste management budget. A £200k pressure was added to budget in 2023/24, with an additional £200k added this financial year – and for subsequent years – to help meet these costs. The additional costs of treating and incinerating are in part balanced by reduced landfill costs. Note that only 9 months of costs are included for 2025/26 as it is anticipated that a full tender exercise will be undertaken by this date for the service.

**Table 1 Net Cost of Treating and Incinerating POPs**

		Net additional cost	Additional budget in MTFP	Annual Financial Implications
		£'000	£'000	£'000
2022/23	3 Months	74.5	0	+74.5
2023/24	12 Months	346.7	200.0	+146.7
2024/25	12 Months	363.2	400.0	-36.8
2025/26	9 Months	£296.4	300.0	-3.6

Costs are based on average monthly tonnage using last two full years

As can be seen, the net cost for the treatment and incineration of POPs is forecast to be funded through the additional budget provided through the Medium-Term Financial Plan, for the current and future years. The net pressure on the budget prior to this was absorbed within the services' operational budgets.

17. More detailed information on current and future costs is contained in EXEMPT Annex 1.

Comments checked by:

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## Legal Implications

18. The Environmental Protection Act 1990 sets out the duties of Waste Disposal Authority as follows;
- Section 30 (2) (a) – county council is waste disposal authority

- Section 51 (1) (a) – Waste Disposal Authority duty to dispose of waste collected in its area by waste collection authorities
- Section 51 (1) (b) – Waste Disposal Authority duty to provide places for residents to deposit waste.

19. The Residual Waste Treatment Contract with Viridor was procured in compliance with the Public Contracts Regulations 2006 and there are no procurement law implications arising from the use of the contract for the treatment of Waste Upholstered Domestic Seating containing Persistent Organic Pollutants. The contract allows for amendments to the contract to be agreed in writing by the parties.

Comments checked by: Jayne Pringle

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## Procurement Implications

20. It is intended that market testing will commence in early 2025 in preparation for procurement to commence in accordance with the Procurement Act 2023 for pre-treatment, transport and incineration of Persistent Organic Pollutants waste.

The delay in the Procurement Act implementation to February 24<sup>th</sup> 2025 will not significantly impact the timeline.

Comments checked by: Katherine Booker

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## Staff Implications

21. The disposal of Waste Upholstered Domestic Seating is being managed using existing resources in the Waste and Circular Economy Team. There are no additional resource implications.

Comments checked by: Jayne Pringle

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## Local Transport and Connectivity Plan Implications

22. The extension of current arrangements has no implications on the Local Transport and Connectivity Plan

## Equality & Inclusion Implications

23. An Equalities Impact Assessment has been undertaken and is included as Annex 2

## Sustainability Implications

24. A Climate Impact Assessment has been completed and is included as Annex 3

## Risk Management

25. The following table shows the risks considered in planning for the extension of current arrangements:

<b><i>Risk</i></b>	<b><i>Impact</i></b>	<b><i>Likelihood</i></b>	<b><i>Mitigation</i></b>
Cost of Regulatory Position Statement compliance gets loaded-in to new contract if procured now	Additional cost	Medium	Continuation of existing arrangements gives extended time for the Regulatory Statement Positions to be costed and adopted by site operators
Addition of additional materials / items under Persistent Organic Pollutants regulation	Legislative requirement for OCC to treat these materials, therefore requiring contract negotiation and variation	Medium	Contract provisions and length to maximise flexibility to include additional items.
Change in law risk: further changes to Regulatory Position Statements that necessitate increased capital	Additional cost passed through to OCC as a result of necessary investment required by the contractor.	Medium	Appropriate provisions to provide flexibility for change and mitigate risk.

expenditure and/or increased operational costs for the contracted facility/facilities to remain compliant	Potential for contractor to become non-compliant and OCC to lose ability to comply with Persistent Organic Pollutants legislation		
Increase financial resources required to fund treatment of Persistent Organic Pollutants	Un-forecastable budgetary pressures	Medium	Changes to legislation may necessitate increased budget pressures. The short-term nature of the proposals means that a more cost-effective contract can be procured once any additional necessary handling or treatment changes become clear.
Legal challenge	Resource required, potential increase in budgetary pressures and the possibility of not being able to continue with the current arrangements	Very low. The use of the existing contract does not contravene procurement law and potential suppliers are agreed that the extent of legislative uncertainties makes this a high risk time to procure.	Advice from procurement and legal colleagues

## Consultations

26. No public consultation is required. Both Procurement and Legal teams have been consulted and involved in the development of the approach.

**Paul Fermer**  
**Director of Environment and Highways**

Annex: Annex 1: Equalities Impact Assessment  
Annex 2: Climate Impact Assessment

Background papers: Nil

[Other Documents:] Nil

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September 2024



