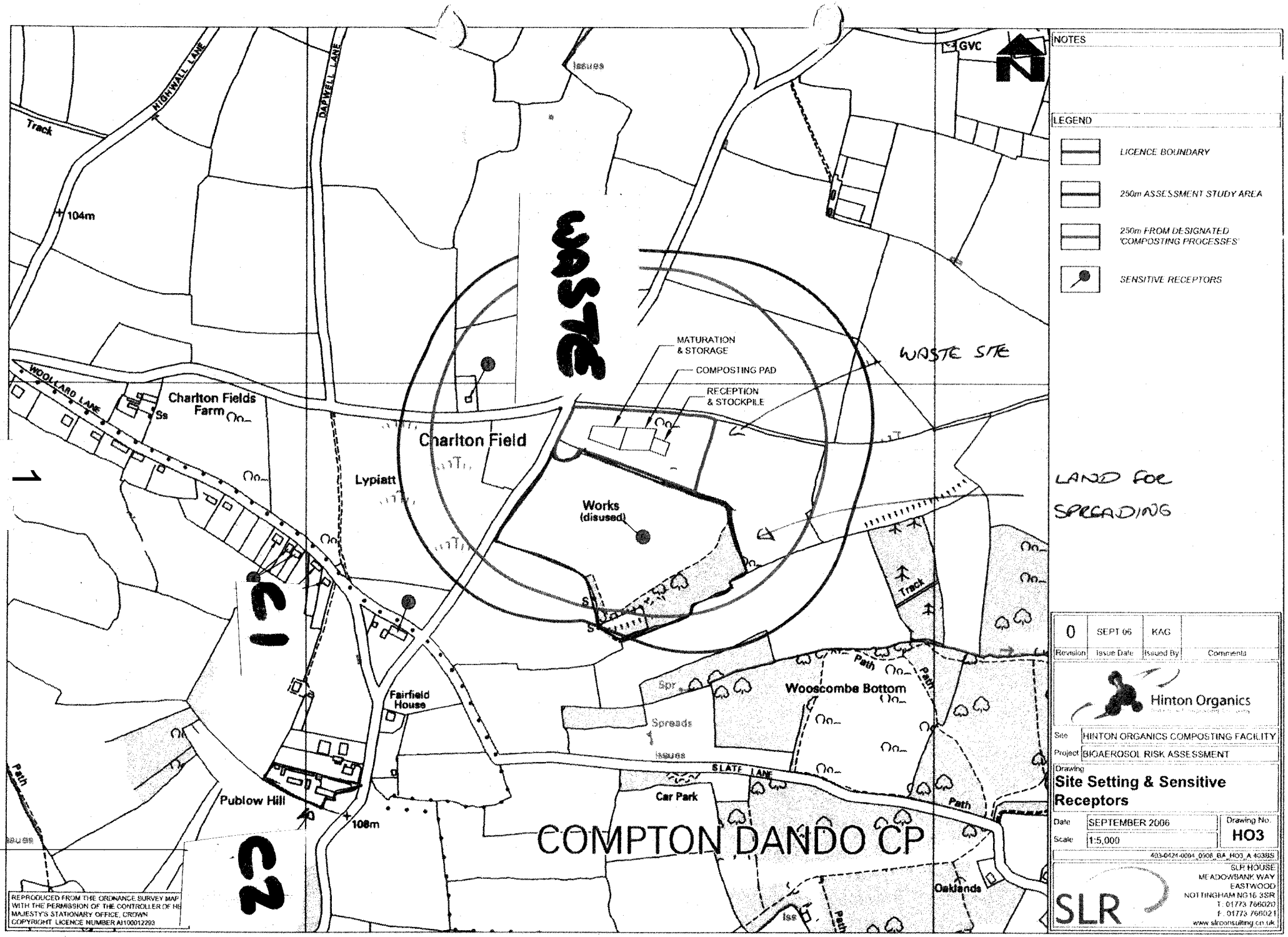
NOTES
LEGEND
LICENCE BOUNDARY
250m ASSESSMENT STUDY AREA
250m FROM DESIGNATED 'COMPOSTING PROCESSES'
SENSITIVE RECEPTORS
WASTE
WASTE SITE
MATURATION & STORAGE
COMPOSTING PAD
RECEPTION & STOCKPILE
LAND FOR SPREADING
Charlton Fields Farm
Charlton Field
Lypiatt
Works (disused)
Fairfield House
Wooscombe Bottom
Spreads
Publow Hill
108m
104m
Car Park
SLATE LANE
HIGHWALL LANE
DAYWELL LANE
WOOLLARD LANE
Track
Path
Oaklands
GVC
C1
C2
COMPTON DANDO CP
0
SEPT 06
KAG
Revision
Issue Date
Issued By
Comments
Hinton Organics
Site HINTON ORGANICS COMPOSTING FACILITY
Project BIOAEROSOL RISK ASSESSMENT
Drawing
Site Setting & Sensitive Receptors
Date SEPTEMBER 2006
Drawing No. HO3
Scale 1:5,000
403-04214-0004_0908_BA_HO3_A 4038S
SLR HOUSE
MEADOWBANK WAY
EASTWOOD
NOTTINGHAM NG16 3SR
T. 01773 766020
F. 01773 766021
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SLR
REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONARY OFFICE, CROWN COPYRIGHT. LICENCE NUMBER AI100012293

creating a better place

Environment Agency

Environmental Permitting (England and Wales) Regulations 2007
Regulation 36

ENFORCEMENT NOTICE TO TAKE SPECIFIED STEPS IN RELATION TO A BREACH/ANTICIPATED BREACH OF PERMIT CONDITION(S)

To: Hinton Organics (Wessex) Ltd, Charlton Field Lane, Nr Keynsham, Nr Bristol, Somerset, BS31 2TN

Environmental Permit: EAWML 26025
Regulated Facility: Hinton Organics (Wessex) Ltd, Charlton Field Lane, Nr Keynsham, Nr Bristol, Somerset, BS31 2TN

The Environment Agency considers that the following condition of the Environmental Permit is being and is likely to continue to be contravened

Section 5.2.2 Control of Odours:
all emissions to air from the specified waste management operations on the site shall be free from odours at levels likely to cause pollution of the environment or harm to human health or serious detriment to the amenity of the locality outside the site boundary as perceived by an officer of the Agency.

because officers of the Environment Agency have substantiated odours outside of the site boundary at levels that are likely to cause pollution of the environment or harm to human health on 2nd to 6th and 8th June 2009.

You are required to take the steps set out in Schedule I by the date(s) specified in order to remedy the contravention.

Date ..12/06/09..... **Signed .....**
Chris Francis
Environment Management Team Leader

The Environment Agency
Rivers House, East Quay, Bridgwater, Somerset, TA6 4YS

Environmental Permitting (England and Wales) Regulations 2007
Regulation 36

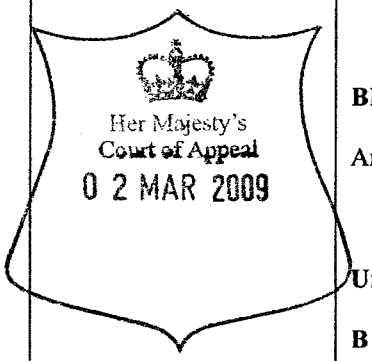
SCHEDULE I STEPS TO BE TAKEN		
Condition number	**Steps to be taken**	**By date**
5.2.2	ensure that activities from the specified waste management operation do not result in emissions to air that are not free from odours at levels likely to cause pollution of the environment or harm to human health or serious detriment to the amenity of the locality outside the site boundary as perceived by an officer of the Agency	26.June.2009

SUMMARY OF REGULATORY BREACHES

Hinton Organics (Wessex) Ltd at Charlton Field Lane, BS31 2TN

1.	30.7.01	s 42(5), EPA 1990 compliance notice served
2.	15.11.01	EA serve formal warning letter for contravention of licence conditions.
3.	3.3.04	s 42(5)(a), EPA 1990 compliance notice served for failure to keep waste on concrete pavement
4.	19.3.04	s 42(5)(b), (6) & (7), EPA 1990 suspension notice served, suspending import of waste.
5.	27.5.04	s 42(5)(a) EPA 1990 compliance notice served for breach of odour conditions
6.	16.9.04	s 42(5)(a), EPA 1990 compliance notice serve for breach of waste quantity and odour conditions
7.	5.10.04	Abatement notice served by Bath & North East Somerset Council (BANES) prohibiting smoke from partly rotted waste
8.	29.10.04	s 42(5)(a), (6) & (7), EPA 1990 suspension notice served, suspending import of waste.
9.	18.1.05	Prosecution for 7 offences under s 33(6), EPA 1990 (fined £5,200 inc. costs).
10.	19.5.05	Offences for contravention of licence conditions including storing off pavement, exceeding permitted quantities, failing to control rejected waste, failing to keep site records, and odours.
11.	20.5.05	s 42(5)(a), EPA 1990 compliance notice served for contraventions of licence conditions relating to storage, non-permitted waste and odour.
12.	28.6.05	Offences of causing odours and failing to control odours.

13.	1.7.05	Abatement notice served by BANES to prohibit foul and offensive odours from partly rotted waste.
14.	12.7.05	Offences for contravention of licence conditions relating to site records and waste storage.
15.	25.7.06	EA audit report records excess waste on pad at 1180 tonnes (no action taken by EA 7.8.06).
16.	15.8.06	Formal caution for offences under s 33(6), EPA 1990 relating to site records and oversize waste (not odours).
17.	25.10.06	EA extends deadline to remove excess waste.
18.	17.11.06	EA requests meeting regarding excess waste and breach of conditions.
19.	.28.11.06	Formal warning letter for contravention of licence relating to waste quantities.
20.	21.6.07	s 42(6)(c), EPA 1990 partial suspension notice served.
21.	24.7.07	s 42(5)(a), EPA 1990 compliance notice served for contravention of licence conditions relating to odours.
22.	2.10.07	Abatement notice served by BANES to prohibit foul and offensive odours from partly rotted waste.
23.	14.2.08	Formal warning letter sent for s 33 odour offences.
24.	4.3.08	s 42(5)(a), EPA 1990 compliance notice served for waste volumes and storage of waste
25.	16.4.08	s 42(6)(c), EPA 1990 partial suspension notice served.
26.	5.3.09	Prosecution for exceeding waste quantities on 4.3.08 fined £3,000 and £2,960 costs.
27.	12.6.09	Enforcement notice served for odour offences.



COURT 71
Application No.

A2/2008/0038
A2/2008/0951

Amendment as underlined in red this 19th day of March 2009 by order of Lord Justice Carnwath

MONDAY 2ND MARCH 2009

Order No. 010946

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
HQ06X02114

BEFORE LORD JUSTICE LAWS
LORD JUSTICE CARNWATH
And LORD JUSTICE MAURICE KAY

Under case reference: A2/2008/0038

B E T W E E N

1) FRANCIS ROY MORGAN
2) CATHERINE MARGARET BAKER

Appellants

- and -

1) HINTON ORGANICS (WESSEX) LIMITED
2) ENVIRONMENT AGENCY
3) BATH & NORTH EAST SOMERSET COUNCIL

Respondents

- and -

COALITION FOR ACCESS TO JUSTICE FOR THE ENVIRONMENT

Intervener

Under case reference: A2/2008/0951

B E T W E E N

HINTON ORGANICS (WESSEX) LIMITED

Appellant

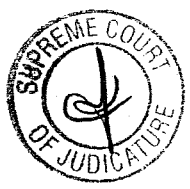
- and -

1) FRANCIS ROY MORGAN
2) CATHERINE MARGARET BAKER

Respondents

ON READING the Appellant's Notice sealed on the 7th January 2008 filed under case reference A2/2008/0038 on behalf of the Appellants applying for permission to appeal with appeal to follow if granted from the order of His Honour Judge Seymour dated 21st December 2007

AND ON READING the Appellant's Notice sealed on the 29th April 2008 filed under case reference A2/2008/0951 on behalf of the Appellant on appeal from the order of His Honour Judge Bursell QC dated 8th April 2008



AND ON HEARING David Hart QC and Jeremy Hyam counsel for the Appellants Francis Morgan and Catherine Baker; Stephen Tromans and Richard Wald counsel for the Appellant Hinton Organics; and David Wolfe counsel for the Intervener

IT IS ORDERED that

A. In respect of the appeal on the "interim costs issue" (A2/2008/0038):

1. Permission to appeal be granted
2. The appeal be allowed.
3. ~~The~~ Paragraph 3 of the interim costs order made by His Honour Judge Seymour QC on 21st December 2007 is set aside and replaced by an order that the costs of the Defendant be reserved to the trial judge.
4. There be no order as to the costs of the appeal.

B. In respect of the appeal on the "expert witness issue" (A2/2008/0951):

5. The appeal be allowed.
6. The ruling of His Honour Judge Bursell QC made on 8th May 2008, as to inadmissibility of expert evidence by the Appellant's odour expert, Mr Branchflower, is set aside.
7. The consequential order of His Honour Judge Bursell QC made on 8th May 2008, that the defendant pay the claimants' costs thrown away, is set aside.
8. The Respondents do pay the Appellant's costs of the appeal and costs thrown away below in respect of the adjournment of the hearing below, such costs to be subject to detailed assessment if not agreed

SUPREME COURT OF JUDICATURE

By the Court

Note from the Court

We have read the letter of the Environment Agency dated 5th March, 2009, inviting us to amend paragraph 3 of the Order made by us on 2nd March, 2009. We have also considered the letter from Richard Buxton dated 10th March, 2009, and the response of the Environment Agency of 12th March, 2009. The Order was based on a draft agreed between the parties, but apparently without reference to the Agency or the Council. We agree that paragraph 3 does not reflect the view expressed in the Judgment at paragraph 53 as to the merits of the order made in favour of the two authorities. Although in the event that there was no detailed argument on this point, we agree that the order should be amended to reflect our view. There will therefore be substituted for paragraph 3 of the Order the following:-

> "Paragraph 3 of the interim cost Order made by His Honour Judge Seymour QC on 21st December, 2007 is set aside and replaced by an Order that the costs of the defendant be reserved to the trial judge"

Carnwath LJ on behalf of the Court
19.3.09

FAO Mr D Fallon
Civil Appeals Office Registry
Room E307
Royal Courts of Justice
Strand
London WC2A 2LL

Our ref: NH
Your ref: 2008/0038

Date: 5 March 2009

Also by fax: 020 7947 6740

Dear Sirs,

Morgan & Baker –v- Hinton Organics (Wessex) Limited,
Environment Agency and Bath and North East Somerset Council (BANES)
Court of Appeal Number: 2008/0038 – Hearing 2 & 3 February 2009

We thank you for providing us with a copy of the Court Order dated 2 March 2009 made on the above matter. For clarification we have been given authority to write jointly in the following terms on behalf of both the Agency and BANES.

Having now had an opportunity to read a transcript of the judgment of Carnwath LJ we believe that the Order drawn in relation to costs may not be correct.

The Order states at paragraph 3 that :

"..3. The interim costs order made by His Honour Judge Seymour QC on 21st December 2007 is set aside and replaced by an order that costs be reserved to the trial judge."

This has the effect of reserving both the Defendants costs and the separate element of costs awarded to the Agency and BANES to the conclusion of the civil trial.

The Order of HHJ Seymour QC dealt with the costs of the Agency and BANES separately to that of the Defendant, in paragraphs 2 and 3 of that Order respectively. We enclose for ease of reference a copy of the Order of the 21st December 2007.

The transcript of the judgment of Carnwath LJ includes the following paragraphs which indicate that it should only be the costs ordered to be paid to the Defendant that should be remitted to the trial judge for consideration, and therefore paragraph 2 of the Order of HHJ Seymour QC was not affected:

".53. For reasons we have explained, the order in favour of the two authorities has not been the subject of argument, but in any event we would find it hard to see any objection to it. There being no appeal from the judge's decision that they were

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wrongly included in the order, they were entitled to their costs on ordinary principles. Since they would be no longer involved as parties to the case, it was obviously appropriate to deal with them then and there."

Carnwath LJ then went on to make clear that it was only the costs of the Defendant that are reserved to the trial judge stating as follows:

"58. On this issue, therefore, we will allow the appeal and substitute an order that the costs of the defendant be reserved to the trial judge"

And again at paragraph 73 and 74:

".....We would hold that the correct order would have been to reserve the defendant's costs of the interim application (including the costs of the hearings on the 9th November and 21st December 2007) to the trial judge.

74. Both appeals are accordingly allowed. For the interim costs order there will be substituted an order reserving the costs of the defendant to the trial judge...."

On this basis it seems clear that it is only that part of the interim order affecting the Defendants costs that was to be revisited, rather than all costs issues. The comments made at paragraph 53 indicate that the Agency and BANES should not await the conclusion of the trial, to which they are no longer a part, before resolution of their costs.

Further there is an affirmation that the costs Order made by HHJ Seymour QC was correct as regards the Agency and BANES, and if this is the case there would be no issue for the trial judge to revisit.

As it stands the Order of the 2 March encompasses both the costs of the Agency and BANES and the costs of the Defendant, whereas upon reading a transcript of the judgment it appears that it was intended only to encompass paragraph 3 of the interim costs Order, namely those of the Defendant.

We would be most grateful if you could bring this matter to the attention of the Court and amend the Order as appropriate under the slip rule.

With respect we would suggest that paragraph 3 of the Order be amended to read as follows:

"3. Paragraph 3 of the interim costs order made by His Honour Judge Seymour QC on 21st December 2007 is set aside and replaced by an order that the costs of the Defendant be reserved to the trial judge"

Yours sincerely

Nick Hayden
Solicitor
Direct dial 01392 442121
Direct fax 01392442112
Direct e-mail nick.hayden@environment-agency.gov.uk

cc. - Richard Buxton's Solicitors (for the Claimants)
- Bond Pearce (for the Defendants)
- Leigh Day & Co (for CAJE)

Cont/d..

RICHARD BUXTON

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Civil Appeals Office
Royal Courts of Justice
Strand
London WC2A 2LL

Attn: Mr D Fallon

Your ref. A2/2008/0038

Our ref. PS/MRG-1

Also by fax. 020 7947 6740 (6 pages)

10 March 2009

Dear Sirs

Morgan & Baker v Hinton Organics (Wessex) Ltd, case no. A2/2008/0038

We act for the Appellants in the above matter and have been sent a copy of the Environment Agency's letter to the Court of 5 March 2009 requesting an amendment to the Order of 2 March 2009.

The Appellants oppose the amendment to the order. We would be grateful if this response could be considered alongside the Agency's request to amend.

Our view is that paragraph 3 of the Order of 2 March 2009 is correct as it stands and that the interim costs order of 21 December 2007 is set aside and replaced by an order that costs be reserved to the trial judge. We say this for a number of reasons.

1) The Claimants do not dispute that the costs of the Agency and BANES are to be paid and that the Court of Appeal was right in this regard. However, it is critical in these proceedings who ultimately pays those costs, either the Appellants or the Respondents. The correct approach is that this should be determined at the close of trial and paragraph 3 of the order properly reflects this.

2) The Agency and BANES are well aware that this was the intention as the appeal proceeded and they expressly agreed to this. See, for example, pages 261/29-33 of the trial bundle (copies enclosed).

3) To amend the Order as now proposed by the Agency would be contrary to the agreement between the Appellants and the Agency prior to the appeal. It would also mean that the burden of these costs fall upon the Appellants in circumstances where the Court of Appeal has allowed their appeal and further that that appeal was allowed because the Appellants had been reasonable in trying to secure a solution in the manner proposed by the Agency and BANES in November/December 2007.

4) The Appellants have applied to Bristol District Registry to restore the nuisance proceedings and have the trial date fixed. It is hoped that this is listed for trial within the next few months. Thus, the question of who pays the Agency and BANES costs will be settled relatively shortly.

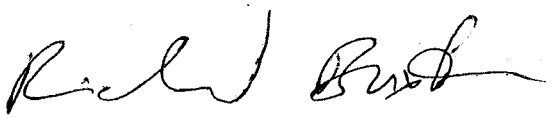
In conclusion, we are surprised to receive the Agency's letter to the Court. We cannot see what purpose it can achieve other than to favour the Respondent in circumstances where the costs incurred by the Agency and BANES were because the Respondent resisted a resolution to the problem (see paragraph 55 of the judgment). For the Respondent to benefit from this, by the Appellants suffering the costs of the Agency and BANES is unfair.

The Appellants have reassured the Agency and BANES that funds have been made available and interest is accruing on this. The Agency and BANES agreed that this was acceptable. To now go back on that agreement is unreasonable and unfair to the Appellants. Finally, the Agency notes in its letter of 16 January 2009 (261-30) that it had no interest in the outcome of the proceedings now its purpose of recovering its costs had been achieved, yet it now wishes to re-assert that interest to the detriment of the Appellants and causing yet further costs to be incurred by the Appellants and the court in responding to this.

If we are wrong in our understanding of the Court of Appeal in this regard and it did intend the Appellants to pay the costs of the Agency and BANES then we would ask that, in all the circumstances of this appeal, that the order of 2 March 2009 remain as it stands and that all the costs of the interim hearing of 21st December 2007 be determined at the close of trial; the financial position of the Agency and BANES being preserved in any event.

In the circumstances, we ask that the request by the Agency and BANES to amend the order of 2 March 2009 be declined. It serves no useful purpose other than to unfairly favour one party over the other, without justification.

Yours faithfully



Richard Buxton

cc Environment Agency (Nick Hayden)
BANES (Shaine Lewis)
Bond Pearce (Dale Collins)

FAO Mr D Fallon
Civil Appeals Office Registry
Room E307
Royal Courts of Justice
Strand
London WC2A 2LL

Our ref: NH
Your ref: 2008/0038

Date: 12 March 2009

Also by fax: 020 7947 6740

Dear Sirs,

Morgan & Baker –v- Hinton Organics (Wessex) Limited,
Environment Agency and Bath and North East Somerset Council (BANES)
Court of Appeal Number: 2008/0038 – Hearing 2 & 3 February 2009

We are in receipt of the Appellants' letter to you of the 10 March 2009, in response to our letter of the 5th March and would make the following short points. We have also confirmed the terms of this response with BANES.

The Costs Order does not reflect the apparently clear intention set out in the transcript and outlined in our letter of the 5th March.

In any event the Order does not protect the position of the Agency and BANES since all costs matters are reserved to the trial judge, presumably including whether the Agency and BANES should receive their costs. This may necessitate further attendance by the Agency and BANES at the conclusion of the civil trial (something Carnwath LJ expressly thought inappropriate).

The suggested paragraph in the Appellants' letter of the 14th January 2009 has clearly not been achieved in the terms of the current Order – nor does it appear to have been argued for in front of the Court (paragraph 53 of the transcript).

In response to the particular paragraphs now raised by the Appellant :

1) The Court of Appeal has not ordered that the costs of the Agency and BANES are to be paid, the Order does not state this.
2) Agreement was reached, but it appears that argument was not put before the Court of Appeal to achieve the terms of the Order suggested – therefore it is hardly surprising that that Order was not made.
3) We are simply suggesting that the Order be amended to reflect the intention of the Court as appears to have been clearly indicated in the transcript.
4) The application to restore the matter to the Bristol District Registry and conclude the matter is welcomed.

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www.environment-agency.gov.uk

The Order, as the Agency and BANES understand it, does not appear to reflect the transcript. Nor does it protect the position of the Agency and BANES since the terms of the Order do not indicate that it is only the party which pays the costs which is to be determined, but costs generally.

In these circumstances the Agency and BANES feel obliged to bring this matter to the Courts attention.

Yours sincerely

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Direct e-mail nick.hayden@environment-agency.gov.uk

cc. - Richard Buxton's Solicitors (for the Claimants)
- Bond Pearce (for the Defendants)
- Leigh Day & Co (for CAJE)

Cont/d..

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Attn: Mr D Fallon

Your ref. A2/2008/0038

Our ref. PS/MRG-1

Also by fax. 020 7947 6740 (1 page)

13 March 2009

Dear Sirs

Morgan & Baker v Hinton Organics (Wessex) Ltd, case no. A2/2008/0038

We have received the Environment Agency's letter to the Court of 12 March 2009.

We are unsure what point the Agency is making. The costs of the Agency and BANES are covered and we have provided assurance of this. The purpose of that assurance was to provide comfort to the Agency/BANES and that they need not attend an appeal. This aspect of the appeal on costs was in the Appellant's skeleton argument e.g.

> *62. ... the Claimants contend that having regard to the Aarhus obligation, the Judge was plainly wrong to order that they pay the Defendants and the added parties' costs, and instead should have made an order reserving the question of who paid the added parties costs to the trial judge, ...*

Agreement was reached between the Agency/BANES of the costs position and contained in the documents before the Court. Further, the Agency advised the court of the position.

The Agency has stated that it is simply seeking to reflect the intention of the transcript. But that creates the inconsistency that the Appellants, on the one hand are successful in reserving the interim costs order to trial but on the other, have to pay the Agency/BANES costs, through more fault of the Respondent than their own.

We repeat the conclusion in our earlier letter and ask that the Agency's request to amend the order of 2 March 2009 be declined. It serves no useful purpose other than to unfairly favour one party over the other.

Yours faithfully

Richard Buxton

cc Environment Agency (Nick Hayden) / BANES (Shaine Lewis)
Bond Pearce (Dale Collins)