



Opencast coal mining Liability for restoration works

Summary

The opencast coal industry is facing a severe crisis, following the liquidation of ATH Resources and Scottish Resources Group (parent company to Scottish Coal) within the last few months. Restoration of sites at the end of their productive lifetime was originally part of planning consents, and restoration bonds were supposedly in place to cover the costs if necessary. It has since transpired that the bonds will not be sufficient to pay for restoration, and communities which have already had to bear the burden of these developments on their doorstep now have no guarantee that the land will be restored. In addition, if restoration does not take place at mines within European sites protected under the Habitats Directive (SPAs), this could be in breach of EU wildlife law. The public purse should not be expected to pick up this cost, and yet administrators KPMG took the case to the Court of Session to try and divest the assets of liability for restoration costs. They were successful, although this judgement is now subject to appeal.

Friends of the Earth Scotland and RSPB Scotland believe that there should be an inquiry into what went wrong, and that planning consent for new opencast sites or extensions at existing sites should not be granted in the meantime.

We welcome East Ayrshire Council's decision to hold an independent review¹, but believe that we need more scrutiny than that offered by their inquiry, or indeed the working group led by Professor Griggs of the Scottish Mines Restoration Trust. Other industries, including landfill sites and any future unconventional gas working, face similar challenges – the inquiry should also look at how we can prevent problems with restoration bonds for any kind of development in the future.

Around a third of total UK opencast coal production was mined in Scotland in 2010². However, the collapse of the two largest opencast coal operators has exposed the poor standards of regulation and enforcement that govern this industry, and demonstrated the poor financial regulation of restoration bonds which are used across several types of development.

When ATH Resources went into administration in December 2012³, it started to become apparent that all was not well. Then Scottish Resources Group, parent company to the country's largest operator Scottish Coal, went into administration in April this year. However, the true extent of the problem only became apparent when it was revealed that the restoration bonds, required to obtain planning permission for the mines, were likely to be inadequate to cover the restoration costs. In fact, it has been estimated that, across Scotland, the taxpayer may potentially need to meet a shortfall of up to £100 million⁴.

Restoration bonds are required as part of a planning consent for certain types of development, particularly those with long term environmental impacts. They should provide a financial guarantee that restoration works will happen if the operator of a development gets into financial difficulties or ceases trading. However, in the case of these opencast coal mines it seems that the regulators – in this case the local authorities – failed to ensure that the bonds would be adequate to cover the restoration costs.

¹ <http://docs.east-ayrshire.gov.uk/crpadmin/2012%20agendas/council/27%20june%202013/Opencast%20Coal%20Mining%20-%20Independent%20Review.pdf>

² <http://scotland.gov.uk/Resource/0038/00389297.pdf>

³ <http://www.bbc.co.uk/news/uk-scotland-scotland-business-20617306>

⁴ <http://www.heraldscotland.com/news/home-news/coal-firm-gives-just-1m-for-clean-up-of-disused-mines.21270033>

That a private developer would seek to minimise cost is always disappointing – but hardly surprising or unusual. What is extremely frustrating is the failure of the regulators in this case. Local authorities either failed to secure adequate bonds at the time of consent or failed to monitor their value while the sites were in operation, during which time the value of the bonds relative to restoration cost plummeted, particularly where delays or site extensions meant sites continued operating long after the original restoration date.

RSPB Scotland staff attended a planning committee meeting in 2007, when East Ayrshire Council consented an extension to the Grievehill opencast coal mine⁵. This extension is within an internationally important wildlife site, one of the best in Europe and home to rare breeding birds such as hen harrier and golden plover. It is protected by European law as a Natura site. We did not believe that the proposals should have gone ahead at all in such a sensitive site, but East Ayrshire Council and SNH disagreed, on the basis that it was to be monitored and restored properly after the coal had been extracted. We specifically warned officials and councillors of the need to guarantee that restoration would happen and of the likely difficulty of doing this to prevent a breach of European law. It now looks as though Grievehill is one of the sites where the restoration bond is grossly inadequate. In combination with the Powharnal development within the same SPA, this has left us with significant damage to a European site and is of particular concern.

It is hard to think of a less sustainable industry than opencast coal mining. A finite resource is extracted by digging huge holes in the ground, often with devastating direct impacts on communities and wildlife. And that is before considering the climate impacts that result from burning the coal. FoES, RSPB and WWF have shown how Scotland can meet climate and energy targets with renewables and energy efficiency in the Power of Scotland report⁶. There is no reason to suppose that coal burning has even a medium-term future in Scotland.

With careful site selection (avoiding sensitive areas), mitigation and restoration it can be possible to restore some sites to reasonable value for wildlife or amenity use. Over the last 20 years, RSPB Scotland has worked very hard alongside the open cast coal operators and local authorities to try and minimise the direct environmental damage their operations cause. Although we have often been in opposition to individual developments, we have worked with some committed and well meaning individuals and we have not questioned the integrity of the industry as a whole, trusting that the operators and local authorities would do a professional job to ensure that the legacy left by the industry would be the best it could.

The revelations of the last few months call into question the assumptions behind this approach. Incredibly, given the precarious financial state of the industry, there are several current planning applications for new opencast coal mines in Scotland. We believe there should be a moratorium on any new consents, at the very least until an inquiry has taken place to establish what went wrong, and measures put in place to ensure this situation cannot happen again.

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RSPB Scotland is part of the RSPB, the country's largest nature conservation charity, inspiring everyone to give nature a home.

The Royal Society for the Protection of Birds (RSPB) is a registered charity: England and Wales no. 207076, Scotland no. SC037654

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⁵ http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7103334.stm with planning committee report [here](#)

⁶ <http://www.foe-scotland.org.uk/power-explained>