

## CASE STUDIES - Corporate Transactions

### Valens Resources Group PLC

Jon and Simon Miles, Kent-based entrepreneurs who sold municipal services company Verdant Group to Greenstar in 2007, have returned to the UK waste industry with the acquisition of East-England based Glazewing Ltd, one of the regions leading metal recyclers.

The clients' track record in successfully buying and building businesses in the waste sector include:

- Buying and developing the Polkacrest healthcare waste management company prior to selling it to London Waste in 1998
- Investing seed capital in Elite Environmental Ltd and assisting with its growth before being acquired by PHS Allclear
- Buying the Ecovert waste business in 2002 when it had nine municipal contracts, £9 million turnover, 250 staff and a failing reputation. They transformed the business into Verdant Group Plc which, when they sold it to Greenstar UK in November 2007, had over 20 local authority recycling, refuse and cleansing contracts, 1,200 staff and an annual turnover of £50 million, making it one of the top five privately-owned waste businesses.

Jon and Simon Miles were advised on the acquisition by Jonathan Grant at lawyers DMH Stallard and by a KPMG Corporate Finance team led by Mark Whelan. The project required analysis and risk assessment of planning and environmental consents attaching to a series of interconnected property titles. Our due diligence and rectification work had to satisfy both clients/the requirements of the deal and the debt funders. Assessment of current and potential access rights were also key, as were the interests of local residents.

Jonathan Grant, Partner



### Skipaway Holdings Limited

Viridor Waste Management Limited, a subsidiary of Pennon Group plc, acquired Skipaway Holdings Limited for £14.7 million. DMH Stallard represented the sellers in the transaction. The business of the target and its three subsidiaries (Skipaway Limited, Allwaste Disposal Services Limited and Wastenot Recycling Limited) comprised industrial and commercial waste collection and recycling activities operating in the Medway towns and the Faversham and Ashford areas handling approximately 240,000 tons of material per annum.

Emphasis was placed on understanding the client's business so as to assist them on the disclosure of compliance with relevant environmental and waste management legislation. This was made possible by the involvement of DMHS' niche environmental practice. Another key issue for the majority shareholder was the negotiation of the restrictive covenant to allow him to deal with property which may be leased or licensed to companies involved in waste management.

This transaction was led by the corporate department with assistance from the commercial, real estate, environmental, planning and employment departments.

Jonathan Grant, Partner



## CASE STUDIES

### Premier Aggregates Limited

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#### Environmental Permitting

The client applied for what was then known as a PPC Permit for its landfill but this was refused by the Environment Agency. It then appealed to the Secretary of State whose Inspector allowed the appeal in July 2008 and directed the Environment Agency to issue the PPC Permit acknowledging that it would then become an Environmental Permit under the new regulations.

However, the Environment Agency then took the position that they could not comply with the Inspector's direction because they perceived a lacuna in the 2007 Environmental Permitting Regulations. Whilst those regulations dealt with the case of a pending PPC Permit application and provided that upon its grant it should automatically become an Environmental Permit under those regulations upon a literal interpretation there was no such provision in the case of a PPC Permit which had been refused but which was granted on appeal.

DMH Stallard acknowledged that upon a literal interpretation of the 2007 Regulations there did appear to be such a lacuna but argued that the Regulations should be given a purposive interpretation. Parliament must be taken as having intended that PPC Permits granted on appeal should automatically become Environmental Permits in exactly the same manner as an application which was pending at the time when the Regulations came into force.

The Environment Agency consulted at the highest level internally but endorsed its regional officers' opinion that the Regulations had to be given a literal interpretation and there would have to be amending regulations. They offered an alternative course of action meanwhile which would only have validity if the Environment Agency's approach was correct which DMH Stallard doubted.

The debate continued with DMH Stallard threatening an application to the High Court for an order of mandamus compelling the Environment Agency to comply with the direction made by the Inspector. However, before such an application was launched Defra intervened and confirmed the opinion of DMH Stallard that the regulations should be given a purposive interpretation and that no amending regulations were necessary or were intended. In the light of that intervention the Environment Agency changed its position and agreed to issue the PPC Permit as directed and to recognise it as then becoming an Environmental Permit.

Michael Krantz, Partner

### Rastrum Limited/Rye Wharf Limited

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#### Judicial Reviews & Challenges

DMH Stallard advises Rastrum/Rye Wharf Ltd on various planning and environmental matters. Recently we have represented them in:

- (i) a challenge to the lawfulness of a Notice of Entry served by the Environment Agency
- (ii) a challenge to a decision of the Secretary of State of Communities and Local Government relating to lawfulness and legitimate expectation.
- (iii) a long running dispute with Natural England as to the status of a site of Special Scientific interest on the Company's land.

Heidi Copland, Partner

#### Prosecutions

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We are defending a prosecution brought against our client by the Environment Agency. The proceedings are now in the Crown Court. A preliminary hearing on legal issues has been adjourned part-heard.

The case involves some highly important issues on when waste ceases to be waste after processing. This is an area of law which European jurisprudence has left in a more opaque state than it should be and although some clarity is beginning to emerge the process remains a slow one.

Central to this case is the processing of waste derived soils of different grades for different purposes. The Environment Agency contends that the processed soils remain waste. Our client argues that they are a product and have therefore ceased to be waste.

An impressive defence team comprising two leading experts and specialist counsel is led and co-ordinated by DMH Stallard.

Michael Krantz, Partner

## CASE STUDIES

### Ethos Recycling Limited, Ethos Energy (Worldwide) Limited and Ethos Energy UK Limited

#### Energy from Waste



Ethos Energy (Worldwide) Limited has acquired patented pyrolysis and gasification energy from waste (EfW) technology which is being marketed by Ethos Energy UK Limited in the United Kingdom.

There is an existing plant in Avonmouth, near Bristol, which is processing clinical waste. Although pyrolysis and gasification is not new this particular adaptation of it appears to be ground-breaking and is very exciting. It can be used to process large quantities of household waste at an EfW rate well above that of current targets.

A contract has been entered into to supply this technology to the MoD to create EfW on Her Majesty's Warships.

DMH Stallard's planning team was chosen to evaluate additional sites in the United Kingdom, two of which are in the London area, for the further implementation of this cutting edge project. The team has now delivered its evaluation report.

Michael Krantz, Partner

### Premier Aggregates Limited

#### Commercial Agreements

DMH Stallard acted for the landfill operator in this transaction with the energy generation contractor, Renewable Power Systems Limited. The objective of the project is to harness the landfill gas produced within the landfill over a twenty year term in order to generate electricity from it.

DMH Stallard's role was to negotiate with the contractor's solicitors the detailed commercial agreement between the parties as well as the lease of the compound which will accommodate the generators over the twenty year term.

DMH Stallard has specialist experience of such negotiations as part of its growing Waste and Recycling practice. Such negotiations are often complicated. A particular complication is managing the interface between the responsibility for landfill gas control which should lie with the contractor and the responsibility for other environmental controls which remains with the landfill operator. This impacts upon the drafting of covenants, cross-indemnities, limitations of liability and insurance provisions.

Michael Krantz, Partner



## CASE STUDIES

### West Sussex County Council

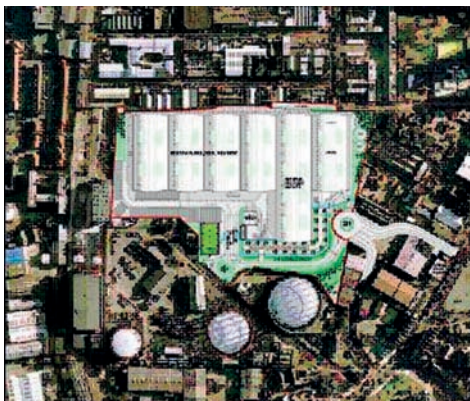
#### Waste Planning

DMH Stallard has provided on-going planning support since 2004 to West Sussex County Council on major development proposals throughout the County including minerals and waste schemes. Specific support includes giving expert evidence at Planning Inquiries, preparation of Committee Reports and presentation of Reports at Planning Committee. We have also engaged in a County-wide environmental and planning appraisal of areas which have potential for development for specific waste facilities.

Our Director of Planning (Peter Rainier) has been seconded to West Sussex County Council in a Planning Consultancy role for the last 4 years. He works at their offices one day a week to deal with complex planning applications for waste and mineral development and advises on the development potential of County Council owned land.

Peter assists West Sussex County Council with their development control work. He has handled applications for major schemes including; a Materials Recycling Facility, increased throughput at a waste recycling centre for a skip business, numerous household waste recycling sites, waste transfer stations, composting sites, an extension to an existing landfill and a major sand and gravel extraction scheme. He has also represented the Council at a Public Inquiry in relation to a land raise operation. All the proposals have been contentious, involving careful and detailed consideration, leading to significant debate by Members of the Council and in one instance a major Public Inquiry.

Peter Rainier, Director of Planning



### Veolia Environment Limited



#### Waste Site Acquisition

We act for Veolia Environment Limited dealing with their property work in connection with their County Council Waste Contracts. This involves the acquisition of numerous sites from District Councils and lease backs, co-coordinating with the key Management Contract and ensuring KPIs are satisfied; the acquisition of sites for waste transfer stations.

Marion Wilcock, Partner

