Case Name: *Baci Bedfordshire Ltd, R (on the application of) v Environment Agency & Anor* [2018] EWHC 2962 (Admin) (06 November 2018)

Full case: Click Here

Commentary: A Judicial Review of the grant of an Environmental Permit to Covanta Energy for it energy recovery facility at Rookery South was brought by local residents on the single ground that the grant was premised upon a mistake of fact and/or erroneous science in respect of the discharge of potentially harmful heavy metals. Both the Defendant and Covanta conceded the error by Covanta, but denied that the Defendant relied upon it when issuing the Permit. The Claim was dismissed because the Judge held that, even though Covanta made a factual and scientific error in its application, the Defendant did not adopt it when making its decision. It follows that the error was immaterial.

The case law concerning the approach by the court to decisions of statutory regulators based on scientific evidence was reviewed and following R (Mott) v Environment Agency [2016] 1 WLR 4338 the court should afford a decision-maker an enhanced margin of appreciation in cases involving scientific, technical and predictive assessments. The judgement also sets out the case law concerning mistake of fact and states that it is well established that, in order to found a challenge on the grounds of mistake of fact, (1) there must have been a mistake as to an existing fact; (2) the mistake must be established in the sense that it is uncontentious and objectively verifiable; (3) the claimant or its advisers must not have been responsible for the mistake; and (4) the mistake must have been material to the reasoning. In this case, the Judge was satisfied that the Environment Agency had not made the same mistake as Covanta. It was elementary science that heavy metals do dissolve in water and the Environment Agency is the regulator with wide experience of this type of facility and its officers have scientific expertise so the Judge found it implausible that the Environment Agency would make the same mistake and there was express reference to metals as soluble fractions in the permit. The issue had also been expressly brought to the Environment Agency's attention during the consultation.

Although there was a difference of opinion between the Claimant and the Environment Agency, the judge held that it was impossible to characterise the Defendant's assessment as irrational, or based on incorrect science. The judge was not equipped to adjudicate upon the technical merits of the differing schemes. But, in any event, it is not the Court's role to second-guess the regulator's professional assessments. Judicial review only lies where the regulator has erred in law, and the Claimant had failed to establish any error of law by the Defendant in this case. Therefore the claim had to be dismissed.

Case summary prepared by Susannah Herbert