

## Permitting decisions- Refusal

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We have decided to refuse the permit for Renu Recycling Limited (“the Applicant”).

The proposed facility location is 434 London Road, Grays, RM20 4DH.

We consider that in reaching that decision we have taken into account all relevant considerations and legal requirements.

### Purpose of this document

This decision document provides a record of the decision making process. It:

- highlights [key issues](#) in the determination
- gives reasons for refusal
- summarises the decision making process in the [decision considerations](#) section to show how the main relevant factors have been taken into account.

Unless the decision document specifies otherwise, we have accepted the applicant's proposals.

Read the permitting decisions in conjunction with the refusal notice.

### Key issues of the decision

#### Summary of our decision

The Environment Agency (EA) has decided to refuse the application for a permit. We consider that the Applicant will not operate the facility in accordance with the permit if issued. Under Paragraph 13, Schedule 5 of the Environmental Permitting Regulations 2016 (“EPR 2016”), it is the duty of the Environment Agency to refuse a permit application in these circumstances.

## Description of the facility

The permit application proposed a new bespoke activity to accept, store and treat Household, Commercial and Industrial (HCI) and Construction, Demolition & Excavation waste. The proposed activities for the site included:

- Physical treatment consisting only of manual and mechanical sorting, separation, screening, baling, wrapping, shredding, granulating, blending or compaction of non-hazardous waste into different components for disposal (no more than 50 tonnes per day) or recovery. The annual throughput <75,000 tonnes.

## The legal framework

Paragraph 13 of schedule 5 of the EPR 2016 states:

*(1) Subject to sub-paragraph (3), the regulator must refuse an application for the grant of an environmental permit or for the transfer in whole or in part of an environmental permit if it considers that, if the permit is granted or transferred, the requirements in sub-paragraph (2) will not be satisfied.*

*(2) The requirements are that the applicant for the grant of an environmental permit, or the proposed transferee, on the transfer of an environmental permit (in whole or in part), must—*

*(a) be the operator of the regulated facility, and*

*(b) operate the regulated facility in accordance with the environmental permit.*

*(3) The requirement in sub-paragraph (2)(b) does not apply to an applicant for the grant of an environmental permit authorising the carrying on of only a stand-alone water discharge activity, stand-alone groundwater activity or stand-alone flood risk activity.*

Section 9 of the Department for the Environment, Food and Rural Affairs ('Defra') Core Guidance on the Environmental Permitting (England and Wales) Regulations 2016, states the following:

Following an application for the grant or transfer of an environmental permit, there is also a specific duty on the regulator not to grant or transfer the permit if it considers that the operator will not operate the facility in accordance with the permit (Schedule 5, Part 1, paragraph 13). In making this decision the regulator should consider whether the operator cannot or is unlikely to operate the facility in accordance with the permit. The regulator might doubt whether the operator could or is likely to comply with the permit conditions if for example the operator:

- has an inadequate management system
- demonstrates inadequate technical competence
- has a record of poor behaviour or non-compliance with previous regulatory requirements and/or
- has inadequate financial competence

The core guidance sets out our approach to assessing operator competence. A non-exhaustive list of factors we may take into account when assessing an Applicant's compliance record is given in Section 9. These include:

#### Section 9.19:

In assessing operator competence the regulator may also consider whether the operator or any other "relevant person" (see below) has a poor record of compliance with regulatory requirements. These considerations will include, but are not restricted to, evidence of convictions for "relevant offences". Other considerations may include receipt of formal enforcement notices such as enforcement or suspension notices or a history of, or acute, non-compliance with permit condition(s).

#### Section 9.21:

A "relevant person" in relation to a conviction for a relevant offence or non-compliance includes:

- the operator
- a director, manager, secretary or other similar officer of an operator (when it is a corporate body) and a partner in a limited liability partnership (LLP), who has either been convicted of a relevant offence him/herself, or who held a position in another corporate body when it was convicted of a relevant offence; and
- any other person that the regulator has reason to believe is a controlling or guiding mind of the operation

#### Section 9.22:

The regulator must not grant or transfer a permit to persons it considers will not be the operator of that facility or will not operate the facility in accordance with the permit. This may include persons who have such a poor record of compliance with regulatory requirements or persons who have demonstrated such poor behaviour towards officers and the regulatory process that it appears unlikely that they would comply with permit conditions. Similar considerations could, equally, lead to revocation of (an) existing permit(s).

#### Section 9.27:

The operator of any regulated facility should be financially capable of complying with the environmental permit. The regulator should consider an operator's financial competence when determining the operator's ability to comply with the conditions in its permit.

## Operator Competence

Given the reference in paragraph 9.19 of the Defra Core Guidance that any assessment can extend beyond relevant convictions it is logical to consider the wider compliance history of any relevant persons. It should also be noted that the list of relevant persons in paragraph 9.21 is not exhaustive. We consider that Phillip Mitchell (Director), Reginald Raymond Rumbol (Site Manager) and Ricky Paul Mann (Technically Competent Manager ('TCM')) are relevant persons in relation to the application as we consider that they are in positions to influence or control the actions of the company.

Renu Recycling Limited (Company number 12294333) was incorporated on 1 November 2019 with one Director, Philip Mitchell. Philip Mitchell, was also the Director of Connect Waste Management Limited (Company number 06532572) who operated a permitted waste site at 75-77 Chequers Lane, Dagenham EAWML 402257. The permit for Connect Waste Management Limited was issued on 30/04/2015. Philip Mitchell became sole Director on 18/06/2015 and remained the sole Director of the company.

Following the permit application for Renu Recycling Limited at 434 London Road Grays, EA officers have visited the site 2 times. On both occasions Reginald Rumbol presented himself as the person in charge of the site and the Site Manager and is regularly contacting the EA about the progress of the application, although there is no reference to him or his involvement in the application. Reginald Rumbol has also informed our staff whilst on site that he is to be the appointed TCM and has recently obtained his certificate through WAMITAB (dated 18/11/2020 as confirmed on the WAMITAB database), and has put down the site address as Renu Recycling Limited at the Grays address.

The TCM detailed in the application form is Ricky Mann. We have checked with the Applicant's consultant who has confirmed that the application details are correct and that the TCM is going to be Ricky Mann. We have considered both Reginald Rumbol and Ricky Mann as relevant persons.

It is not clear when Reginald Rumbol started working at the Connect Waste Management Limited site but he was first seen by EA officers on 17/09/2015 and was introduced as the Site Manager. Out of 14 site visits between 17/09/2015 and 26/07/2019 Reginald Rumbol was present for 12 of them. During 10 of the 12 visits permit breaches and poor management of the site were identified. During these visits Reginald Rumbol showed EA officers around the site and was in operational control.

The Connect Waste Management Limited permit was bespoke and authorised the operation of a waste transfer station similar to the permit applied for by Renu Recycling Limited. The permit allowed the physical treatment of waste including sorting, separation, screening, and shredding of non-hazardous waste into

different components for disposal (no more than 50 tonnes a day) or recovery. Connect Waste Management Limited ran a poorly performing operation and repeatedly breached permit conditions. Operator performance is rated in bands. The bands go from A, being the best performers, to F, being the worst performers. Bands A and B demonstrate sites having the expected level of permit compliance. Bands C and D require improvement and Bands E and F require significant improvement. The Connect Waste Management Limited site was rated as a poor performing site (Bands D and E) for 2018 and 2019.

Connect Waste Management Limited were consistently non-compliant with their permit. The main reasons for non-compliance were emissions being generated from the site and the operator not complying with their Environment Management System (EMS) for example:

- **2015** - 5 site visits and permit was breached on 3 of those visits (dates of visits where permit breaches were identified: 20/08, 14/10, 27/11)
- **2016** - 4 site visits and all had permit breaches (dates of the visit: 20/01, 19/02, 05/04, 26/10)
- **2017** - 3 visits – 2 identified permit breaches (dates of the visit where permit breaches were identified: 17/01, 10/10)

Despite continued advice and guidance provided to the operator on all Compliance Assessment Report forms by regulatory officers they continued to breach the permit conditions. The majority of the non-compliance issues related to the dust suppression, excess volumes of waste and non-compliance with their EMS. They were also not compliant with their Fire Prevention Plan. Philip Mitchell regularly visited the site including on 06/05/2015, 17/09/2015, 20/01/2016, 19/02/2016, 05/04/2016 and 26/10/2016.

Both Philip Mitchell and Reginald Rumbol had a clear operational interest in the site. Where breaches were identified on these dates (4 out of the 6) EA officers made both Philip Mitchell and Reginald Rumbol (site Manager) verbally aware of these breaches, informed them of the improvements needed and agreed deadlines for making the required improvements. Philip Mitchell was included in correspondence from the EA officer inspecting the site summarising the breaches following the visits. Despite seeing the issues first hand and being told of the impact on the environment and the dust on neighbouring businesses, neither Philip Mitchell, in his capacity of Director of Connect Waste Management Limited nor Reginald Rumbol (site Manager), did enough to ensure the operation came into compliance.

A site must operate in accordance with an EMS that identifies and minimises the risk of pollution. The permit was first found to be non-compliant for emissions (dust) on 20/08/2015 and not taking appropriate measures to control dust. The EMS for the site at that time made reference to a dust suppression system that was not installed at the site. Reginald Rumbol was not present on this site visit

but he was present on all the following site visits which highlighted the same issue. Permit condition 3.1.1 (emissions) and 1.1.1 (management) were breached on 3 site visits between 20 August 2015 and 27 November 2015. The dust suppression system was confirmed to be installed at the site visit on 20 January 2016. It took the site a period of 5 months to complete works on the dust suppression system. A system which they had already included in their EMS as a control measure for emissions, and which should therefore be in place from the date the permit was issued.

Despite the installation of the dust suppression system the site continued to be breached under permit condition 3.1.1 for not taking appropriate measures to control emissions on site.

This included infrastructure damage to the site including cladding on the building and a missing wall in between the neighbouring site.

The EA uses a point based system to assess compliance with permits and their overall performance as an operator. When a breach of the permit occurs an operator is issued a score according to the environmental effect of the breach. Points are accumulated over a year to give a compliance banding. The higher the score of an operator, the higher the impact is on human health, quality of life or the environment. A higher score attracts an increased subsistence charge which reflects the increased regulatory effort needed during the year to identify and address an unacceptable risk to human health, quality of life or the environment.

There was a continued Compliance Classification Scheme CCS3 breach for permit condition 3.1.1 over a 1 year period from 20 January 2016 to 17 January 2017 over the whole period for which Philip Mitchell was the director and Reginald Rumbol was site manager.

A CCS3 breach scores 4 points to an operator. A CCS3 score is described as a non-compliance which could have a minor environmental effect. The continued scoring against permit condition 3.1.1 over a year means that the activities on site were potentially having a minor environmental effect over a 1 year period. CCS scores are accumulated over a course of a year to give a compliance banding to give a compliance banding. Due to this continuous breach the site received 16.1 points for 2016 (there was an additional score of a 0.1 points for a CCS4 breach for not submitting waste returns on time). This placed the site in band C which is defined as a site that must improve in order to achieve compliance according to guidance on gov.uk. The scoring system determines which banding an operator receives and correlates to the subsistence fees they pay for their permit. (i.e. higher score more regulation required therefore a higher subsistence fee).

The site was also located within an Air Quality Management Area therefore it was particularly important that they controlled emissions to reduce the risk of air quality deteriorating further but this never happened. The company avoided costs by not investing in sufficient infrastructure on site to control these emissions.

There were 6 reports of dust from the general public via our National Incident Reporting System between 2016 and 2020 due to the inadequacy of the dust suppression system. There were also a number of complaints made directly to the EA officers. The reports were made by local businesses who were being affected by a continuous fine mist of wood particles from Connect Waste Management Limited which was landing on their cars and getting into their eyes, causing anxiety and distress amongst surrounding business operations and their employees. EA officers visited the neighbouring premises, evidenced the impact and followed this up with Connect Waste Management Limited, offering a number of recommendations and scoring them for breaching the dust management plan for the site.

Between 10 October 2017 to 26 July 2019, permit condition 1.1.1 was found to be breached on a number of site visits. 3 of the breaches issued during this time were CCS2 breaches. A CCS2 breach is a non-compliance which could have a significant environmental impact. During this time the site consistently failed to operate the activities in accordance with the EMS which included excessive storage of wood waste outside the building presenting a fire risk. A review of the EMS was undertaken and showed a number of significant inconsistencies and ambiguities regarding the location of storage and processing of waste on site. There were contradictions within the text of the EMS and the EMS did not include a site plan showing where areas referenced in the EMS are located on site. Therefore this breach was issued due to the EMS not identifying and minimising the risk of pollution due to the inconsistencies and ambiguities in the document.

At Connect Waste Management Limited in Dagenham an audit was undertaken by the EA on 16/10/2019 where descriptions of waste inputs and outputs between August to October 2019 were assessed to see if they were accurately described. Five areas were identified where the descriptions were neither adequate nor accurate:

- European Waste Codes
- Written Description of waste including quantity and containment
- Time and Place of Transfer
- Full details of both transferor and transferee
- Insufficient Carrier/Haulier information

Although Reginald Rumbol was not present on this particular site visit the period assessed included times where Connect Waste Management Limited was operational and looked after by Reginald Rumbol. Mis-description of waste means that the operator could pay a reduced amount of Landfill Tax which in addition to being illegal provides the business with an unfair advantage in allowing them to pass this saving on and undercut other legitimate waste companies. Mis-description of wastes handled at the site also puts communities, human health and the environment at risk as it could mean the risks posed by the waste are not suitably identified and the waste may not be disposed of in a safe and proper manner. Connect Waste Management Limited were also scored 7 times, between 30/04/2015 and 01/02/2020, for not submitting their waste returns. The poor attention to paperwork for this site by both parties raises our

concerns of either Philip Mitchell or Reginald Rumbol being involved in running another permitted facility where similar issues may reoccur.

Between 2017 and 2020 Connect Waste Management Limited allowed Britannia Skips to operate from their site illegally. Britannia Skips didn't have a permit at the time they were operating on Connect Waste Management Limited's permitted site. This was addressed in inspection reports and Connect Waste Management Limited were instructed verbally to stop them operating. Subsequently a Regulation 61 Information Notice under the EPR 2016 was issued to Connect Waste Management Limited on 02/10/2017 which included a statement confirming Connect Waste Management Limited were the only ones authorised to operate from the site. Despite all of this Connect Waste Management Limited continued to allow Britannia Skips to operate unlawfully until they obtained their own permit in 2020.

On 29/09/2019 Connect Waste Management Limited went into Voluntary Liquidation. The liquidators, Anderson Brookes, disclaimed the permit at 75-77 Chequers Lane on 07/01/2020. During 2019, Connect Waste Management Limited vacated the site at 75-77 Chequers Lane without the knowledge of the EA. Permit condition 4.3.4 requires notification to the EA within 14 days of the operator going into administration, entering into a company voluntary arrangement or being wound up. No such notification was given.

Prior to liquidation, a permit application was made in August 2019 to transfer the permit held by Connect Waste Management Limited to Reuse Waste Management. The permit held by Connect Waste Management Limited was disclaimed by the Liquidator in January 2020 and ceased to have effect before the application was determined so the permit was never transferred. Reuse Waste Management were seen on site and without a permit on 01/10/2019 during a site audit. Connect Waste Management Limited still had their Waste Carriers Licence CBD CBDU146570 registered to the site which expired on 23/12/2019, and at the time of the site audit were still operating as hauliers from this site. Reuse Waste Management also said that some of the waste on site still belonged to Connect Waste Management Limited. So despite all the advice and guidance offered previously in respect of Britannia Skips, Connect Waste Management Limited have also subsequently allowed another company (Reuse Waste Management) to operate from the site despite that company not having a permit.

In addition to the Environmental Permit breaches, Health and Safety Executive (HSE) served an improvement notice on Connect Waste Management Limited on 04/01/2019 (Notice number 309513797). The notice was issued for failing to organise the yard in such a way that pedestrians and vehicles can circulate in a safe manner. The notice was complied with on 13/03/2019. HSE also served an immediate prohibition notice against Connect Waste Management Limited on 16/05/2019. A prohibition notice is issued if inspectors believe the work activities give rise to a risk of serious personal injury. The notice ordinarily requires an immediate cessation of the activity which cannot be resumed until action has been taken to remove or reduce the risk. The notice was issued for failing to



organise the yard in such a way that pedestrians and vehicles can circulate in a safe manner. This further illustrates the poor running of the site by the company.

On 23/09/2020, EA officers visited the application site at 434 London Road in Grays. Whilst there was no Environmental permit in place there were Waste Exemptions (WEX240660) registered to Renu Recycling Limited for the following activities for storage S1, S2, and treatment T10, T4, T5, T6, & T9 of waste.

EA officers saw processed plasterboard waste on site in the building, situated under processing equipment. Reginald Rumbol explained that plasterboard was already on site when they took it over and they had processed this plasterboard to assist the landowner.

On the same visit a vehicle turned up to the site loaded with waste but was turned away. Reginald Rumbol explained that Renu Recycling Limited were not using the Exemptions they had registered.

## **Proposed TCM**

Ricky Paul Mann is identified as the TCM for the site on the permit application for Renu Recycling Limited at 434 London Road, Grays. Ricky Mann currently holds the TCM role for the Manns Waste Management Limited permit EAWML 101645 at The Old Bus Depot, Chequers Lane, Dagenham, Essex, RM9 6QJ and he was a Director of Manns Waste Management Limited until December 2019 when he resigned. Ricky Mann is still a 'person with significant control' of Manns Waste Management Limited.

Manns Waste Management Limited has got a significant history of non-compliance with their permit dating back to 2010 when the permit was first issued. 62 inspections have been undertaken in this time and only 5 have detailed no non-compliances. The EA wrote to Manns Waste Management Limited (in October 2016) informing them we were minded to revoke their permit. The company responded making commitments to comply which have never been achieved. The company has been served with a number of Regulation 36 notices where the EA considers that an operator has contravened, is contravening, or is likely to contravene an environmental permit condition, which they have not complied with. The site is still not in compliance with its permit and another prosecution is pending for non-compliance with another Regulation 36 Notice and consideration will be given to whether any further action is appropriate.

Based on the non-compliance history of Manns Waste Management Limited, whilst Ricky Mann was Director and TCM for the site, his being the proposed TCM in respect of this application only adds to our concerns about operator competence.

On 01/12/2020 EA officers attended the site run by Manns Waste Management Limited to conduct a site visit and were informed that plasterboard from this site

was being sent to Renu Recycling Limited at 434 London Road, Grays, despite Renu Recycling Limited not having a permit or relevant exemptions that would allow the acceptance of this waste. This is being investigated.

The plasterboard on site at 434 London Road, Grays cannot be processed without a relevant authorisation and this activity is not allowed under the Waste Exemptions registered. Plasterboard, waste code 19 12 12 (Gypsum recovered from construction materials only), is the only type that can be treated under the T5 Waste Exemption and must be treated at the place where it is to be used or where the waste was produced. The plasterboard at 434 London Road, Grays does not satisfy these criteria. Reginald Rumbol confirmed that Renu Recycling Limited had treated the plasterboard so either with or without the Waste Exemption this activity was illegal. The S2 Waste Exemption does allow the importation of plasterboard but only waste code 17 08 02 (gypsum-based construction materials other than those mentioned in 17 08 01), plasterboard from a permitted waste facility would not fall under this category. In any event, it had been confirmed that the exemptions were not being used.

## **Financial Competence**

Prior to Liquidation, Connect Waste Management Limited were constantly in arrears with fees and charges owed to the EA. At the time of the liquidation the amount owed to the EA was £21,793.32. This was never paid.

There was also unpaid monies owed to HMRC amounting to £382,812.

The Applicant for this permit has the same director and involved relevant persons, and is applying for similar activities to a previous company which went into liquidation. Whether for financial or other reasons that company was consistently unable to adhere to their permit conditions and were consistently found to be in arrears with their fees. By going into voluntary liquidation before the site was cleared and tidied the costs connected to any such clearance were avoided. In addition responsibility for surrendering the permit and taking the necessary measures to avoid any pollution risk and return the site to a satisfactory state was avoided. Should a permit be granted to the Applicant we could not be satisfied that the situation would not repeat itself.

We have completed a credit check on the Applicant. This identified it as a high risk company. Based on this assessment and the past history of Connect Waste Management Limited we are not satisfied the Applicant would be financially capable of complying with any permit. We did not make any further enquiries into the Applicant's financial competence given the wider concerns regarding operator competence.

## **Environmental issues: likelihood of pollution**

The proposed permit would allow for the handling of wastes that have the potential for significant risk to human health and the environment. The wastes include those that are putrescible and biodegradable. As these wastes are stored, treated and moved around the site, if not handled in accordance with specific conditions they have the potential to cause risks of odour, bioaerosols and there is a risk of pests being attracted to these wastes at the site. Other wastes requested in the application have the potential of significant risk of dust, and the activities may cause a noise nuisance to surrounding adjacent commercial properties, and nearby residential properties at approximately 43 m distance from the site.

There is also the potential for impact on climate change from the activities. Dry weather and higher temperatures could lead to increased potential for dust emissions from the site operation. These risks are ordinarily assessed during the permitting process and plans are approved that alongside the permit enable us to understand the risks involved and to agree where required measures to mitigate harm from these emissions to human health and the environment. Where these conditions are not adhered to the potential for risk from a site for this activity and for these wastes is significant.

According to the EMS of the new permit applied for by Renu Recycling Limited, they intend to receive, store, sort and treat waste using mechanical treatment (mechanical screening plant) of HCl waste similar to the activity that was carried out at Connect Waste Management Limited.

The Applicant has submitted an EMS that explains the control measures linked to running the site as well as a number of amenity plans for risks from the site activities and wastes. Some of these have been assessed and would be adequate if complied with but we are not satisfied this would be the case based on our experience with Connect Waste Management Limited. The proposed Renu Recycling Limited site is also located in an industrial area with neighbouring businesses and nearby residential properties, as well as having similar proposed wastes and activities on the site the potential dust emissions, as witnessed at the Dagenham site previously run by Connect Waste Management Limited, could similarly impact the businesses surrounding this site at Grays.

## **Section 108 Deregulation Act 2015 - Growth Duty**

We have considered our duty to have regard to the desirability of promoting economic growth set out in section 108(1) of the Deregulation Act 2015 and the guidance issued under section 100 of that Act in deciding whether to grant this permit

Paragraph 1.3 of the guidance says:

“The primary role of regulators, in delivering regulation, is to achieve the regulatory outcomes for which they are responsible. For a number of regulators, these regulatory outcomes include an explicit reference to development or growth. The growth duty establishes economic growth as a factor that all specified regulators should have regard to, alongside the delivery of the protections set out in the relevant legislation.”

## **Consultation**

The following summarises the responses to consultation with other organisations, our notice on GOV.UK for the public and the way in which we have considered these in the determination process.

### **Responses from organisations**

Response received from Environmental Health Thurrock Council

Brief summary of issues raised: Environmental Health Thurrock Council has no significant concerns regarding the risk to the health of the local population from odour, dust and Noise emissions from this activity.

However, the Environmental Health Thurrock Council recommended the following to take into consideration:

- The applicant has proposed operating hours of 06:30 to 18:00 Monday to Friday and 06:30 to 11:30 Saturdays. Given the close proximity of residential properties on Mill Lane and the London Road this is unacceptable and will, in my opinion, give rise to complaints from local residents. I would recommend a start time of 08:00.
- The noise assessment report uses assumed values from similar sites and from literature, no actual noise measurements have been taken, I accept that this was due to the lockdown at the time the report was written. However, actual noise measurements should be taken to demonstrate that the values quoted in the report are close to or below the measured values.
- Overall the Environmental Health Thurrock Council don't think that this is an ideal location for the proposed activity given the close proximity of residents.

### **Summary of actions taken:**

The assessment of the Noise Impact and Noise Management Plan were not complete at the time of the decision and therefore no view on the adequacy of the information can be reached.

Other plans and documents have been submitted including the EMS which would include working hours which would have been fully assessed during determination and issues such as working hours amended in agreement.

## **Conclusion**

As Director and site manager of Connect Waste Management Limited, Philip Mitchell and Reginald Rumbol respectively had a duty to ensure that the company was compliant with its permit and adhered to the regulations. Despite being made aware of numerous non-compliances, they took no or inadequate action to resolve the issues and allowed the company to operate outside of its permit, causing unacceptable emissions from the site resulting in risks to the environment and causing nuisance and harm to surrounding businesses and residents. As described, there were also issues with payment of fees to the EA, health and safety concerns and allowing another company to operate illegally on the site. We also have concerns over the compliance history of the proposed TCM. All 3 persons (Philip Mitchell, Reginald Rumbol and Ricky Mann) are considered 'relevant persons' and would be in positions to influence or control the actions of the Applicant. In view of this and their poor record of compliance we are not satisfied that the applicant would operate in accordance with any permit issued and have no other option than to refuse the application.