

In the matter of the  
FCC Recycling (UK) Limited Inquiry  
Environmental Permitting (England and Wales)  
Regulations 2016

Planning Inspector Ref: APP/EPR/636

FCC RECYCLING (UK) LIMITED  
DANESHILL LANDFILL  
DANESHILL ROAD  
RETFORD  
NOTTINGHAMSHIRE  
DN22 8RB

Appellant

And

ENVIRONMENT AGENCY

Defendant

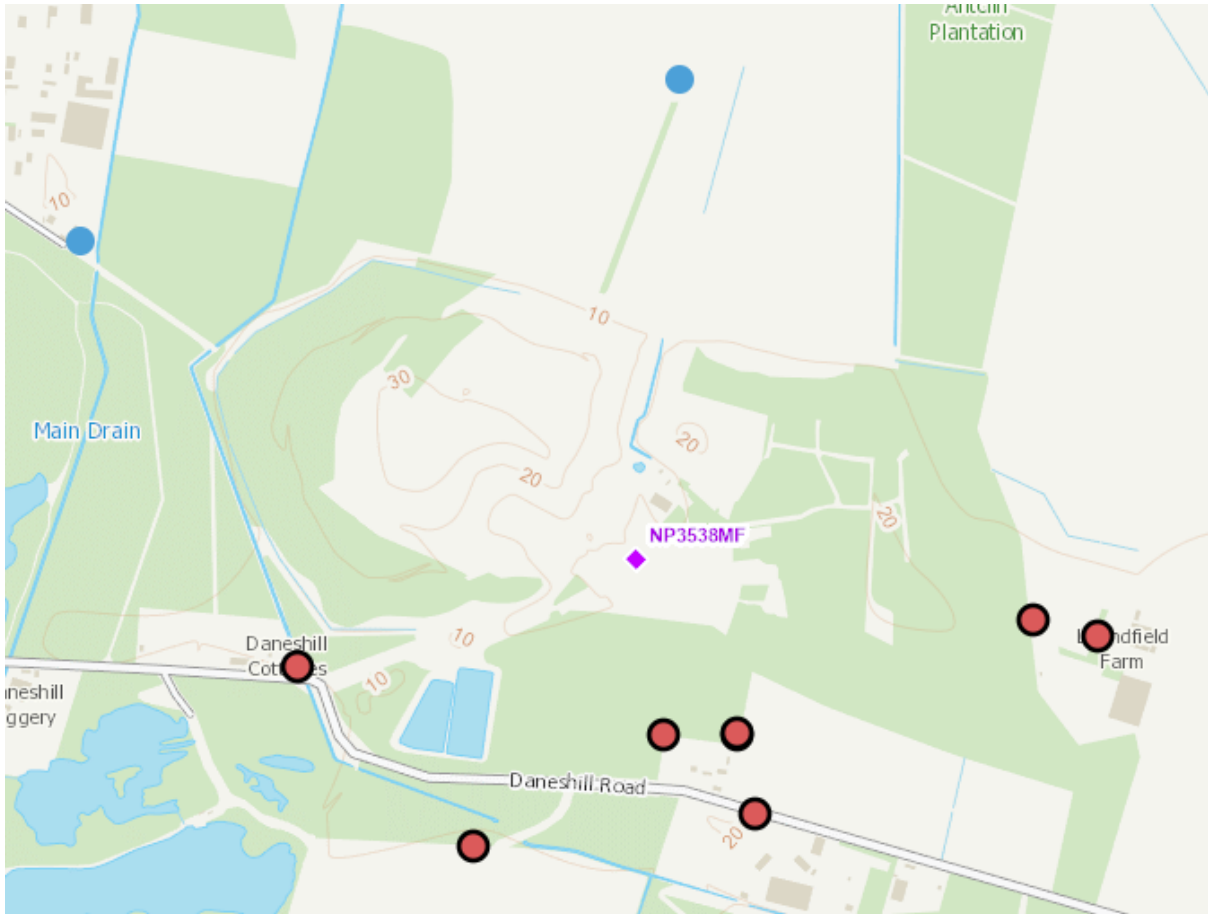
THE ENVIRONMENT AGENCY'S RESPONSE:  
TO THE ADDITIONAL DOCUMENTATION  
SERVED BY THE APPELLANT

DATE: 22 November 2023

Comments on the 'Appellant Comments on Rule 6' document.

Corrections/Errata (paras 6-10)

1. The revised receptor locations provided (shown as red dots on the drawing below) appear accurate, though there are no receptors listed on the Northern side of the site. A check of the Environment Agency (the "Agency") systems also reveals an industrial estate Northwest of the STF area starting at approx. OS GR 466727 387228 (distance approx. 875 m) and a building (possibly a dwelling?) at OS GR 467615 387457 (distance approx. 680 m North of STF area) both of which may be relevant receptors depending on wind conditions (both marked with blue dots on Drawing 1 below).



Drawing 1 – Receptors

Request for Information to be provided by the EA (para 11)

2. The documents requested are appended.

Overarching Comments (paras 12-19)

3. The Agency stands by the comments in the Statement of Case (“SoC”) and will defend any application for costs.

Regulator Initiated Variation of the Maw Green Permit (paras 20-25)

4. The Appellant states:

*20. The Appellant notes that its application for treatment of ACMs within waste soils at Daneshill was entirely consistent with that made for precisely the same type of operation at its Maw Green site. Prior to this Appeal being made, no criticism of the information provided in respect of the Maw Green application was made by the EA and the permit for those operations was granted by the EA. <sup>4</sup>*

*21. The EA has now, by way of a regulator-initiated variation dated 5 October 2023, partially revoked the Maw Green Permit (“the Varied MG Permit”). In summary, the revocations mean that ACM related activities, which were in July 2023 deemed*

*acceptable by the EA 'as applied for' and which were to be undertaken outdoors, will now be required to be subject to further limitations and conditions which, in essence, require the relevant activities to be 'enclosed'.*

5. The Maw Green permit variation was unfortunately issued without a full consideration of environmental risks and best available techniques for treatment of ACMs within waste soils. The subsequent Agency Initiated Variation was issued to correct this and ensure that emissions of asbestos fibres and dust are controlled and abated during the treatment process in a consistent manner with other dedicated soil treatment sites handling soils with ACM.

*22. As referenced in paragraph 6.13 of the Appellant's Grounds of Appeal, it now could not be clearer that the EA has adopted an erroneous and unjustified interpretation to BAT14 which requires all ACM related activities proposed by the Appellant to be undertaken inside a building and additionally requiring the proposed screener and handpicking line to be "fully enclosed". It is important to note that the Appellant expects the EA to contend that the enclosure of the screener and/or handpicking line within a building would be insufficient to comply with the requirement for these activities to be 'enclosed' as per the wording of the Varied MG Permit.*

6. BAT 14 of the Commission Implementing Decision (EU) 2018/1147 of 10 August 2018 establishing best available techniques (BAT) conclusions for waste treatment, under Directive 2010/75/EU of the European Parliament and of the Council ("the BAT Conclusions") sets out techniques to prevent or reduce emissions to air. The Agency has put necessary conditions in both the varied Daneshill and Maw Green permits to meet the requirements of BAT 14 and the overall objective of preventing and minimising releases of asbestos fibres and dust into the air from the treatment of soils containing ACM by enclosing and the activity. The pre-operational condition in the permit puts the onus on the operator to demonstrate how they will meet these requirements and provide the necessary evidence to ensure adequate control measures are in place prior to operation.

*25. The Varied MG Permit will be appealed by the Appellant, with an application being made for that appeal to be conjoined with the extant appeal.*

7. The Agency notes that the Appellant will appeal the Maw Green permit and the conjoining of the appeals.

#### Varied Daneshill Permit (paras 26-31)

8. The Appellant states:

*29. The Appellant has already made submissions on this issue to PINs as follows:*

*29.1 By email dated 8 September 2023<sup>6</sup> to confirm that the EA's proposed variations to the Daneshill Permit (which are now encapsulated within the September Daneshill Permit) would not resolve the issues in dispute in this appeal;*

*29.2 By email dated 16 October 2023<sup>7</sup>, with respect to the EA's failure to comply with the requirements of the Environmental Permitting (England and Wales) Regulations 2016 in connection with the October Daneshill Permit.*

*30. The EA is specifically requested to provide full disclosure of the steps it took to ensure that public consultees, who have made direct representation to this extant*

*appeal, have been consulted and that the responses of those consultations were taken into account by the EA prior to the issue of the September Daneshill Permit.*

9. The consultees' responses outlined their concerns that if the Agency were minded to grant the variation for the Treatment of Soil Contaminated with Asbestos Activity, then such an activity must be contained within a building and which must be fitted with the appropriate ventilation system. The Agency varied the permit conditions to allow the treatment activity in an enclosed and abated manner. Consequently, nothing would be gained by revisiting the consultation process.

Detailed Comments on the EA SoC (paras 32-26)

10. The Appellant states:

*32. At paragraph 29 of the EA SoC, the EA directly acknowledges that it has permitted sites to use the same type of enclosed picking stations for the treatment of ACMs and expressly acknowledges that there "is some risk of fibre release from handpicking". This demonstrates the internal inconsistency in the EA's case. The Appellant will address this issue in detail, as part of its evidence to the Inquiry, by reference to examples (available in the public domain) of other permits granted by the EA for ACM related treatment activities at installations.*

11. Note this reference is incorrect – it is paragraph 28 that mentions handpicking. Paragraph 28 states:

*Once screened, the medium sized screened soils would then be subject to hand picking for asbestos fragments within a mobile picking station. Spray rails for damping down would be used on the input conveyers for dust suppression. We have previously permitted sites to use an enclosed picking station for handpicking the asbestos fragments. Whilst there is some risk of fibre release from handpicking, this operation is less energetic than screening, in a wetted state and is likely to be much lower risk.*

12. There is no inconsistency, the short passage quoted by the Appellant is taken out of context. The handpicking operation, as described in the full paragraph, is a much lower fibre risk activity due to the way it is carried out and the mitigation measures taken. The Agency considers this supports our position that the screening activity should likewise be carried out with appropriate control measures in place, as set out in our statement of case, to control the release of asbestos fibres the activity is likely to generate.

*33. Paragraphs 73 to 76 of the EA SoC are entirely irrelevant to the issues in the appeal and should be treated as redacted or withdrawn by the EA.*

13. These paragraphs relate to the biofilter media, and not to the asbestos treatment activity. They are included in the SoC section on the permit determination correspondence for completeness of the record. These are not the subject matter of the appeal as the biofilter formed part of the variation that was permitted. The Agency suggests that as the Appellant also concedes these are out of scope these paragraphs do not form part of the appeal.

*34. At paragraph 117<sup>6</sup> of the EA SoC it is stated that, "There is no safe level of asbestos fibres in the environment and no safe level of human exposure". The Appellant notes*

*the apparent lack of consistency in the EA's approach to asbestos as compared to other "non-threshold" substances such as some chlorinated solvents, benzene, lead and PM2.5. The Appellant will address this issue in detail in its evidence in order to demonstrate that the EA is both misunderstanding and mis-applying the precautionary principle. The EA has adopted a position in respect of the risk of any level of asbestos fibres (no matter how low the levels of exposure are) which is not justified by the well-established scientific evidence which is able to assess and identify the magnitude of health risk posed by specified exposure levels to asbestos. The Appellant will demonstrate that any emissions which would be generated by the Proposed Activities would not result in any significant risk of pollution.*

*35. At paragraph 141, the EA SoC again repeats its assertion that there is "no safe level of asbestos". The EA takes this point even further at paragraph 183 of the EA SoC, stating that it, "considers there is an extreme degree of risk...". The EA has provided no technical or expert evidence in support of its assertions in this respect. In adopting this approach, the Appellant contends that the EA has not had any or due regard to the risk-based management philosophy that underpins UK chemical and environmental regulation. The Appellant will address the magnitude of risk which arises from the Proposed Activities, having regard to extensive technical data and a comprehensive review of the relevant technical guidance, studies and scientific research which has been undertaken to date. The Appellant will demonstrate that the EA has adopted a sensationalist approach to the risks that may be posed by the Proposed Activities, which is not supported by the available evidence and well-recognised assessment methodologies for determining the same.*

14. The Agency's approach is consistent. The "other non-threshold" substances such as benzene, lead, and PM2.5 have legislated limit values under the Air Quality Standards Regulations 2010.
15. The Agency's approach for assessing the impacts of substances emitted to air is set out here: [Air emissions risk assessment for your environmental permit - GOV.UK \(www.gov.uk\)](http://www.gov.uk). This states:

*You need to compare the impact of your emissions to air to the following environment standards:*

- *Air Quality Standards Regulations 2010 Limit Values and Target Values*
- *UK Air Quality Strategy Objectives*
- *Environmental Assessment Levels*

These environment standards do not cover emissions of asbestos fibres.

16. The Agency's M17 Guidance: [M17 monitoring of particulate matter in ambient air around waste facilities - GOV.UK \(www.gov.uk\)](http://www.gov.uk) states that there is no safe level and that exposure should be kept as low as possible, referencing the WHO Air Quality Guidelines for Europe (WHO Regional Publications. European Series) 2nd Edition.
17. The Agency refers the Appellant to our Statement of Case, para 34, which states:

*34. "No Significant Pollution is Caused"*

*We could also not answer this question positively. As explained above, we consider there is potential for pollution. Fundamentally, pollution of asbestos has a significant risk to life. Whilst not specified by BAT, there is no safe level of asbestos within the environment and we would take the precautionary approach that there should be no pollution of asbestos fibres within the environment. We therefore take the stance that activities that may give rise to emissions should not be in an exposed environment. In addition the exposed nature of the works means it would be extremely difficult to identify if there was pollution because external air monitoring may not capture such emissions.*

18. The Agency considers the treatment process as a whole, and asbestos is not the only potential pollutant from the screening process that needs to be controlled. In the Agency Initiated Variations for Maw Green and Daneshill, the Agency has set limits on particulate, as it is also considered to be a relevant BAT-AEL for the treatment process. As stated above BAT 14 d requires containment (enclosure), collection and treatment of diffuse emissions. Once collected and treated, emissions via a point source are required to have any necessary limits.

*36. At paragraph 200 of the EA SoC, the EA alleges that the Appellant's arguments rely on monitoring evidence obtained from a site which, "is completely enclosed".<sup>9</sup> This is incorrect on the facts. The data which the Appellant has obtained from the monitoring of activities at the Maw Green site relates to activities which were undertaken in 'open' conditions and which were carried out consistently with the Appellant's operating procedures for the Proposed Activities at Daneshill. The Appellant will, as part of its evidence, also refer to data obtained at its ERQ site and will contend that this data remains relevant to the assessment of risks arising from the Proposed Activities. Furthermore, the Appellant will provide a full review of the EA's stance (and all relevant correspondence between the Appellant and the EA on this issue) in respect of the attempts undertaken by the Appellant to comply with the EA's interpretation of the requirement to achieve 'full enclosure' of the screener at ERQ in connection with ACM related activities.*

19. The Agency has accepted its mistake in granting a permit variation for the treatment of asbestos contaminated soil in the open air. The Agency rectified this with the Agency Initiated Variation.
20. The Maw Green site could only monitor external diffuse emissions as it did not have a point source emission so how valuable the monitoring data would be from that site is questionable. Likewise, the 'Edwin Richards Quarry' does not have a point source emission and the treatment of contaminated asbestos soil is not permissible as the Operator has so far failed to comply with the Pre-Operational Condition. We have requested but to date failed to receive, full details regarding the monitoring undertaken which has been previously referred to, so this can be assessed in advance of the Public Inquiry.

#### Appellant's Comments on Representations made by Third Parties (paras 37-39)

21. The Agency has already submitted comments on the representations made by Third Parties as part of the appeal and has nothing further to add at this stage.

Appended Documents:

1. Hazardous Waste Soil Treatment.
2. Response 649434312
3. HSE response to Fol request (appendix to Response 649434312)