

**APP/EPR/652**

**IN THE MATTER OF:**

**THE ENVIRONMENTAL PERMITTING REGULATIONS (ENGLAND AND WALES)  
2016**

**AND**

**AN APPEAL BY 3C Waste Limited against the conditions imposed by  
Environment Agency Initiated Permit Variation for Mechanical Screening of  
Asbestos Contaminated soils at Maw Green Landfill Site**

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**PROOF OF EVIDENCE OF**

**Daniel Kirk, Principal Permitting Officer**

**National Permitting Service – Environment Agency**

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## **Personal**

1. I have worked for the Environment Agency National Permitting Service for 14 years and held the position of Principal Permitting Officer for approximately 2 years.
2. I have a BSc (Hons) in Ecology and Environmental Management from Nottingham Trent University and a MSc in Environmental Management from Derby University.
3. As a Principal Permitting Officer in the National Permitting Service, I am responsible for completing and supporting others in the assessment of permit applications from a range of sectors on behalf of the Environment Agency and in accordance with the Environmental Permitting (England and Wales) Regulations 2016 (EPR). Following the assessment, a determination decision is reached to either grant the permit or to refuse the application.

## **Introduction**

4. This Proof of Evidence document has been prepared to assist the Inspector at the inquiry in respect of the appeal, Reference Number APP/EPR/652, against the conditions imposed by the Environment Agency (EA) in Environment Agency Initiated Permit Variation by the Appellant (3C Waste Limited).
5. A Permit Variation (EPR/BS7722ID/V009) was issued (20/07/2023) for the Maw Green Landfill Site by an Environment Agency Permitting Officer. It was identified by the Environment Agency's Environment and Business Team that the permit variation did not incorporate all the relevant conditions and operating techniques currently expected for the screening of hazardous soil waste industry sector under Best Available Techniques. Specific aspects of the existing permit which were incorrect portrayed in the permit variation include, operating techniques, enclosure of the mechanical screening process, emission point and ambient air monitoring, appropriate waste types, processing tonnages and activity referencing. I was therefore allocated the Environment Agency Initiated Variation (EPR/BS7722ID/V010) and issued this (05/10/2023) to amend the errors identified.
6. I became involved with the permit application in June 2023 when I was asked to provide support to a new Permitting Officer in how to undertake the general permitting process. The Permitting Officer's role is to lead the determination. I was then allocated permit variation EPR/BS7722ID/V010 to undertake an Environment Agency Initiated Variation to the Maw Green Landfill Site to correct errors in the previous permit determination EPR/BS7722ID/V009. I have also been allocated the application for Edwin Richards Quarry Soil Treatment Centre (reference EPR/HP3632RP/V005) which contains elements related to the appeal.

## Scope and Structure of Proof

7. This proof of evidence provides details of
  - 7.1 The permitting process undertaken for the permitting of hazardous soil treatment undertaken at Maw Green Landfill Site. This includes an account of the history of the determination covering the time from receipt of the Appellant's Variation application EPR/BS7722ID/V009 to the issue of the Environment Agency Initiated Permit Variation EPR/BS7722ID/V010. It also includes reasons for the key decisions made during these permit determinations.
  - 7.2. The application for a permit variation for Edwin Richards Quarry Soil Treatment Centre (reference EPR/HP3632RP/V005). This includes a summary of the application, details of correspondents and an account of the history of the application time from receipt to requesting further information from the applicant. The application is still within the determination stage.

## Summary of Maw Green Determination History

### 8. Timeline

- 3C Waste Limited submitted a permit variation application (reference EPR/BS7722ID/V009) received **10/01/2023**
- 3C Waste Limited application (reference EPR/BS7722ID/V009) allocated to Permitting Officer **11/04/2023**
- 3C Waste Limited application (reference EPR/BS7722ID/V009) consider "Duly Made" (application complete enough for determination) **13/04/2023**
- 3C Waste Limited application (reference EPR/BS7722ID/V009) Issued **20/07/2023**
- Environment Agency identified and confirmed errors in permit variation EPR/BS7722ID/V009 **08/08/2023**
- Environment Agency Initiated Variation logged and approved **25/08/2023**
- Environment Agency Initiated Variation EPR/BS7722ID/V010 Issued **05/10/2023**

### 9. Summary of incorrect issue of Maw Green permit variation (EPR/BS7722ID/V009)

- 9.1 Variation EPR/BS7722ID/V009, which allowed operation of the Soil Treatment Facility was, as considered by the Environment Agency, issued in error (20/07/2023) without the necessary controls on the asbestos treatment process to prevent and minimise emissions.
- 9.2 I understand that the Appellant relies upon this decision of the Environment Agency and uses it to criticise the consistency and cogency of its approach. To assist the inspector, I have investigated the circumstances surrounding this decision and spoken with the officers directly involved with it. This has allowed me to get to the bottom of what went on. From this, I have ascertained the following.
- 9.3 Environment Agency undertook a large recruitment intake during 2022/2023 to resource increasing permit work queues and permit review work. Post Pandemic Permit work queues had increased significantly resulting in significant delays to permit decisions.

- 9.4 To address significant work queues all Permitting Officers were allocated the oldest pieces of work on the queue with the intention of experienced and senior officers providing support to newer officers.
- 9.5 Application case EPR/BS7722ID/V009 was allocated to a Permitting Officer who was recently employed and inexperienced.
- 9.6 Due to the large intake of new staff being significant when compared to the number of existing staff, experienced mentoring resources were stretched and resulted in a reduced ability to provide support and in-depth review of the Permitting Officers cases.
- 9.7 Assumptions were made that the relevant technical staff had been consulted when they had not been sufficiently involved.
- 9.8 As a result of limited involvement of officers experienced in this sector, the following documentation had not been correctly reviewed and applied.
- Best Available Techniques (BAT) Conclusions for Waste Treatment
  - Best Available Techniques (BAT) Reference Document for Waste Treatment
  - Chemical waste: appropriate measures for permitted facilities.
- 9.9 Based on the guidance being misapplied, the conditions of the permit were not appropriately adapted to reflect the risk associated with the activities proposed under application EPR/BS7722ID/V009.
- 9.10 Peer review of the Permitting Officer's work was undertaken by another Permitting Officer who was also recently employed and inexperienced due to availability of resources.
- 9.11 Being new and wary of key performance indicators the Permitting Officer pursued permit issue 20/07/2023.
- 9.12 Environment Agency identified and confirmed errors in permit variation EPR/BS7722ID/V009 (08/08/2023)

## **10. Maw Green Environment Agency Initiated Variation EPR/BS7722ID/V010**

- 10.1 As errors had been identified (08/08/2023) in the issuing of Application EPR/BS7722ID/V009. The Environment Agency considered it appropriate to initiate a permit variation application (EPR/BS7722ID/V010) to apply the necessary conditions and control measures on the soil treatment facility.
- 10.2 The Environment Agency was not satisfied that the proposals applied for in the Maw Green Application, were fully compliant with the best available techniques as outlined in the following guidance.
- Best Available Techniques (BAT) Conclusions for Waste Treatment
  - Best Available Techniques (BAT) Reference Document for Waste Treatment
  - Chemical waste: appropriate measures for permitted facilities.

- 10.3 In addition, the decision made in application EPR/BS7722ID/V009 was not in line with the existing permitting decisions in existing issued permits which follow the precautionary BAT approach applied nationally to the mechanical treatment of asbestos. The Environment Agency considers at this point that there is insufficient evidence in the Appellant's Maw Green application to support mitigation measures other than the enclosure and abatement of the mechanical screening of asbestos process (See Paul Barker Proof of evidence).
- 10.4 The Environment Agency considers that the storage, handling and treatment of asbestos wastes in the manner proposed increases the risk of asbestos fibres being released into the environment, either into the air or into the soil matrix. The Agency considered that it could be possible to vary the current permit to permit the asbestos treatment process to be undertaken in a controlled manner, subject to stringent conditions.
- 10.5 Permit number EPR/HP3632RP/V003 (Edwin Richards Quarry – Soil Treatment Centre, "ERQ") was issued Waste Recycling Group (Central) Limited (Company No. 04000033), on 02/06/2021. This existing permit includes conditions requiring the operator to implement standards expected for the sector which meet the requirements of our guidance for minimising the risk of airborne fibres.
- 10.6 I was allocated Environment Agency Initiated Variation ref EPR/BS7722ID/V010 and included similar conditions to those issued in permit for Edwin Richards Quarry as I was satisfied the conditions in this permit were appropriate and these conditions have not been previously appealed by the Appellant.
- 10.7 This is similar to the approach taken for Daneshill with addition of a preoperational condition (though we note some minor differences in condition wording in permits as we have finessed our position). I considered the approach to Maw Green Landfill to be consistent with determinations for other current applications (Daneshill) and existing decisions at permitted sites handling soils containing asbestos.
- 10.8 I determined that based on the Environment Agency's position as outlined in Paul Barker's Proof, the conditions inserted into the Maw Green Landfill are necessary for achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land.

## **11. Maw Green Inclusion of Conditions**

### Improvement condition 5

- 11.1 The Permit was varied to include conditions consistent with others permit e.g. Daneshill. The reasoning for inclusion of conditions is fully outlined in Graham Rayne Proof of Evidence on Daneshill. A summary of specific decisions on Maw Green Landfill are summarised below.
- 11.2 As per the approach stated in the Statement of Case 22/01/2024 (Section 80), I inserted Improvement Condition 5 into table S1.2 of Maw Green Variation EPR/BS7722ID/V010 to demonstrate that the screening of asbestos wastes is fundamentally not increasing the level of risk posed by the asbestos containing wastes as a result of being screened and segregated into different streams.
- 11.3 Asbestos containing materials can be damaged by energetic processing and could result in increased small asbestos fragments and fibre releases. An unintended consequence of screening out material could be to increase the concentration asbestos contamination in the 0-15 mm fraction (See Paul Barker Proof). The condition requires a period of sampling of the incoming wastes and the segregated streams over the first four months of operation.
- 11.4 The decision to introduce this condition for monitoring was in line with the requirements of the guidance list in Section 10.2
- 11.5 I made this decision as the Environment Agency (See Paul Barker Proof) believes the likelihood should be assessed, as there is potential for this asbestos contamination to be spread into the outputs and in this case deposited onto the landfill via the soils used for restoration.

### Preoperational condition 4

- 11.6 I varied the permit ref EPR/BS7722ID to include pre-operational condition 4 in line with those variations issued in the permit for Edwin Richards Quarry and Daneshill as I was satisfied the conditions in the permit met the requirement of the relevant BAT guidance (see Section 10.2), The similar worded conditions had been inserted into existing permits issued for this sector and the Edwin Richards permit conditions had not been previously appealed by the Appellant.
- 11.7 In response to the Edwin Richards Quarry permit, preoperational condition, as stated in the Statement of Case for Maw Green (Section 99), the Appellant had provided no demonstration that all emissions are routed/directed to the abatement, instead it was outlined that the emission would be allowed to spread throughout the building and drawn towards the HEPA filter. The condition was therefore not discharged. The Environment Agency is satisfied that the preoperational condition requiring enclosure was not unreasonable (See Statement of Case 22/01/2024 section 113 - 116).

11.8 Insufficient evidence was also provided in the Maw Green Landfill application to demonstrate that enclosure of the screener emissions cannot be contained and collected. A range of proposals has not been provided and evidence as to why these can be discounted. In addition, insufficient evidence has been provided to demonstrate enclosure and channelling of emissions could not be achieved. I therefore considered it appropriate to insert the preoperational condition based around the wording in the Edwin Richards Quarry permit, into the Maw Green permit.

## 12. Amendment to Table S1.1

- 12.1 I amended Table S1.1 to ensure the permit condition fulfilled the requirements of the BAT in line with the guidance listed in section 10.2.
- 12.2 I amended Table S1.1 to reflect limits in existing permits such as Edwin Richard Quarry and Danes Hill Landfill which include similar activities and subsequent conditions (See Graham Rayne Proof on Daneshill limits).
- 12.3 I considered the conditions imposed in the EPR/BS7722ID/V010 permit variation to represent BAT for the treatment of asbestos contaminated soils in this manner.
- 12.4 As stated in the Statement of Case 22/01/2024 for Maw Green (Section 182), I set what I considered to be reasonable tonnage limits but would not object to revision of these figures to suit the Appellant's needs, providing that the other requirements of the conditions are complied with.
- 12.5 As stated in the Statement of Case 22/01/2024 for Maw Green (Section 182), the Agency notes and agrees that the recovered waste soils will not be used as landfill "cover", but as restoration materials above the landfill cap (subject to their suitability for use under the Site's restoration plan).

## Conditions specifying enclosure and channelling of emissions

- 12.6 I inserted conditions requiring the enclosure of the process and channelling of emissions because the Environment Agency considers (See Paul Barker Proof of evidence) that the storage, handling and treatment of asbestos wastes in the manner proposed increases the risk of asbestos fibres being released into the environment, either into the air or into the soil matrix.
- 12.7 Insufficient evidence had been provided in the Maw Green Landfill application to demonstrate that equivalent BAT would be put in place. Therefore based on precautionary principle, the Environment Agency's interpretation of BAT currently applied in the sector (See Paul Barker Proof of evidence) was applied in the form of requiring enclosure and abatement of emissions.

Air and ambient air permit emissions limits

- 12.8 As stated in the Statement of Case for Maw Green (Section 110) Both the October 2023 Permit and Decision Document state 0.1 f/ml for the emission limit to air from the abated screener.
- 12.9 As stated in the Statement of Case for Maw Green (Section 110) “The 0.01 f/ml limit is for ambient air monitoring”. This is a monitoring limit for asbestos fibres in ambient air around the facility, rather than an emission limit value for the channelled emission point from the abated screener.

**13. Edwin Richards Quarry - Soil Treatment Centre Application reference  
EPR/HP3632RP/V005**

13.1 Summary of Variation application amendments relevant to appeal

- Remove the split of hazardous / non-hazardous waste treated at the facility from 89,998 tonne per annum for hazardous waste and 60,000 tonnes per annum for non-hazardous waste to 180,000 tonnes per annum inclusive of either hazardous and/or non- hazardous waste.
- Removal of Preoperational condition 1

<b>Table S1.3 Pre-operational measures</b>	
<b>Reference</b>	<b>Pre-operational measures</b>
1	<p>Prior to the use of the mechanical screener for the pre-screening of asbestos contaminated soils under activity reference AR2 a report shall be submitted for written permission detailing the following aspects:</p> <ul style="list-style-type: none"><li>• Evidence to demonstrate that the mechanical screener is fully enclosed and all dust emissions from the screening operation are directed to an active abatement system with a HEPA filter or other suitable design.</li><li>• Details of the proposed commissioning, operational and maintenance procedures associated with the mechanical screener and active abatement system to be implemented on site.</li><li>• Details of monitoring checks, audits and emergency procedures to be implemented on site to ensure both the mechanical screener and active abatement system are fully operational and working as designed.</li></ul> <p>No mechanical pre-screening of asbestos contaminated soils under activity reference AR2 shall commence unless the Environment Agency has given prior written permission under this condition.</p>



### 13.2 Summary of Edwin Richards Determination History

- Waste Recycling Group (Central) Limited permit variation application (reference EPR/HP3632RP/V005) received by Environment Agency on 23/12/2022
- Permit variation application (reference EPR/HP3632RP/V005) confirmation allocated to Daniel Kirk 27/11/2023
- Dan Kirk Duly Making Meeting with Applicant 08/12/2023
- Significant amendment to application requested to add soil washing facility received 12/01/2024
- Permit variation application considered "Duly Made" 12/01/2024
- Dan Kirk Schedule 5 Meeting with Applicant 22/01/2024
- Schedule 5 Notice Requests for further information 23/01/2024
- Extension to deadline (to 28/02/2024) for Schedule 5 Notice response requested and agreed 26/01/2024
- Request for further information – Noise impact assessment information requirements 05/02/2024
- Courtesy Email from Daniel Kirk 16/02/2024

### Summary of further information requested during determination.

- 13.3. I was not satisfied that sufficient information had been provided to adequately demonstrate the risk posed in order for us to remove preoperational condition 1 from the Edwin Richards Quarry - Soil Treatment Centre Application reference EPR/HP3632RP/V005.

I therefore requested further information on the following topics (see Schedule 5 Notice Dated 23/01/2024 for full details) and agreed an extended deadline response of 28<sup>th</sup> February 2024. This notice requested:

- Clarification and confirmation of proposals for treatment of waste containing asbestos, including mitigation techniques and location of process (inside a building or not)
- Waste acceptance criteria for waste containing asbestos detail
- Moisture control
- Enclosure
- Cleaning and Maintenance
- Monitoring

- 13.4. I was not satisfied that sufficiently robust monitoring has been provided to demonstrate the risk posed in order for us to remove preoperational condition 1 from the Edwin Richards Quarry - Soil Treatment Centre Application reference EPR/HP3632RP/V005.

I therefore attended a Meeting 22/01/2024 and explained that I would provide in the Schedule 5 Notice dated 23/01/2024 the opportunity for the Applicant to submit a plan which includes proposals for an operational trial and outlines the scope of a trial which could be reviewed and agreed by the Environment Agency. This would ensure a mutually agreed robust trial was undertaken to demonstrate the risk posed by the mechanical treatment of soils containing asbestos.

13.5 The EA is currently awaiting a response to the requests for information and a response outlining proposals for a robust mechanical screening trial. The deadline is 28/02/2024.

#### **14. Conclusions**

I consider the issue of the Maw Green Environment Agency Initiated Variation to be the appropriate approach to correct the erroneous permit issue. This will ensure the storage, handling and treatment of asbestos wastes is undertaken in a manner which does not result in a significant risk of asbestos fibres being released into the environment, either into the air or into the soil matrix. This is on the basis that there are similar sites with similar permit conditions, it is in line with our interpretation of BAT for the sector and the Applicant has provided insufficient information to justify not applying a precautionary approach in line with the BAT standard expected for this sector.

I have demonstrated through our correspondence and meetings with the Applicant regarding the Edwin Richards Quarry - Soil Treatment Centre Application that we are willing to work with the operator to establish a robust trial to demonstrate the risk posed by the mechanical screening of asbestos contaminated soils.

#### **15. Appendix**

Appendix 1 – Maw Green Permit

Appendix 2 Schedule 5 notice - 23/01/2024