IN THE MATTER OF THE CONJOINED APPEALS IN RESPECT OF THE SOIL TREATMENT FACILITIES AT THE DANESHILL LANDFILL SITE AND MAW GREEN LANDFILL SITE

THE EA v FCC RECYCLING (UK) LTD & 3C WASTE LTD

CLOSING SUBMISSIONS ON BEHALF OF THE AGENCY

INTRODUCTION

1. At this inquiry, the appellant has been preoccupied, at times, by attacking the conduct of the Agency prior to the lodging of the appeals and in relation to how it has regulated other sites such as ERQ. That the Agency has chosen not to respond in detail or become distracted by endlessly justifying its approach pre-appeal and defending its conduct should not in any way indicate that it accepts these criticisms. The Agency has focused on the merits of permits subject to the appeals. The inquiry would have taken longer had a defensive/adversarial posture been adopted.

2. Until recently, ACM soils were deposited in landfill sites. The idea of treating soil containing asbestos has only really 'become a thing' in the last decade. Decision makers do not have huge amount of experience of regulating the screening and treating of this particular substance. Lowe explained in his oral evidence that there are "*only a handful*" of STFs which treat soils containing asbestos in England (in fact it is about 10 according to Heasman). The determination of the appeals should be seen in this context. The application of the precautionary principle must be applied especially cautiously when the experience and track-record of different approaches to treatment is so limited. Further, as there is no "environmental standard" for asbestos (unlike other hazardous substances such as benzene), there is no tolerable level of exposure against which one judges the risk. It is for that reason that the cliche "zero-tolerance" has been used as a short-hand.

3. The appellant's case to this inquiry is novel. Its evidence does not identify a STF installation (as opposed to mobile plant) which treats pre-screened ACM soils using a mechanical screener outside.

4. Whilst there are 3 appeals, given the strong synergy of the issues, both parties have treated them together. They stand or fall together. This is not a case where a permit should be granted for one site, but refused for the other. There are plainly benefits associated with the treatment and re-use of hazardous soils (ie there is no dispute that the underlying purpose of the activity is valuable and beneficial). No questions were put to any of the appellant's witnesses (or reference made in the proofs) because the benefits are uncontroversial. I detected a hint of criticism from the appellant as to this omission. To the extent that it is pursued in Closing, it is submitted that these are all matters agreed in the SCG [paras 7.4 and 7.5]. That is how the appeal process is meant to work. It does not serve the inquiry to use time dealing with matters of common ground. The Agency has focussed on the main issues which are in dispute.

NARROWING OF THE ISSUES

5. It is to the credit of the parties that they have demonstrated flexibility. The appellant agreed that the crushed concrete surface can be replaced by tarmac which will help to reduce the extent of the entrainment by proving a smoother surface with fewer nooks and crannies [SCG, paras 7.6.2 and 7.6.3]. The Agency has agreed to an elevated on-site storage tonnage maxima and that stockpiling can be done outdoors. It has also clarified that enclosure under BAT14d does not require double-enclosure (ie a fully sealed enclosed screener placed inside a suitably sealed and filtered building).

6. The key question is whether it is acceptable to use a mechanical screener in an un-enclosed manner with only dust suppression measures in place.

BAT14

7. The Agency relies upon the BAT Conclusions [CD7.1.I]. BAT14d makes clear: "*In order to prevent or, where that is not practicable, to reduce diffuse emissions to*

air…depending on the risk posed by the waste in terms of diffuse emissions to air, BAT14d is especially relevant". BAT14d requires the techniques of "*containment, collection and treatment of diffuse emissions*". This is achieved by "*storing, treating and handling waste…in enclosed buildings and/or enclosed equipment*".

8. The requirement of BAT14d is carried over to the EA's Chemical Waste Appropriate Measures Guidance which applies to ACM soils [CD7.1.J]. It tells us: "*To make sure fugitive emissions are collected and directed to appropriate abatement, your treatment plant must use high integrity components (for example, seals or gaskets). Your treatment plant must be fully enclosed, with air extraction systems located close to emission sources where possible*" [para 6.2.3] and "*where necessary, to prevent fugitive emissions to air from the storage and handling of wastes, you should use a combination of the following measures: store and handle such wastes within a building or enclosed equipment…*[and] *keep buildings and equipment under adequate negative pressure with an appropriate abated air circulation or extraction system*" [para 6.2.5].

9. The requirement of BAT14d is also carried over to the EA's "Hazardous Waste Soil Treatment – Work In Progress" ("WiP") [CD7.1.K]. The status of this piece of internal guidance has proved controversial. The appellant relies upon the fact that it has neither been published nor subject to consultation with industry stakeholders to contend that it ought to be disregarded. That is hyperbolic:

a) It is not fair to characterise it as an incomplete/unfinished document. It can be better described as a 'living document' which is added to over time so it stays up to date, reflecting the latest developments.
b) That it is an internal document is unimportant. Many organisations (including PINS) have internal guidance for decision makers. The WiP does not say anything which is not said by the BAT documents. This is not a case where the internal guidance contradicts or goes against the grain of the published guidance. They go hand in hand.
c) Even if there were merit in the appellant's criticism this would not warrant disregarding the document, it would simply temper the weight to be attached to it.

10. So, if regard is to be had to WiP, what does it say? Its guidance is on all fours with the appeal. The "*fixed plant requirements*" for "*asbestos cement removal*" states explicitly: "*Screening cannot proceed unless the process is enclosed and asbestos fibres are abated via HEPA filter*".

APPLYING BAT IN THIS CASE

11. It is common ground [Heasman xx]:

    a) BAT14 is the most directly relevant guidance for the purposes of the inquiry.
    b) The appeals offend rather than comply with BAT14d.
    c) "Chemical Waste Appropriate Measures" is important guidance adopted by the Agency which, as it has been subject of consultation and consideration by stakeholders in the industry and experts in the field, should be afforded significant weight [CD7.J]. The appeal offends para 6.2 (3) as it fails to provide "*full enclosure*".

12. It is plain that the Agency's insistence on containment and abatement is entirely in accordance with BAT14d and the associated guidance. In week 1, the appellant was preoccupied with identifying microscopic differences between specific sentences within the different guidance documents (or different paras within the same document) [Barker xx]. This was not pursued during week 2, so it may be that this is an issue which has been dropped by the appellant. But, if it has not: it is unsurprising that a fine-grain analysis of guidance documents is able to throw up some differences. The appellant fails to see the wood for the trees. The thrust of the guidance documents point in the same direction: the default position/starting point is prevention by means of enclosure and if this is not possible reduction/minimization will be allowed. There is a strong measure of consistency and agreement in this regard. This key "message" sings loud and clear from the guidance.

13. The position is straightforward as can be crystallised thus:

    STEP 1: The starting point: you must prevent emissions to air by enclosure.

STEP 2: Only if it is not practicable to prevent by enclosure, can you fall back on to the lower level of protection of reducing/minimising emissions without enclosure.

14. So, the first question is whether the Inspector accepts the appellant's case that the risk is "*negligible*" so that the appeals do not have to comply with BAT14d [the point put by the Inspector to Heasman on day 7]. This will be explored later but, in summary, the Agency remains of the view that the appellant has underestimated the real risk given that it is trite to observe that asbestos is very dangerous and there is no recognised "safe level" [M17, para 7.4.3, CD7.1.P]. A single fibre can be sufficient to cause lethal cancer: Briggs v Drylined Homes Ltd [2023] EWHC 382 at para 6. Unlike benzene, there is no environmental assessment level and so there is no established tolerable level by which one can judge whether the risk is negligible [HSE FOIR: CD5.1.D]. Having not established the tolerable/safe level for asbestos (because there is none), there exists a significant gap in knowledge. In essence, the appellant has predicted the journey but has no understanding or evidence of the destination. This means the Inspector is being invited to take a chance on the appellant's risk assessment and the resulting long term serious health effects of the proposals.

15. The next question is whether the appellant can escape step 1 by showing that it is not possible or practicable to prevent emissions by means of enclosure [see para 13 herein]? This is a question which I shall address next.

HAS THE APPELLANT DEMONSTRATED THAT IT IS IMPOSSIBLE OR IMPRACTICAL TO ENCLOSE?

16. The appellant has failed to provide convincing evidence that it is impossible/impracticable to undertake the enclosed screening:

a) The appellant gets nowhere near establishing that it is impossible to enclose the screener in a building. Is the inquiry really expected to believe that it is impossible to construct a structure of sufficient scale to house the appellant's activities? This is not a case where the sites are physically constrained (ie they are too small and there is not enough room to erect a building on them).

b) On viability: the appellant has not provided a financial appraisal to show that the costs associated with sourcing and erecting a building would be exorbitant and/or render the STF unviable. Heasman agreed in xx that there was no accurate quotation for the cost of the building or any evidence providing any indication of the appellant's financial means (or the likely profit margins for the operations subject of the appeals). Whilst Heasman declined to agree that the evidence of viability was threadbare that is a fair characterisation. In any event, as the Inspector observed on day 7, if the building is judged as a necessary means of enclosure in accordance with BAT14d the fact that it would be unaffordable for this particular operator s neither here nor there.

c) The Agency's approach to the appeal is unremarkable. It only requires of the appellant what many other companies are already doing. To put it crudely: if other STFs can enclose their equipment and use abatement to prevent the escape of emissions to air in line with BAT14, the Agency requires some convincing that the appellant cannot (and should not) be held to the same standard [PB app 2].

ENCLOSURE

17. The direction of travel is towards increasing use of enclosure. The London Plan requires all waste transfer stations (which do not deal with asbestos) to be enclosed [Lowe xic]. HS2 requires enclosure for all non-hazardous waste [Lowe xic]. Barker told the inquiry that the Agency is in the process of reviewing those permits it has granted for hazardous waste treatment facilities in order to require enclosure (subsequently it will review non-hazardous permits too). In his words, "*the sector is moving towards enclosure including for metal shredders, crushing and screening*" for hazardous waste activities. The appellant's approach rows against that tide. The appellant sought to undermine PB's characterisation of the direction of travel by reference to "Non-Hazardous and Inert Waste Appropriate Measures" but this gets it nowhere [IQ/1/AJ]. As its name suggests, it relates to non-hazardous waste. It is not only unsurprising but it is entirely consistent with a risk-based approach (to adopt the appellant's repeated refrain) that a tougher approach is taken for the treatment of more dangerous substances. That a lighter approach may be taken for less dangerous (non-hazardous substances) is nothing to the point.

18. As Lowe explained in his oral evidence, the big advantage of enclosure is it provides passive protection. It is more-or-less fool-proof. In contrast, the appellant's case relies upon active measures. These measures may sound impressive on paper, but to be relied upon one must have a high degree of confidence that they will be consistently (if not constantly) implemented in reality. Whatever the stated confidence (and intentions) of the appellant the system, dependant upon human inputs, will not work all the time. It can only be said to work for some or most of the time. Take the misting/dampening measures. There are a host of reasons why this may not work in the way and to the extent that the appellant expects. The water supply could be paused. The equipment could malfunction, break down or become clogged up. In these circumstances, the misting cannot take place unless and until the equipment is fixed. Some of the misting will be non-automated (ie require employee input) [Heasman xx]. What if an employee, unobserved by his manager, cuts corners and decides not to do the misting for as long and to the ambitious extent that the Dust Emissions Management Plan expects or does it in a way which does provide the broad coverage which is required? Heasman stated that in the event any of the control measures break down, the appellant would 'pull the plug' on the operation so the activity would stop "*pretty instantaneously*" [xx]. The Agency remains doubtful that one can confidently accept that the operation will pause with the celerity assumed by the appellant. Such an assumption is optimistic and does not reflect the worst-case. It speaks to a wider shortcoming with the appellant's case: it has assumed 100% compliance with the control measures. It makes no allowance for partial compliance or times when the control measures fail.

19. Cole agreed that he expects to see greater dust emissions outside when the screening is undertaken un-enclosed than would be the case if takes places in a building [question from Chambers]. That may sound like a statement of the bleedin' obvious, but it was not a point he acknowledged in his lengthy written evidence.

20. As I said in Opening, the onus lies squarely on the appellant's shoulders to demonstrate with cogent and convincing evidence that its approach will provide an equivalent level of protection to that of BAT14d's containment, collection and abatement of diffuse air emissions. The Agency remains unconvinced by the appellant's evidence. Cole confirmed in xx that there will be greater dust emissions from the operation of a

mechanical screener than the presence of a pile of soil (all other things being equal). The latter is to be enclosed by means of the fastening of a tarpaulin. This was described by Stoaling in xx as acting "*like a building*" by containing the fibres and preventing their escape (provided, of course, that the tarpaulin is fastened securely). Yet the appellant proposes that the mechanical screener should be operated unenclosed. So: the higher risk activity (which generates greater dust emissions) is to undertaken with a lower level of protection. That is an inconsistency which lies at the centre of the appellant's case.

21. In respect of the impact difference between manual picking and mechanical screening, it is common ground [Cole xx]:

    a) The greater the agitation of the material, the greater the release of asbestos fibres.
    b) There will be greater dust emissions with a mechanical screener than by hand-picking. He agreed that a mechanical screener knocks larger items around and therefore there is far greater scope for (i) a larger piece to be broken up into smaller pieces and (ii) a larger piece releasing more fibres by grinding down bonded pieces of asbestos which have become weathered and brittle. This is not only common sense but is borne out by the appellant's own monitoring data. With no screening going on 20% of emission to air samples contained countable fibres, rising to 26% when the mechanical screener was operating with a HEPA filter and 44% when the screener was operating uncovered [PB app2, section 10].

22. The appellant has criticised the Agency on the basis of an apparent inconsistency of approach: mobile plants v installations. This is not fair. The differences between a MP and a (permanent) installation are material. A MP does not legally have to comply with BAT. The great advantage of a MP is that, rather than exporting the hazardous material off the site to be stored and sorted somewhere else, it is all done on site without having to move it. In contrast, with an installation one is creating a new risk by importing hazardous material where there had been none. An installation is typically a larger scale, long-term operation with all the associated long term risks. In these circumstances, it is unsurprising that it is held to a higher standard of environmental protection than the MP which is always intended to be a temporary measure (typically up to a year).

DISPERSION MODELLING

23. Central to the appellant's case of providing equivalent protection to 'containment and abatement' is Stoaling's dispersion modelling. The appellant relies upon the dispersion/dilution of fibres provided by the dispersion modelling in order to meet the standards instead of implementing BAT14d. Notwithstanding the huge volume of material, it is important not to lose sight of the essence of its position. Under the appellant's case, asbestos fibres will be released when the mechanical screener is operated outdoors. There is no containment whatsoever. The fibres are released into the air. Cole can only contend that the position is acceptable (ie an unappreciable number of asbestos fibres will reach the sensitive receptors) through reliance upon dilution factors. The fibres are still out there. Dilution/dispersion factors have no application in the real world. They are tool for modellers. They are entirely a desktop means to predict what is likely to happen in a theoretical sense. Even if the Inspector accepts Cole's evidence at face value, that only deals with fibres at the sensitive receptors. Meanwhile in the real-world: week in, week out, fibres will be released into the atmosphere from the sites because the screening activity will not be enclosed and there will be no containment at all.

The appellant's unsatisfactory approach to the evidence

24. The way that the appellant sought to obtain a tactical advantage with this evidence is unsatisfactory.

25. First: the modelling was provided to the Agency for the 1st time on 28 February 2024 appended to Stoaling's proof . The officers' proofs were written entirely ignorant of this new evidence. This represents a new front in the appellant's case. This was not evidence which was before the Agency when it granted the permits. The appellant's Daneshill Appeal Statement of July 2023 confirms that dispersion modelling had been undertaken [para 7.32, CD4.1.C]. But the modelling itself was only provided in Stoaling's proof. No good explanation has been articulated as to why this evidence was held back until the exchange of proofs. The only reasonable inference to draw is that

the appellant chose to "sit on" on this evidence for over 7 months, so that the Agency would have very little opportunity to interrogate and conduct a meaningful appraisal. If the appellant had full confidence that it was unimpeachable, why was it so reluctant to provide it sooner as the Agency requested in its statement dated 17 October 2023 [CD5.7A]?

26. Second, for reasons only known to the appellant, contrary to good practice it decided not to reach out to the Agency to try to agree the methodology/parameters in advance.

27. The Inspector will know that parties at inquiries sometimes bandy around allegations like "ambush". But, here, that characterisation is apt rather than hyperbolic. It is not how planning inquiries ought to work. Had this modelling been provided as requested in autumn 2023, the Agency would have known of the bold new modelling argument it had to meet. It probably would have instructed a modelling expert to dispute the case which was to be advanced by Stoaling and Cole. Because the Agency was unaware of the nature of the technical evidence, it had no reason to call a witness on the topic. It would make no sense to ask a modelling expert to prepare a proof prospectively (when s/he hasn't seen the appellant's model) just to ensure that s/he was on the Agency's witness list and available to challenge the other side's proofs when they were served.

28. Third: the Agency has repeatedly asked for the modelling files which informed its work in order to undertake a full audit of the dispersion modelling: by letter dated 17 October 2023 [CD5.7A] and at the transcribed "common ground" meeting on 29 February 2024 by MS Teams (the day after the modelling was served) [IQ9/8/A]. The appellant refused. Had this been provided at an earlier stage, there would have been an opportunity to agree this data before the inquiry opened. The appellant declined to provide the raw data and said that if the Agency was concerned it ought to build its own air dispersion model. This was an unhelpful suggestion given the Agency did not have the time or the resources to do so. Nor is it how the process should work. Normally: the applicant builds the model and then the Agency verifies its conclusions and does sensitivity checks. The explanation provided by Stoaling is plainly unsustainable (in essence: "we could not provide the evidence because the matter was under appeal and the Inspector would not have the wherewithal to interrogate it"). Whether the modelling files will assist the Inspector is beside the point. The Agency wanted the raw data to

verify the modelling. By declining this request, the appellant has prevented an audit of its model. This is troubling. One might have expected that, if it was confident in its model and its underlying assumptions, the appellant would have no difficulty in providing the raw data to allow its model to be verified. The Agency is troubled by this lack of transparency. So should the Inspector. It means the Agency has been denied the full opportunity to meaningfully audit the modelling. This cannot be congruent with the public interest. It is contrary to the spirit of the Inquiry Rules and PINS guidance. The position is unsatisfactory. The decision of the appellant means that a question mark hangs above the modelling. For this uncertainty, the appellant has only itself to blame.

29. As was said in Opening, the Agency had considered whether to request an adjournment but, given how long this case has gone on for and the disruption and delay which it would inevitably cause, it reluctantly decided to keep the show on the road. But that does not detract from the fact that the Agency has not had the opportunity to meaningfully assess and appraise the appellant's modelling evidence. This has placed it at a distinct disadvantage.

The value of the dispersion modelling

30. Stoaling is at pains to make clear that he has provided "*theoretical emissions rates*" for the sites [his proof, paras 3.6 & 4.3] and then applied a discount to take account of expected dispersion/dilution (this figure arises from the monitoring data). So, to put it simply, the appellant has reached its "output" by calculating a mix of theoretical and actual data inputs. The Agency is not satisfied that this provides a robust basis to justify the appellant's permitting proposal. Stoaling confirmed in xx that in his 26 appearances at inquiries (or for statutory nuisance cases) where he has provided air dispersion modelling, none of them involved asbestos or dust emissions from STFs. It is a novel area for him. Given his expertise, it is further illustration of the relatively untrodden ground which this inquiry has been tasked with treading. Further, he agreed in xx that his model pays no account of re-suspension notwithstanding that it is an expected phenomenon. He confirmed that his model, essentially, assumed a 0% re-suspension rate.

The value of the monitoring data for Maw Green and ERQ

31. The monitoring data was provided on 8 February 2024: 3 weeks before the Agency's proofs were due and 6 weeks before the inquiry opened. By this stage, the dice was cast. The Agency had already selected its witnesses. It was too late, at that stage, to instruct a modelling expert and prepare a proof. In these circumstances, the Agency was unable to advance a positive case. It has drawn attention to shortcomings with the modelling.

32. Whilst a significant amount of data has been provided, it is not a question of quantity but the quality of the data (ie what can be safely deduced from the data). It would be more illuminating and allow the Inspector to more clearly decipher useful patterns, if the emissions were linked to the processing speed, type of material and moisture level. Whilst the appellant boasts of the cumulative periods of monitoring, in fact, the data is limited and is based on samples which contain very little asbestos. There are shortcomings with the monitoring data [see CD7.1.C, app 2]:

a) The majority of the data arises from handpicking rather than mechanical screening, being 2 techniques which Cole said in xx were "*fundamentally different*". Cole explained orally that 593 data points relate to hand-picking (which causes less dust emissions) and only 395 data points for screening at MG.
b) The data does not provide a realistic worst-case as it does not provide data when the activity is being undertaken at a realistic maximum throughput or realistic maximum or near maximum processing rate/speed [Cole xx]. Cole agreed in xx that he "*could have done*" but, in essence, considered that it was disproportionate and unnecessary. So: this is not a case where it was not possible to provide this worst-case data. The appellant has chosen not to provide it.
c) The additional monitoring undertaken over 14 days in August/September 2023 at 90mins intervals provides a snap-shot. But it cannot be relied upon to provide data which paints the picture of the long-term impact. This was entirely the appellant's choice. It could have chosen to undertaken modelling over a far greater period. This would more fully capture a range of weather, the behaviour of the operator and the efficacy of the dust suppression measures. Moreover, because of its short-term 'compass' it does not assist on the extent of the accretion of fibres on the site. If the

monitoring took place over a period of weeks/months rather than days, it could have illuminated the extent of the cumulative impact of the accretion (or build up) of fibres on the site. This remains a known-unknown.

33. The biggest known-unknown is re-suspension. This is the hole at the centre of the appellant's case. Everyone acknowledges that re-suspension will occur. Asbestos does not degrade. Once it is released into the environment (an inevitable consequence of the appellant's decision not to do the mechanical screening in an enclosed manner), it will 'stay out there' forever. Re-activated by wind and vehicular movements, in particular, everyone agrees that the fibres will move around. A fibre released from the intense agitation of weathered/brittle bonded asbestos from treatment by the appellant's mechanical screener in 2024 may not reach the Travellers' site or Loundfield Farm for many, many years. But the potency of the fibre will not have diminished. The fibre will be just as injurious to health if it reaches the sensitive receptor in 2025 or 2055. The impact of the fibres, released by the sites over the lifetime of the permits, will persist forever; far longer than the lifetime of those of us who have attended this inquiry.

34. Cole agreed in xx that his evidence does not address the issue of re-suspension. In xx he passed the buck to Stoaling. He said that he relied upon his evidence. In xx Stoaling agreed that his modelling does not take account of re-suspension whatsoever. In essence, he has assumed 0% re-suspension. Faced with this hole, the appellant has tried to make a virtue out of a vice by saying that there is no model which can forecast the rate/extent of re-suspension and so it is not fair to identify this as a real shortcoming with its methodology [Cole rex]. The appellant then, boldly, tried to turn the tables on the Agency and criticise it for failing to set out a process which it ought to have adopted [Cole rex]. This entirely misses the point. It is a classic attempt at diversion. The fact remains that asbestos has no safe level. There is no recognised tolerable level for measuring risk. The appellant's modelling evidence relies upon dilution factors to assure the Inspector that no appreciable amount of asbestos fibres will reach the sensitive receptors. How can one have any real confidence in those assertions when the dilution factors do not take account of re-suspension? If the appellant is right that there is no recognised re-suspension model "out there" which it could have used, isn't the answer to apply the precautionary principle and proceed on the basis of the tried and tested BAT14d method of containment ("*depending upon the risks posed*..")? That the

appellant has done its very best in respect of re-suspension does not eliminate the shortcoming. Just because the appellant could not have used a modelling technique to remedy the problem (re-suspension) does not mean that the Inspector should overlook it. The acknowledged deficiency stands irrespective of whether it could be corrected.

35. This shortcoming is accentuated by the fact that there is so little evidence to help the Inspector get any sense of the scale of the chief trigger for re-suspension: vehicular movements. It is not just a question of those vehicles which come in close proximity to the mechanical screener. Inevitably, fibres will be spread and entrained across the site. Fibres which escape from the screener and fall a few metres away from it, will inevitably (if not effectively cleaned and removed) be picked up on employee's shoes or the tyres of vehicles and spread them further and further away from the source). It is inevitable that, over time, uncontrolled fibres will spread across the wider site and down the access road. They will not be confined to the pad. That is common sense. None of those screener-related fibres would be released and spread in that way if the screener was kept in a suitable building as the Agency contends.

36. In any event there is a well-known adage in the realm of environmental permitting: "*dilution is not the solution*" [Lowe xic]. In essence, it is and has always been the Agency's case that in accordance with BAT14, one ought to undertake containment of asbestos fibres by means of enclosure in order to prevent the emission of fibres. In contrast the appellant, accepting that its activities will give rise to fibre emissions, relies upon dilution factors which statistically reduce the risk so that it can contend that no appreciable amount of asbestos fibres will reach the sensitive receptors. Plainly, the Agency's approach better reflects the zero-tolerance approach sought by M17. The appellant's approach is pregnant with far more risk, relying upon a number of assumptions and dilution factors to reach a destination where there is expected to be a statistical un-appreciable number of fibres at sensitive receptors. However, the Agency does not agree that the Inspector ought to treat it as a *negligible* risk [Heasman xx]. As there is no EAL and no tolerable level for assessing the risks to human health of asbestos, the risks associated with the emission of fibres at the scale proposed at these 2 sites cannot be characterised as negligible.

CONCLUSION

37. The Agency remains firmly of the view that the appellant's contended for approach represents an unacceptable relaxation of control. It has not been sufficiently justified with cogent evidence and the Agency does not consider that it provides an equivalent level of protection to the conventional approach of 'containment and abatement'. This constitutes a retrograde step for the protection of the environment and public health. Whilst this point should not be over-stated, it is noted that the implications of allowing the appeals are, potentially, far-reaching. If the appellant can "get away" with screening ACM soil outdoors, why would other operators go to the trouble and expense of undertaking the activity inside in a building [Chambers]? Moreover, if operators in this field can undertake unenclosed screening of ACM soils, wouldn't other operators say "if you can screen asbestos outside, then why do I have to undertake the screening of a less hazardous substance indoors?". The Agency shares the concerns of Chambers that allowing the appeals and thereby sanctioning unenclosed screening of ACM soils risks husbanding a far more permissive regime where the passive protection of enclosure is taken over by less stringent and expensive active control measures [Chambers, para 97]. This was also a point articulated by Tytherleigh on day 5.

38. The appeals should be allowed, given the concessions made, but the Inspector is invited to decline to grant the permits as sought.

JACK SMYTH

No5 CHAMBERS

3 May 2024