

Appeal by Sims Group UK Limited
Environmental Permitting (England and Wales) Regulations 2016
Rabone Lane, Smethwick, Warley, B66 2LF

Sims Group UK Limited: Reply
20 November 2024

This document is not intended to reply to each and every paragraph of the Environment Agency’s (“EA”) Statement of Case, particularly where the position of Sims Group UK Limited (“Sims”) has been clearly set out in its own Statement of Case. The paragraphs below address and clarify some of the key issues relevant to the decision to be made by the Planning Inspector.

SIMS Group UK Ltd was acquired by Unimetals on 30 September 2024 and has since 2 October 2024 changed the company name to Unimetals Recycling (UK) Ltd. As the EA and PINS have already been informed, we have continued to refer to the appellant as Sims throughout this Reply to retain consistency for the appeal.

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Principal points of argument in reply

1. Emissions to air

- i) Where a proposed abatement technique (in this case a fabric filter) will have no discernible environmental impact, it is entirely unnecessary for the EA to insist on the implementation of that technique. Such an approach to regulation is ineffective, intransigent and contrary to principle;
- ii) A fabric filter is not applicable to stack A2 at the Rabone Lane site. The consequent, relevant limit to be imposed on stack A2 is 10mg/Nm³;
- iii) The attempt made by the EA to impose the lower limit of 5mg/Nm³ is a poorly concealed attempt to impose on Sims the use of a fabric filter, contrary to Article 15(2) of the Industrial Emissions Directive.

2. Indirect emissions to water

- i) The use of H1 assessment is mandated by the EA and it is both wrong and unlawful for the EA to decline to take it into account and adjust permitted limits accordingly;
- ii) There is no evidence that the EA has taken any steps to assess for themselves the treatment of heavy metals at Minworth STW and consequently there has been no attempt by the EA to take that treatment (or the capacity for treatment) into account in the determination of the permit;
- iii) The consequence is that the EA has failed to properly exercise its discretion and failed to properly account for the relevant sewage treatment reduction factors;
- iv) The WT BREF clearly identifies that the shredding of depolluted WEEE is part and parcel of the 'mechanical treatment in shredders of metal waste'. The EA has misdirected itself as to the relevant factors to take into account in determining the appropriate permitted limits, resulting in unnecessary and inappropriate limits imposed on Sims.

The applicability of a fabric filter at Rabone Lane

3. The existing control techniques at the Rabone Lane site are damp techniques. The waste to be shredded is damped by injecting water into the shredder. The air that contains residual dust is directed to a cyclone and then a wet scrubber. A bag filter cannot be used in conjunction with these damp techniques as the bag filter would become clogged by damp particulates and would be ineffective.

4. Where a particular technique would be ineffective and achieve no discernible environmental benefit, in this case due to the design of the system, common sense dictates that there should be sufficient flexibility within the permitting system to determine that the particular technique in question cannot be considered to be applicable. The EA have ignored this. The permitting system is not so inflexible as to not be able to take into account site specific reasons on applicability.

5. Craig Harris, in his email of 16 August 2023¹, wrote:

“Would SIMS accept 5mg on the second extraction point? I will try to push it through on 10mg but I could get potential kick back. The difficulty is going to be that there is nothing in BAT which states bag filters can’t be fitted in wet processes.”

6. The flawed reasoning of the EA’s position is later expressed at paragraph 35 of the EA’s Statement of Case when it states:

“it is clear that the question of whether a fabric filter is applicable is not to be determined by the operational efficiency of abatement plant ...”

7. There are two principal errors. First, this line of reasoning simply ignores reality, namely whether the proposed mitigation measure will work in practice and the consequent real world outcomes. Second, the fact that fabric filters are not suitable for wet dusts is expressly identified in the BAT Reference Document for Common Waste Water Gas Treatment/Management Systems in the Chemical Sector (“CWW BREF”), which is itself expressly identified within the Waste Treatment BREF (“WT BREF”) as relevant, in the BREF’s section on scope, as well as within sections 2.3.4.1 and 2.3.4.4 of the WT BREF.

8. In contrast to the approach of the EA, principle 4 of the UK Government’s Better Regulation Framework states²:

¹ S1/1/639

² S2/1/3

“Recognising what works. We will thoroughly analyse our interventions based on the outcomes they produce in the real world and where regulation does not achieve its objectives or does so at unacceptable cost, we will ensure it is revised or removed.”

The relevant emission limit for dust from exhaust stacks

9. The EA has summarised the key issue in respect of a fabric filter as:

“First, whether for the purposes of the Waste Treatment BAT Conclusions, a fabric filter would be applicable at ‘Emission Point A1’, which in turn determines the relevant emission limit values for dust for exhaust stacks.”

10. Table 6.3 of BAT 25 identifies that³:

“When a fabric filter is not applicable, the upper end of the range is 10mg/Nm³”

11. In respect of stack A2, where the EA accept that a fabric filter is not applicable, the relevant limit imposed is 10mg/Nm³.

12. Both the BAT conclusion and the EA clearly acknowledge that when a fabric filter is not applicable, a higher limit of 10mg/Nm³ applies.

13. It follows that the imposition of the limit of 5mg/Nm³ is, despite the EA’s assertions to the contrary⁴, results in the imposition of a specific technique on Sims. This contravenes the rule against prescription found in Article 15(2) of Directive 2010/75/EU⁵.

14. The setting of the level at 10mg/Nm³ where a fabric filter is not applicable is consistent with EA guidance for Part A installations⁶:

“Where the BAT AELs are expressed as a range, the ELV should be set on the basis of the top of the relevant BAT-AEL range – that is to say, at the highest associated emission level - unless the installation is demonstrably capable of compliance with a substantially lower

³ S1/1/497

⁴ see paragraph 44 of the EA’s Statement of Case

⁵ S1/1/531

⁶ S2/2/20

ELV, based on the BAT proposed by the operator, or exceptional environmental considerations compel a tighter ELV”.

Paragraphs 39 to 43 of the EA’s Statement of Case

15. The EA have chosen to quote from page 270 of the Waste Treatment BREF⁷, but, for reasons unknown but which risk misleading the Planning Inspector, the EA have not chosen to set out the relevant quotation in full:

*“The waste to be shredded is damped by injecting water into the shredder (Figure 3.18). The amount of water injected is regulated in relation to the amount of waste being shredded (which may be monitored via the energy consumed by the shredder motor). Downstream windsifter separation is not affected if the water mist is properly controlled. **The air system works without filter systems, and the dust is separated from the air stream with cyclone(s) and/or a wet scrubber.**”*

(emphasis added)

16. The passage identified by the EA, describing a ‘shredder system with water injection into the mill’, expressly identifies that the system works without filter systems.
17. Paragraphs 40 and 41 of the EA’s Statement of Case fail to identify that the CWW BREF is expressly referred to as relevant within the WT BREF’s scope. As set out above, sections 2.3.4.1⁸ and 2.3.4.4⁹ of the WT BREF also expressly identify the relevance of the CWW BREF.
18. Paragraph 42 of the EA’s Statement of Case fails to identify any relevance to “wet” particulates.
19. Paragraph 43 of the EA’s Statement of Case also risks misleading the Planning Inspector. Both sites at Avonmouth and Hull Reservoir Road operate entirely different systems. While both the sites at Avonmouth and Hull also operate water injection into the mill, this is at a much earlier stage in the process and does not result in damp particulates being emitted from the sites. Neither Avonmouth nor Hull utilise wet scrubbers as a means of abatement,

⁷ S2/3/306

⁸ S2/3/144

⁹ S2/3/145

whereas Rabone Lane operates wet scrubbers at two stages in the process for the purposes of abatement, and can be clearly distinguished from both Avonmouth and Hull.

20. Given the failure of the EA to recognise this fact, there is considerable doubt that any of the sites to which the EA has referred in paragraph 43 of its Statement of Case provide any support for the suggestion that a fabric filter can operate in conjunction with damp abatement measures, let alone provide any probative evidence relevant to the conditions at the Rabone Lane site.

The combination of techniques to reduce emissions to water

21. Emissions to surface water are addressed at page 4 of the EA's Permit Decision Document¹⁰. No criticism has ever been made as part of the permitting process of the site's compliance with BAT 19. BAT 19 recognises the limitations that may exist for existing plants within the constraints associated with the layout of their water collection system. The criticisms implicit in the EA's Statement of Case at paragraph 54 but which have never featured before are irrelevant to the issues before the Planning Inspector.

H1 Assessment

22. H1 Assessment is the EA's prescribed means by which an operator may assess risk in respect of any specific activity.
23. The EA's Statement of Case ignores the fact that H1 assessment is mandatory for an operator, as well as the fact that the screening factors are expressly provided for in the EA's own appropriate measures guidance¹¹. Sims reiterates the points made at paragraph 40 of its own Statement of Case. It is unlawful for the EA to depart from its established policy of permitting sites to screen out potential risks from emissions to water through the use of the H1 assessment in the absence of any form of consultation with those affected by such a change in policy.
24. Where lead and zinc settle into sewage sludge, the spreading of that sludge in the environment is separately regulated and controlled by the Sludge (Use in Agriculture) Regulations 1989¹². The Regulations establish maximum annual applications for metals

¹⁰ S1/1/625

¹¹ S1/1/673

¹² S2/4/1

contained in sludge and set maximum permitted metal concentrations in agricultural soil treated with sludge. Regulation 3¹³ prohibits sludge from sewage plants from being used in agriculture unless specified requirements are fulfilled.

Minworth STW

25. The following tables set out the emissions of dissolved zinc by Minworth STW for the years 2023 and 2024:

2023			
MINWORTH STW, FE (DISCH 1 & 2)	2023-01-05	Zinc, Dissolved	41ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-02-11	Zinc, Dissolved	49.3 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-03-13	Zinc, Dissolved	50.9 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-04-06	Zinc, Dissolved	52.7 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-05-09	Zinc, Dissolved	46.3 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-06-07	Zinc, Dissolved	35.8 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-07-13	Zinc, Dissolved	22.3 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-08-18	Zinc, Dissolved	22.4 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-10-03	Zinc, Dissolved	19 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-11-01	Zinc, Dissolved	24.4 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-11-18	Zinc, Dissolved	27.5 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2023-11-28	Zinc, Dissolved	22.8 ug/l

2024			
MINWORTH STW, FE (DISCH 1 & 2)	2024-01-02	Zinc, Dissolved	27.8 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-02-05	Zinc, Dissolved	30.1 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-03-08	Zinc, Dissolved	31 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-04-13	Zinc, Dissolved	35.1 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-05-03	Zinc, Dissolved	37.1 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-06-06	Zinc, Dissolved	26.3 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-06-28	Zinc, Dissolved	16.9 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-07-31	Zinc, Dissolved	27.8 ug/l
MINWORTH STW, FE (DISCH 1 & 2)	2024-08-23	Zinc, Dissolved	23.2 ug/l

¹³ S2/4/2-3

MINWORTH STW, FE (DISCH 1 & 2)	2024-09-26	Zinc, Dissolved	27.7 ug/l
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26. The dissolved limit for zinc at Minworth STW is 122 ug/l. It is clear that Minworth STW currently treats zinc to levels well below the permitted limit, irrespective of any emissions made by the Rabone Lane site.
27. No account has been provided by the EA of how the Minworth STW treats heavy metals, including zinc and lead, despite its position as the regulator of the STW. Sewage treatment reduction factors are designed to provide an operator with a means of assessing how pollutant reduction will occur in a waste water treatment plant. This will include accounting for both settlement and treatment¹⁴.

Paragraphs 55 to 62 of the EA’s Statement of Case

28. In respect of paragraph 55 of the EA’s Statement of Case, although Sims is continuing to trial filtration as a method of reducing emissions to water, the trial does not identify that the limits can be complied with.
29. Dilution prior to any discharge from the Rabone Lane site, referred to at paragraph 57, is irrelevant to any issue before the Planning Inspector.
30. In respect of paragraphs 58 to 61, no attempt appears to have been made by the EA at all to consider the ways in which lead and zinc are, in fact, either treated or are capable of being treated at the Minworth STW. That does not reflect the proper exercise of discretion. Nor does this failure achieve the requirement imposed on the EA by the EEB Guidance quoted at paragraph 68 of the EA’s Statement of Case to assess the downstream waste water treatment plant.
31. Paragraph 62 of the EA’s Statement of Case is irrelevant. The Planning Inspector is not concerned with “pre-treatment”.

Metal shredding

32. Paragraph 71 of the EA’s Statement of Case wrongly asserts that the shredding of WEEE is a different activity to the shredding of metal waste. This is not the case. The following

¹⁴ Minworth STW has 22 primary settlement tanks, 28 activated sludge lanes and 62 final settlement tanks.

factors explicitly identify that the shredding of depolluted WEEE is part and parcel of the mechanical treatment in shredders of metal waste. For the avoidance of any doubt, all WEEE waste shredded on the Rabone Lane site has been appropriately depolluted prior to shredding.

- a. The introductory words to Chapter 3 of the WT BREF read¹⁵:

*“This chapter covers the treatment in shredders of **metal waste, including waste electrical and electronic equipment (WEEE)** and end-of-life vehicles (EoLVs) and their components (Annex I to Directive 2010/75/EU). It also covers the mechanical treatment in shredders of WEEE containing refrigerants, and the mechanical treatment of solid waste with calorific value.”*

(emphasis added)

- b. Paragraph 3.1 of the WT BREF is entitled ‘Mechanical treatment in shredders of metal waste’¹⁶.
- c. A ‘mixed scrap (or conventional shredder)’ is described on page 240 of the WT BREF¹⁷:

*“Mixed scrap shredders have a drive power of up to 9 200 hp (7 000 kW), or some 400t/h. These plants are the largest and most common type of shredding plant in the EU, often misdescribed as car shredders. However, cars (in the form of depolluted end-of-life vehicles) usually form only a minority percentage of the material being processed by such plants. The remaining material feedstock is comprised of any light steel and, in the case of larger plants, sometimes heavier steel, suitable for shredding in either clean (e.g. cladding from buildings) or complex/composite (e.g. non-hazardous **and depolluted waste electrical and electronic equipment**) form.”*

(emphasis added)

¹⁵ S2/3/271

¹⁶ S2/3/271

¹⁷ S2/3/276

- d. Page 242 identifies ‘Feed and output streams’¹⁸. Amongst the various waste input materials identified for metal waste is included:

“depolluted WEEE (requirement of Directive 2012/19/EU on WEEE)”

- e. Paragraph 3.1.2.1.2 reads¹⁹:

“3.1.2.1.2 Dust and particle-bound metals

*Although the potential contamination of dust by heavy metals (e.g. lead) is considerably lowered by the implementation of the EoLV Directive (2000/53/EC) and the WEEE Directive (2012/19/EU), and their strict depollution requirements, particulate emissions to air **from the shredding of metal waste** (depolluted EoLVs, **depolluted WEEE**, ferrous and/or non-ferrous metals) include dust and particle-bound metals. The levels of dust and metal emissions to air and the associated techniques reported through the data collection are given in Table 3.1 below.”*

(emphasis added)

33. The shredding of WEEE wastes at a metal shredder is no different to the shredding of metal wastes at a metal shredder. The wastes are shredded in the same plant, using the same technology and infrastructure, for the same purpose – the recovery of metals.
34. Strict waste acceptance procedures exist to ensure that the metal waste input stream does not contain any non-depolluted WEEE, complying with paragraph 3.1.3.1.3.1 of the WT BREF²⁰. The shredding of WEEE is not a “new activity”, having been legitimately undertaken at the Rabone Lane site for many years.
35. It is evident that the BREF document identified depolluted WEEE as a metal waste input stream. There is no support to be found in the WT BREF for the suggestion by the EA at paragraph 71 of its Statement of Case that the shredding of WEEE is not the same activity as the shredding of metal waste.

¹⁸ S2/3/278

¹⁹ S2/3/282

²⁰ S2/3/313