APP/EPR-61

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

Statement of Common Ground

Introduction

1. Unimetals Recycling (UK) Limited ("Unimetals") are appealing against condition 3.1.1 of environmental permit EPR/ZP3691ET ("the Permit") and the following emission limit values ("ELVs") specified in Schedule 3 of the Permit:

   i) The ELV for dust for exhaust stack A1 (5mg/m3) in Schedule 3, table S3.1;
   ii) The ELV for lead (0.1 mg/l) in relation to the discharge of process water and site surface water to the sewer at discharge point S2 in Schedule 3, table S3.2; and
   iii) The ELV for zinc (1mg/l) in relation to the discharge of process water and site surface water to the sewer at discharge point S2 in Schedule 3, table S3.2.

2. In addition, Unimetals are appealing against:

   i) The length of time provided by the Permit for compliance with the ELVs; and
   ii) The requirement for Unimetals to undertake spot sampling, as opposed to flow-proportional composite sampling.

3. The reasons provided by the Environment Agency ("EA") at the time that the Permit was varied are found in the Application Variation Decision Document, beginning at page 622 of the Appellant's Statement of Case Bundle.

The Appeal Site

4. The principal activities undertaken on the Rabone Lane site ("the site") are the processing and recovery of ferrous metals, non-ferrous metals, non-metallics from fragmentising and other process residues from the mechanical treatment of waste. The wastes accepted and treated at the site include metals, end-of-life vehicles and Waste Electrical and Electronic Equipment ("WEEE"). The site is mostly open with concrete impermeable surfacing covering external areas. Metal waste is deposited, handled and stored outside.

5. Surface water run-off produced by rainwater enters the on-site drainage system and discharges to an oil separator (and recently via a simple filter). Due to the open areas of the site with external waste storage and treatment areas, rainwater can percolate through stockpiles of waste before entering the drainage system.

6. The run-off that enters the interceptor is then discharged to the foul water sewer in Foundry Lane that leads to Minworth Sewage Treatment Works ("Minworth STW"), authorised by a trade effluent consent issued by Severn Trent Water.

The Variation Application

7. Unimetals applied for a variation in 2022 to the Permit to allow acceptance and the shredding of hazardous waste electrical and electronic equipment ("WEEE").

8. The daily treatment capacity of the shredder is 2,640 tonnes, based on 12 hours operation. This capacity is aggregated for hazardous and non-hazardous wastes.

9. The acceptance, storage and treatment of these hazardous wastes led to the need for the following additional installation activities to be included as part of the Permit variation:

   i) Section 5.3 A(1)(a)(ii) – disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving physico-chemical treatment;
   ii) Section 5.6 A(1)(a) – temporary storage of hazardous waste with a total capacity exceeding 50 tonnes pending any of the activities listed in Section 5.3.

10. These activities are all Part A(1) activities within the meaning of the Environmental Permitting (England and Wales) Regulations 2016 ("EPR 2016").

11. The Industrial Emissions Directive 2010 ("IED 2010") is implemented into domestic legislation through Schedule 7 of EPR 2016.

12. Schedule 7 of EPR 2016 applies to every installation to which Part A1 activities are undertaken.

13. Article 11 of IED 2010 provides, amongst other matters, that Member States shall take the necessary measures to provide that installations are operated in accordance with the principle that best available techniques ("BAT") are applied. BAT conclusions, in this case to be found in the Waste Treatment BAT Reference Documents, are the reference for the setting of permit conditions.

14. Article 14(1) IED 2010 creates a duty on the Environment Agency ("EA") to ensure that the permit includes emissions limit values for polluting substances listed in Annex II. The Waste Treatment BAT Reference Documents state the emission limit values.

15. Article 15(2) of IED 2010 states "the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on the best available techniques, without prescribing the use of any technique or specific technology".

The ELV for dust

16. BAT 25 provides that:
    a. in order to reduce emissions to air of dust and of particulate-bound metals, PCDD/F and dioxin-like PCBs, BAT is to apply BAT14d and to use one or a combination of the following techniques:

   i) Cyclone
   ii) Fabric filter
   iii) Wet scrubbing
   iv) Water injection into the shredder; and

    b. the BAT-associated emission level for dust is 2-5mg/Nm3, though when a fabric filter is not applicable, the upper end of the range is 10mg/Nm3.

17. The site currently uses three of these four techniques: water injection, cyclone and wet scrubbing.

18. The key issue for the Planning Inspector is whether the use of a fabric filter is applicable at the site. Additionally, Unimetals considers that a further key issue is whether the effect of the approach adopted by the EA is to impose on Unimetals the use of a fabric filter bag, in contravention of Article 15(2) of IED 2010. The EA disagrees.

Areas of disagreement

19. The Parties disagree on the following matters:

i) Whether the use of a fabric filter bag is not applicable, including whether BAT 25 limits circumstances in which a fabric filter would not be applicable to circumstances associated with a risk of 'deflagration';
ii) whether circumstances at the site are such that the use of a fabric filter bag would not be applicable.
iii) Whether the EA prescribed a particular technique or technology;
iv) Whether the EA's approach amounts to prescription of a particular technique or technology

The ELVs for lead and zinc

20. In General Considerations, under the heading for BAT-associated emission levels for emissions to water, the BAT Conclusions state that "all BAT-AELs for emissions to water apply at the point where the emission leaves the installation". Article 15(1) IED 2010 states that "The emission limit values for polluting substances shall apply at the point where the emissions leave the installation".

21. BAT conclusion 20 sets out the range of proposed BAT-associated emission levels to be imposed by way of a permit condition.

22. For indirect discharges to a receiving water body, footnote 2 to table 6.2 of BAT 20 provides:

> *"The BAT-AELs may not apply if the downstream waste water treatment plant abates the pollutants concerned, provided this does not lead to a higher level of pollution in the environment."*

23. BAT-AELs may not apply, if a downstream waste water treatment plant abates the pollutants concerned, provided that this does not lead to a higher level of pollution in the environment. This is a discretionary consideration. The consideration is qualified by reference to the second half of the sentence beginning "provided this".

24. Article 15(1) IED 2010 reads, "with regard to indirect releases of polluting substances into water, the effect of water treatment plant may be taken into account when determining the emission limit values of the installation concerned, provided that an equivalent level of protection of the environment as a whole is guaranteed and provided this does not lead to higher levels of pollution in the environment".

25. For lead, footnote 4 to table 6.2 provides:

"The upper end of the range is 0.3mg/l for mechanical treatment in shredders of metal waste."

26. For zinc, footnote 5 to table 6.2 provides:

"The upper end of the range is 2mg/l for mechanical treatment in shredders of metal waste."

27. The upper limits set out in the table can vary depending on the waste treatment process employed at the site. Policy is that if BAT conclusions provide a range of BAT-associated emission levels for a process, the ELV in the Permit should equate to the upper end of the range.

28. The EA has produced appropriate measures guidance for treating metal waste in shredders. Section 6.4 of the guidance states that an operator must assess the fate and impact of the substances emitted to water and sewer following the EA's risk assessment guidance. The EA's risk assessment guidance states:

> *"You can 'screen out' potential risks from emissions to air, discharges to water or deposition onto land by carrying out tests to check whether they are within acceptable limits or environmental standards. If they are, you do not need to do any further assessment of the pollutant because the risk to the environment is insignificant."*

29. Unimetals carried out an H1 assessment in accordance with the relevant guidance. An 'H1 assessment' is a screening tool, published by the EA. The result of the H1 assessment identified that the risk to receiving water was insignificant.

30. Within section 7 of the appropriate measures guidance for treating metal waste in shredders, headed "emissions limits, monitoring and limits appropriate measures", at section 7.3, in relation to discharges to sewer the guidance states that operators must meet emission limits for lead and zinc of 0.3mg/l and 2.00mg/l, respectively, unless their permit states otherwise. The EA has also produced additional appropriate measures guidance for WEEE. Within section 7 of the WEEE appropriate measures guidance, at section 7.2, in relation to "discharges to sewer … from all mechanical treatment of WEEE" the guidance states that the emission limits for lead and zinc are 0.1mg/l and 1.00mg/l, respectively. The WEEE appropriate measures guidance does not apply an uplift to the upper end of the emission limit range for metal waste treated in shredders where that waste is hazardous WEEE.

31. Additionally, within section 1.3 of the appropriate measures guidance for metal shredding and section 1.2 of the appropriate measures guidance for WEEE, the guidance states that "Existing installations must comply with relevant BAT Associated Emission Levels (AELs) by August 2022, unless we approve a derogation. BAT AELs are set out in the published Waste Treatment BAT Conclusions document [a link is provided]. New installations (including new or replacement plant at existing facilities or a substantial change to existing plant) must comply with any relevant BAT AELs from when operations begin, unless we approve a time limited derogation.".

32. The Sludge (Use in Agriculture) Regulations 1989 regulates the use of sewage sludge from waste water treatment plants..

33. The trade effluent consent for the site is issued by Severn Trent Water..

34. The Application Variation Decision Document records:

> *"Representative monitoring of the surface water discharged from point S2 have been undertaken together with a report of the H1 Screening tool. Sewage treatment reduction factors were applied, and all parameters measured against Maximum Allowable Concentration (MAC) passed test 2. However, Zinc was close to the upper limit of the waste BAT AEL for indirect discharges (BAT 20). The waste BAT AELs and monitoring requirements for indirect discharges to a receiving water body have been added to the permit under table 3.2. We have concluded that because the shredder on site will be processing both metal waste and hazardous waste, we cannot include the higher BAT AEL limits in the permit for lead and zinc because the higher limits are applicable to mechanical treatment in shredders of metal waste. The limits of lead and zinc are set as 0.1mg/l and 1mg/l respectively."*

Other than the above and the section on emission limits, there is no record in the Application Variation Decision Document of any assessment of the impact of the Minworth STW.

35. The key issues for the Planning Inspector are:

i) in the context of how to exercise its discretion, did the EA properly:
   a. consider the impact of the Minworth STW;
   b. take into account the results of the H1 assessment.

ii) Whether the EA have properly concluded that the relevant waste treatment operation was not "mechanical treatment in shredders of metal waste".

<u>Areas of disagreement</u>

36. The Parties disagree on the following matters:

i) Whether the EA properly exercised its discretion, including:
   a. whether the EA has ignored its own published guidance on the assessment of potential risks to water or land;
   b. whether the EA properly took into account the results of the H1 assessment;
   c. whether the EA has acted unlawfully in ignoring the established approach to the H1 assessment;
   d. whether the EA properly considered the impact that the presence of the downstream waste water treatment plant should have on the appropriate ELVs;
   e. whether the EA has ignored the terms of Minworth STW's own environmental permit;
   f. whether the EA properly considered whether an ELV was required at all;
   g. whether the EA has ignored the dual regulation provided by the existence of the trade effluent consent;
   h. whether the EA has failed to properly take into account the "costs", including both financial and environmental costs, of imposing this ELV on Unimetals;

ii) Whether the established means of assessing potential risks to water and the environment for indirect emission to water in the context of permit applications and variations is to apply the sewage treatment reduction factors found in the H1 assessment.

iii) Whether the waste treatment process employed at the site is "mechanical treatment in shredders of metal waste".

iv) Whether the EA uses the results of the H1 assessment tool to amend ELVs out of alignment with BAT AELs only where either there is a sensitive receptor (in which

case the ELV will be more stringent) or where the results demonstrate that the pollutant has been transformed or destroyed (not applicable to metals).

v) Whether in determining whether the disapplication of ELVs based on BAT AELs for emissions leaving the permitted site would lead to a higher level of pollution in the environment, it is reasonable to consider emissions to land whether or not the introduction of those emissions to land is separately regulated. That the relevant comparison is whether emissions would be higher than had the ELVs been applied when the emissions left the installation.

vi) Whether the Sludge (Use in Agriculture) Regulations 1989 are relevant to the ELVs imposed by the Permit;

vii) Whether the trade effluent consent for the site, issued by Severn Trent Water, is relevant to ELVs imposed by the Permit.

Timescales for compliance with the ELVs for lead and zinc

37. The issues for the Planning Inspector are:

a. whether the treatment of hazardous WEEE on site was a new or existing activity; and

b. whether the Permit allows a reasonable and necessary period of time for implementation of the changes that are required in order to meet the relevant ELVs.

Areas of disagreement

38. The Parties disagree on the following matters:

i) That Unimetals were required to make the variation application due to a reclassification of WEEE by the EA.

ii) That Unimetals were not undertaking anything new on site and the risks to the environment were unchanged.

iii) Whether time to comply can be provided for by way of an improvement condition.

iv) Whether IED 2010 makes express provision to allow existing sites additional time to adapt technically to the requirements of the Directive and BAT conclusions beyond the expiry of the implementation deadline.

Sampling

39. Table S3.2 requires spot samples to be taken by Unimetals.

40. Note 1 to Table S.3.2 states:

> *"In the case of a batch discharge, average values over the release duration taken as flow-proportional composite samples, or, provided that the effluent is appropriately mixed and homogenous, a spot sample taken before discharge."*

41. The issue for the Planning Inspector is, given the complexity of taking samples at the site, whether an improvement condition should be imposed to allow time for the determination of which type of samples should be adopted on site).

42. The permit monitoring condition 3.5.1 allows for changes to the monitoring requirements, set out in Unimetals document 'Smethwick_Protocol for Monitoring Point Source

Emissions to Sewer at S1 and S2_Dec 2016' to be agreed by written agreement without the permit requiring variation.

43. This is a subject of continuing discussions between the Parties.

Unimetals Recycling (UK) Limited
Environment Agency

9 May 2025