

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

**APPEAL BY NICK BROOKES
AGAINST AN ENFORCEMENT NOTICE
ISSUED UNDER REGULATION 36**

APPEAL REFERENCE: APP/EPR/684

**ENVIRONMENT AGENCY
PRE-INQUIRY STATEMENT
DATED 01 MAY 2025**

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Section 1. Introduction

1. This appeal relates to a waste operation carried out by Nick Brookes (“the Appellant”) at Nick Brookes Demolition and Waste Disposal, Green Lane, Wardle, Nantwich, Cheshire, CW5 6DB (“the Site”). The Appellant holds an environmental permit, reference EPR/EP3798CS (“the permit”), granted by the Environment Agency authorising a waste operation at the Site.
2. On 29 July 2024 the Environment Agency issued an Enforcement Notice to the Appellant under Regulation 36 of the Environmental Permitting (England and Wales) Regulations 2016.
3. A copy of the Enforcement Notice can be found at **Appendix 1**.
4. The Enforcement Notice requires the Appellant to take specified steps to remedy a breach of Permit condition 1.1.1 by 10am on 13 September 2024.
5. The Appellant has brought an appeal against the Enforcement Notice.
6. The Appellant has been persistently contravening the Permit conditions for a considerable period of time and has refused to remedy matters voluntarily.
7. The Environment Agency considered all the information available when deciding to issue the Enforcement Notice and has followed the applicable guidance. It was a reasonable, necessary and proportionate response to require the breach to be remedied within an appropriate timescale, to ensure protection of the environment and human health.
8. The Environment Agency considers that this appeal should be dismissed, and the Enforcement Notice should be affirmed in full.
9. To save time and resources this statement reiterates the EA’s statement of case with minor updates only to reflect the change of appeal procedure and to incorporate the main points raised in the EA’s comments.
10. The Environment Agency expects to call two witnesses, the current regulatory officer, and a national trommel fines sector lead. The regulatory officer will address the compliance issues identified, the events which led up to the decision to issue the Regulation 36 Enforcement Notice and summarise the pollution risks associated with the activity. The national trommel fines sector lead will provide an overview of the Environment Agency’s position on regulating trommel fines, discuss the national campaigns carried out by the Environment Agency which identified the chemical composition of trommel fines derived from the treatment of mixed waste, and discuss the potential environmental impacts associated with this waste stream.

Section 2. Legislation and guidance

Directive 2008/98/EC

11. The environmental permitting regime in the UK implements the requirements of the EU Waste Framework Directive 2008/98/EC (“The WFD”) as regards the collection, transport, recovery and disposal of waste. Following the UK’s withdrawal from the European Union, the body of EU law existing at that point has been retained and will continue to apply in UK law until it is amended or revoked. This was achieved by the

provisions of the EU (Withdrawal) Act 2018, and by associated Statutory Instruments which amended retained EU law to make it operable in the UK.

12. Article 3(1) of the WFD defines waste as any substance or object which the holder discards or intends or is required to discard. This is known as ‘the discard test’.
13. Article 6 (1) of the WFD sets out the following conditions that recycled or recovered waste must meet in order to be considered as having ceased to be a waste (i.e. having achieved end-of-waste status):
 - (a) the substance or object is to be used for specific purposes;
 - (b) a market or demand exists for such a substance or object
 - (c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and
 - (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.
14. Article 6(2) of the WFD provides for detailed criteria to be established for waste to meet the conditions in Article 6(1), including:
 - (a) permissible waste input material for the recovery operation;
 - (b) allowed treatment processes and techniques;
 - (c) quality criteria for end-of-waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary;
 - (d) requirements for management systems to demonstrate compliance with the end-of-waste criteria, including for quality control and self-monitoring, and accreditation, where appropriate;
 - (e) a requirement for a statement of conformity.
15. Article 13 of the WFD requires the UK to take the necessary measures to ensure that waste management is carried out without endangering human health and without harming the environment and, in particular – - without risk to water, air, soil, plants or animals; - without causing a nuisance through noise or odours; and - without adversely affecting the countryside or places of special interest.
16. Article 23 of the WFD requires waste operations to be carried out under an environmental permit or registered exemption, to implement the objectives of Article 13 of the WFD and other associated provisions.

The Environmental Permitting (England and Wales) Regulations 2016

17. The Environmental Permitting (England and Wales) Regulations 2016 (“EPR”) provide a consolidated system of environmental permitting in England and Wales.
18. Under Regulation 32 EPR, the Environment Agency is the principal regulator of waste operations in England. Under Schedule 9, Part 1 EPR, the Environment Agency must exercise its functions for the purposes of implementing Article 13 of the WFD.
19. Regulation 36 EPR gives the Environment Agency the power to issue an enforcement notice if it considers that an operator is contravening an environmental permit condition. Regulation 36 requires an enforcement notice to specify the Environment Agency’s view about the contravention, the matters constituting the contravention, the steps to remedy the contravention and the period within which those steps must be taken.

20. Regulation 38 EPR provides that it is an offence to contravene an environmental permit condition, or to fail to comply with the requirements of an enforcement notice.
21. Regulation 31 and Schedule 6 of EPR provide for appeals. Under Regulation 31(1)(f) a person may appeal against an enforcement notice to the appropriate authority. In England, the appropriate authority is the Secretary of State.
22. Under Regulation 31(7) of EPR, an appeal does not have the effect of suspending an enforcement notice.

DEFRA Environmental Permitting – Core Guidance (revised March 2020)

23. The Core Guidance sets out how the EPR should be interpreted and applied.
24. Paragraph 2.1 explains that the Environmental Permitting regime provides for ongoing supervision by regulators of activities which could harm the environment. The aims of the regime include:
 - protect the environment so that statutory and government policy environmental targets and outcomes are achieved; and
 - deliver permitting, and compliance with permits and certain environmental targets, effectively and efficiently, in a way that provides increased clarity and minimises the administrative burden on both the regulator and operators.
 - continue to implement European legislation fully.
25. Paragraph 9.5 provides that operators should have effective management systems to ensure a high level of environmental protection.
26. Paragraph 11.1 provides that risk-based compliance assessment should include targeting those facilities that have poor standards of operation and are failing to comply with the conditions of their permit and reducing the regulatory burden on operators whose standard of operations are consistently high.
27. Paragraph 11.3 provides that the operator is responsible for ensuring that its regulated facility does not cause pollution of the environment and harm to human health. Checking compliance with the terms and conditions of the permit is the principal way in which the operator's performance in relation to that responsibility should be assessed. In addition, the Regulator should also audit the operator's systems for the management and supervision of the facility.
28. Paragraph 11.8 states that the Environment Agency can serve an enforcement notice if it believes an operator has contravened, is contravening, or is likely to contravene any permit conditions.
29. Paragraph 11.9 provides that enforcement notices will specify the steps required to remedy the problem and the timescale in which they must be taken. Enforcement notices may include steps to remedy the effects of any harm and to bring a regulated facility back into compliance.
30. The relevant extracts from the Core Guidance can be found at **Appendix 2**.

The Environment Agency's Enforcement and Sanctions Policy

31. The Environment Agency's Enforcement and Sanctions Policy explains its approach to enforcement and sanctioning. A copy is at **Appendix 3**.

32. Section 7 sets out the Environment Agency's aim to make sure its enforcement response is proportionate and appropriate to each situation. Its first response is usually to give advice and guidance, or issue a warning, with the objective of providing an opportunity for the operator to return to compliance and stay compliant. Section 7 also makes clear that the Environment Agency may serve enforcement notices where appropriate.
33. Section 7 also confirms that the Environment Agency may serve enforcement notices where appropriate. The Environment Agency would generally consider issuing an enforcement notice where advice and guidance, or requests for an operator to remedy a breach of permit condition voluntarily, have not worked or are not appropriate. An enforcement notice is often the first formal enforcement tool which the Environment Agency uses to try to bring an operator back into compliance with their permit.

Environmental Management System (EMS) guidance

34. Most environmental permits require operators to have a written management system. This is a set of procedures describing what they will do to minimise the risk of pollution from the activities covered by their permit. The Environment Agency has produced guidance on how to develop a management system and keep it up to date so that operators can carry out activities under an environmental permit. A copy of the guidance is at **Appendix 4**.
35. The guidance provides for operators to:

“Break down the operations that will be carried out on your site during start up, normal operation and shut down, into a list of activities and processes, for example unloading waste, storing waste, incinerating waste.

For waste, mining waste, and installations, list the wastes that will be produced by each activity or process. List the steps you will take to prevent or minimise risks to the environment from each activity or process and type of waste. Be specific about the actions you will carry out to do this.”

Definition of waste guidance

36. The Environment Agency has produced guidance “Check if your material is waste”. A copy of the guidance is at **Appendix 5**.
37. The guidance sets out 4 methods of demonstrating a waste has ceased to become a waste:
- following a relevant end of waste regulation,
 - meeting quality protocols and resource frameworks,
 - doing a self-assessment, and
 - getting an opinion through the Environment Agency's definition of waste service
38. The guidance clarifies how the conditions referred to in Article 6(1)(a)-(d) of the WFD should be applied when making end of waste decisions.
39. The Environment Agency considers that condition (d) is most relevant to this appeal. It provides that the use of the substance or object must not lead to overall adverse environmental or human health impacts.

40. To decide if a material will have an overall adverse environmental or human health impact, the guidance requires a risk assessment using a comparator approach. The comparator approach compares the material with an equivalent non waste derived product. An extract from the guidance on the application of condition (d) is set out below:

“The material must be of no significantly greater risk to the environment or human health than the non-waste-derived product.

An initial assessment of the 2 materials must be carried out which should include:

- composition*
- the basic elements*
- physical parameters, such as water content*
- advance analysis where needed, such as speciation of elements or ecotoxicity*
- calorific value (relevant to fuels)*

A full risk assessment for substances of potential concern in the material will also be required if the initial assessment shows they are of a higher concentration or quantity than the non-waste equivalent, including when emitted to the environment.”

41. The guidance confirms that the criteria in Article 6 (2) of the WFD must also be applied when considering the end of waste test for a particular material. An extract from the guidance on those criteria is set out below:

“Permissible waste input material for the recovery operation

You will need to define the input waste if it could impact the: technical specification of the material, amount of harm to the environment or human health

The input waste should be defined in relation to the: type of waste – its origin and composition where appropriate quantity of waste

Allowed treatment processes and techniques

You will need to define the treatment processes and techniques if they could:

- affect the technical specification of the material*
- impact the amount of harm to the environment or human health*

Quality criteria for end of waste materials resulting from the recovery operation in line with the applicable product standards, including limit values for pollutants where necessary

You should make sure quality criteria and limit values for pollutants are set if the quality of the material can vary and if this variation could:

- affect the technical specification of the material*
- impact the amount of harm to the environment or human health*

You are likely to have covered this part of the assessment when you assessed the overall adverse effects on the environment and human health.

Requirements for management systems to prove compliance with the end of waste criteria, including for quality control and self-monitoring, and accreditation, where appropriate

You should have a management system that shows how you will follow the end of waste criteria, including: quality control procedures, self-monitoring procedures, how you achieve accreditation where appropriate.”

Guidance on appropriate measures for waste facilities

- 42. The Environment Agency has published guidance on appropriate measures for waste facilities. The guidance is split into several sections. Extracts from the section on general management are at **Appendix 6**.
- 43. The guidance explains that an EMS must identify pollution risks and minimise them through appropriate measures and procedures to ensure compliance with the permit conditions and environmental legislation. The guidance also highlights the importance of staff at waste facilities being appropriately trained and competent to identify whether waste is suitable for the facility, to manage loads that don't conform, and to determine end of waste products.

Section 3. The Appellant, the Site and the Permit

The Appellant

- 44. The Appellant is Nick Brookes. The Appellant is the holder of the Permit.

The Site

- 45. The Appellant occupies the Site at Green Lane, Wardle, Nantwich, Cheshire, CW5 6DB.
- 46. The Site is in an industrial area, the nearest residential properties are approximately 500m east of the Site.
- 47. A plan of the Site showing the area of land covered by the Permit can be found on page 24 of the Permit which can be found at **Appendix 7**.
- 48. The Appellant operates a waste transfer facility at the Site which processes skip waste from household, commercial and industrial sites.
- 49. Mixed waste is tipped within a transfer building where it is processed through a trommel screen to break down and separate the waste by size using a rotating drum with perforated holes. Larger fractions of waste leave the trommel and pass through a picking line where recyclables such as plastics, metals, wood and cardboard are removed. The remaining waste which cannot be recycled is sent for incineration or to landfill. Smaller fractions of waste processed through the trommel screen fall through the holes and are referred to as 'trommel fines'. The trommel fines exit the transfer building at the rear and are deposited in the open yard where the wash plant is located.
- 50. Mixed construction and demolition waste is tipped in the rear yard where it is crushed. The crushed waste is mixed with the trommel fines and processed through a wash plant to produce aggregates, which are subsequently sold as product, and filter cake, which is a sludge that is sent to landfill.
- 51. Other activities undertaken at the Site are not relevant to this appeal.

The permit

52. On 10th December 2001 the Environment Agency issued a Waste Management Licence to Nick Brookes authorising the keeping and treatment of waste at the Site, under the Waste Management Licensing Regulations 1994, subject to the conditions of the licence. On issue, the licence was given the reference EAWML / 50066.
53. The Environmental Permitting (England and Wales) Regulations 2007 (EPR) superseded The Waste Management Licensing Regulations 1994. Waste Management Licence EAWML / 50066 which was in force on 6 April 2008, became an environmental permit by virtue of Regulation 69 of the 2007 Regulations.
54. By virtue of further transitional provisions in the Environmental Permitting (England and Wales) Regulations 2010, and the Environmental Permitting (England and Wales) Regulations 2016, the environmental permit must be treated as if it was granted under Regulation 13 of the Regulations.
55. Since its issuance in 2001, the permit has undergone two variations. On 2 May 2005, it was modified with specific conditions deleted. Later, on 17 August 2011, the permit was verified, consolidated, and reissued in EPR format and given the reference EPR / EP3798CS.
56. A copy of the permit can be found in **Appendix 7**.
57. Schedule 1, Table S1.1 of the permit sets out the operations which can be carried out. This consists of three separate activities:
- A1 – Waste Transfer Station
 - A2 – Soil Processing Facility
 - A3 – Composting Facility.
58. Only certain waste types are permitted to be processed as part of each activity. Schedule 2, Table S2.1, S2.2, S2.3 lists the EWC (European Waste Catalogue) code of wastes which are allowed to be stored and treated as a part of Activities A1, A2, A3 respectively.
59. The wash plant makes up part of the soil processing facility – Activity A2. Table S2.2 lists the EWC codes permitted to be processed through the wash plant.
60. 19 12 12 is a EWC code listed within Table S2.2 however it must meet the definition specified which is 'Treated bottom ash including IBA and slag other than that containing dangerous substances only'.
61. Trommel fines from the treatment of mixed waste should be coded as 19 12 11* or 19 12 12 depending on if the waste is hazardous or not in accordance with Waste classification technical guidance WM3 which the relevant extracts can be found in **Appendix 8**.
62. Trommel fines from mixed waste do not meet the definition in table S2.2 therefore they are not permitted to be processed through the wash plant.
63. Section 1 of the Permit sets out the requirement to have an Environment Management System (EMS) under Permit condition 1.1.1 (a) which states:

“The operator to manage and operate the activities: In accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints;”

64. The requirements of an EMS is set out within Environment Agency Management System Guidance that can be found in **Appendix 4**.

Section 4. Chronology of events leading to the Enforcement Notice being issued

65. The Environment Agency issued the Enforcement Notice because it considered that the Appellant was contravening condition 1.1.1 of the Permit and the Appellant had failed to remedy this breach voluntarily since it was brought to their attention in 2022.
66. The Environment Agency considers that the Appellant’s EMS breaches condition 1.1.1 because it does not contain procedures to prevent trommel fines from the treatment of mixed waste being treated through the wash plant which forms part of the soil processing facility, or misclassifying waste as product. These omissions mean that the EMS is not identifying and minimising the risks of pollution from the activities.
67. The chronology of the relevant Environment Agency inspections of the Site and communications with the Appellant since December 2021 is summarised below.

16 December 2021 – Inspection at Appellant’s Site

68. On 16 December 2021, Environment Agency officers carried out an inspection at the Site. This inspection was an audit, part of a wider campaign, to assess if waste sites are taking all appropriate measures to ensure that waste being sent to landfill does not contain gypsum. A Compliance Assessment Report form (“CAR form”) was produced following the inspection, reference 50066 / 0412384 and sent to the Appellant on 04 January 2022. A copy of this CAR form can be found at **Appendix 9**.
69. Within this CAR form reference was made to mechanically treated trommel fines from the treatment of mixed waste being processed through the soil processing facility ‘wash plant’:

“Mixed waste is subjected to sorting by mechanical grab to remove predominantly metals and wood. The remainder passes through a trommel screen which generates a fines output. The screened waste is hand-picked to remove recyclate fractions, with a remaining light fraction shredded to produce a light fines output for incineration. The ‘inerts’ (mixed construction & demolition wastes) are tipped in the rear open yard, screened, with the fines put through a wash plant along with the trommel fines output from the mixed waste treatment. Washed fines are then filter-pressed to dewater. The trommel fines are not permitted to be treated through the wash plant. Activity A2 limits washing to the coded wastes in Table S2.2, which does not include mechanically treated trommel fines from mixed waste processing.

ACTION 2 - cease the mixing and subsequent treatment of your mixed waste trommel fines through the wash plant forthwith. If you wish to recommence this activity in the future you can submit an application to vary your permit.”

70. The deadline for this action was set as 18 February 2022.

“The co-treatment of mixed waste trommel fines with C&D waste by washing and pressing is not authorised by your permit. The resulting cake disposed to landfill is mis-described and may be gypsum contaminated. This is recorded as a further category 2 breach (Condition 2.1.1, criterion a1).”

71. The Appellant was considered to be in breach of permit condition 2.1.1 as trommel fines from the mechanical treatment of mixed waste, 19 12 11*/19 12 12, were being processed through the wash plant which is not a permitted waste type to be processed through the soil processing facility activity, A2.
72. The breach of the Permit condition was scored as a category 2 breach – a non-compliance which can have significant impact on the environment. This is because it was likely that gypsum was being processed through the mechanical treatment, which would contaminate the outputs (trommel fines) which are put through the wash plant and filter press prior to land fill or use in construction. The environmental impacts of this have the potential to be severe and can include strong malodours associated with emissions of hydrogen sulphide, a breakdown product of the gypsum, within landfill gas; as well as potential corrosive damage to the landfill gas collection / treatment systems.
73. The Appellant did not cease the mixing and subsequent treatment of the mixed waste trommel fines through the wash plant after receiving this CAR form.
74. The Appellant challenged the category 2 permit breach on 17 March 2022 by letter from the Appellants consultant addressed to the officer who conducted this inspection. A copy of this letter can be found in **Appendix 10**.
75. The Appellant included the following comment in relation to the treatment of trommel fines through the wash plant:

“When the permit was last varied in August 2011 I dealt with the application on behalf of our client, with assistance from my colleagues at the time Jan Edwards and Robin Draper, both of whom have previously worked for the EA as senior permitting staff. At the time of the application, it was agreed that the wash plant would receive wastes listed in the permit and those arising on site from the sorting operations. The waste arising from the trommel process at the time was not coded but referenced in the site documentation and agreed with inspecting officers. The aggregate protocol sent to the EA at the time referenced the sorting of the waste and soil/fines/hardcore stockpiling before transfer to the wash plant. This has remained unchanged to date and has never been listed as a breach during previous audits. The process is not new and has been observed by numerous officers up to October 2021. It is unreasonable to request cessation of operations, which have been agreed with the EA and which would result in more waste being delivered to landfill if the process ceased. We submit that the C2 score should be removed.”

76. The notes on the CAR form provide that a challenge should be submitted within 28 days. The Environment Agency received the Appellant’s challenge 72 days following the receipt of the CAR form. Despite this, the officer responded to the challenge by email on 22 March 2022 and a copy of the response can be seen in **Appendix 11**. The response provided:

“Treatment of trommel fines in admixture with screened soils through the wash plant

I am unable to comment upon any ‘agreement’ during the variation process that would authorise the mixed waste trommel fines to be treated in this way – if you have written evidence to support such authorisation please supply it and I will discuss the matter with the Area team. But the permit as written appears clear that a 19-12-11 material is not authorised for washing. The blending of the trommel fines with soils for washing could be seen as a means to dilute the trommel fines output prior to landfill.”

14 September 2023 – Inspection at Appellant’s Site

77. On 14 September 2023, Environment Agency officers carried out an inspection at the Site. Officers were shown around the Site by the operations manager and met with the Appellant to discuss the issues identified during the inspection.
78. A CAR form was produced following the inspection, reference 50066 / 0478595 and sent to the Appellant on 30 October 2023. A copy of this CAR form can be found at **Appendix 12**. Photographic images taken at the Site are included within Section 2 of this CAR form. Photograph 2 shows the pile of trommel fines and construction and demolition waste which are being processed through the soil processing facility.
79. Within this CAR form, reference was made again to trommel fines from the treatment of mixed waste being processed through the soil processing facility ‘wash plant’:

“Section A1: Permitted activities, specified by permit.

You have been scored a Category 3 breach of permit condition 2.1.1 because it poses a minor risk to the environment. The aggregates which are derived from the waste including trommel fines have the potential to leach contamination, from the mixed waste trommel fines input, at the site where the aggregates are used.

The permit condition states: ‘The operator is only authorised to carry out the activities specified in schedule 1 table S1.1 A2 (the “activities”)’ which states ‘Treatment of wastes listed in table S2.2 consisting only of washing, sorting, screening, separation, crushing and blending of waste for recovery as a soil, soil substitute or aggregate’

The condition has been breached because trommel fines from the treatment of mixed waste – 19 12 12 are being processed through the soil processing facility which is not a waste type included in table S2.2 therefore not permitted to be treated through the wash plant.

Action: Stop processing trommel fines through the wash plant by 12am on 6/12/2023.

The output from the wash plant including grit sand and stones leaves site as product. For this to occur it has to meet the requirements of the WRAP quality protocol, end of waste criteria for the production of aggregates from inert waste: LIT_8709_c60600.pdf (publishing.service.gov.uk). Appendix C lists the waste types considered inert and therefore qualify as wastes which can meet end of life criteria. Appendix C does not allow for mixed waste which the trommel fines you are processing through the wash plant are derived from. Therefore, none of the

aggregates produced from the wash plant with trommel fines as an input meet end of waste criteria meaning you cannot move them offsite as product.”

80. The appellant was considered to be in breach of permit condition 2.1.1 because trommel fines from the treatment of mixed waste were being processed through the wash plant. 19 12 11*/19 12 12, mechanically treated waste, is not a permitted waste type within table S2.2 of the Permit therefore it is not permitted to be treated through the wash plant.
81. As a result, the aggregate output of the wash plant, including grit sand and stones was heavily contaminated with metals, plastics, wood and a battery. This material was being sent offsite as product. For waste to become product it must meet the end of waste criteria in accordance with the guidance found in **Appendix 5**. This material does not meet the requirements of the end of waste criteria because it is produced from input materials which are not listed within the WRAP quality protocol: Aggregates from inert waste, a self-assessment of the waste has not been conducted and an opinion that the material is not waste has not been obtained from the Environment Agency’s Definition of Waste Service. Therefore, this material is waste which is misdescribed as a product.
82. The breach of the Permit condition 2.1.1 was scored as a category 3 breach – a non-compliance which has the potential to cause a minor environmental impact. This is because the aggregates which are derived from waste including trommel fines have the potential to leach contamination at the sites where the aggregates are used.
83. Reference was also made to the Appellant’s EMS, Version 10.0 dated 11 March 2022 which can be found in **Appendix 13**, being inadequate as it does not reflect activities onsite which are permitted and does not fully meet the criteria stated within the guidance which can be found in **Appendix 4**. An extract from the CAR form is set out below:

“The root cause for the breach of permit conditions 2.1.1 Schedule 1 table S1.1 A2 and 1.1.1 has been identified as a failure to follow your management system and your management system being inadequate:

Section C2: General Management – Management procedures and operating system

You have been scored a category 3 breach of permit condition 1.1.1 (a) because it poses a minor risk to the environment as explained in the breaches above.

The permit condition states: ‘The operator shall manage and operate the activities: (a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints’

You have been breached for this permit condition because your Environmental Management System is inadequate because it does not accurately reflect the processes onsite which are permitted and it does not fully meet the criteria stated within the guidance.

Action: Update your Environment Management System to reflect permitted activities and meet the criteria specified within this guidance: Develop a management system: environmental permits - GOV.UK (www.gov.uk). Email the completed document to jemimah.smith@environment-agency.gov.uk by 5/1/2024 for review.”

84. The CAR form expanded on the reasons why the EMS is inadequate and suggestions of changes which could be made to meet the requirements within the guidance. The breach of condition 1.1.1 was considered to be the root cause of the breach of permit condition 2.1.1.
85. The breach of permit condition 1.1.1 was also scored a category 3 breach – a non-compliance which has the potential to cause minor environmental impact due to the risks set out in the breach of condition 2.1.1.
86. Within Section 3 of the CAR form the Appellant was notified that the Environment Agency will now consider what enforcement action is appropriate.

Communications with the Appellant's consultant regarding the September 2023 inspection

87. On 3 October 2023, prior to CAR form 50066 / 0478595 being issued the Appellants consultant emailed the officer with a number of documents including previous compliance forms and documents of site procedures which state aggregates are produced from trommel fines. A copy of the email chain can be found in **Appendix 14**.
88. The officer responded to this email on 25 October 2023.
- *“The aggregates protocol you have provided is an internal document which states that the site will follow the WRAP Quality Protocol for Aggregates. This protocol must be followed by all businesses producing aggregates from inert waste to meet the end of waste criteria. While this protocol has changed since the variation to your permit was made in 2011 it is the responsibility of the site to ensure they are following the correct protocol and legislation in relation to the activities.*
 - *Appendix C of the WRAP quality protocol specifies the only acceptable input materials for producing aggregates from waste. This does not include 19 12 12 trommel fines, therefore the process you are currently following by washing trommel fines derived from mixed waste, which is not inert, to create aggregates, does not meet the criteria. As stated in condition 1.1.3 operators are not obliged to comply with the quality protocol, however if they do not the aggregate will normally be considered waste.*
 - *Your environmental permit does not allow trommel fines to be processed through the wash plant as permit condition 2.1.1 states ‘Treatment of wastes listed in table S2.2 consisting only of washing, sorting, screening, separation, crushing and blending of waste for recovery as a soil, soil substitute or aggregate’. Table S2.2 does not include 19 12 12 trommel fines derived from mixed waste.*
 - *You have no evidence of discussions with EA permitting team or officers that trommel fines should have been included within the wastes accepted for the wash plant and we can’t find any reference on our records from your application that you requested trommel fines to be included.*
 - *If you do wish to treat 19 12 12 trommel fines through the wash plant you can undergo a permit variation application process, however as discussed above the*

output would not meet the WRAP quality protocol end of waste criteria and would remain as waste.”

89. On 25 October 2023 the Appellant’s consultant responded by email. A copy of this email can be found in **Appendix 14**.

“I think the easiest answer to your comments below is that trommel fines were not something the EA talked about when the plant was permitted. I think a site meeting is necessary to go through my email and your comments as there is some common ground but we need to understand why there is suddenly a complete difference in interpretation of the process after it has been in operation for over 10 years.”

90. On 30 October 2023 the officer responded by email and arranged an online meeting for the Appellant, Appellants consultant, the Environment Agency officer and technical specialist for 13 November 2023.
91. On 13 November 2023 an online meeting was held. This meeting gave the Appellant the opportunity to explain their representations to the issues the Environment Agency identified during the site inspection. The Environment Agency explained the reasons for the breaches identified and expanded on the environmental impact of the site processing trommel fines through the wash plant to produce aggregates, which are sent offsite as product. The Appellant did not accept the Environment Agency’s take on the issues and disagreements were not resolved.

24 September 2023 – Appellant formal challenge of CAR form reference 50066/0478595

92. On 24 September 2023 the Appellant formally challenged CAR form 50066 / 0478595 by writing to the Environment Agency within 28 days of receipt, following the procedure set out within the CAR form. A copy of the letter can be found in **Appendix 15**.

93. The main points which were challenged are summarised below:

- There has been a change in interpretation of permit condition 2.3.2.
- The Environment Agency’s interpretation of the WRAP Quality Protocol: Aggregates from Inert Waste.
- A flow chart within Nick Brookes’ Secondary Aggregate Production Protocol v2.0 describes the processes onsite which includes the diversion of trommel fines to wash plant and was agreed with the Agency.
- They wish to add 19 12 12 and other codes to the permit to resolve the current disagreement.

26 March 2024 – Environment Agency response to formal challenge

94. On 26 March 2024 the Environment Agency responded to the CAR form challenge and addressed each point raised by the Appellant. A copy of the response can be found in **Appendix 16**.
95. The Waste Regulatory Specialist who looked into the challenge found that the CAR form findings were justified and reflect both the conditions of the permit, and the activities identified at the time of the inspection and that the scores and the actions deemed to be necessary and reasonable and proportionate to the risk posed in accordance with the Regulators Code.

96. Following the response to the formal challenge, CAR form 50066 / 0478595 was reissued with extended deadlines. The length of time given to gain compliance with permit conditions were the same length as that given originally, beginning on the date of the reissue. A copy of this CAR form can be found in **Appendix 17**.
97. The reissued CAR forms included the following deadlines for the breaches of permit condition 2.1.1 and 1.1.1 -

“Action: Stop processing trommel fines through the wash plant by 12am on 24/06/2024.

Action: Update your Environment Management System to reflect permitted activities and meet the criteria specified within this guidance: Develop a management system: environmental permits - GOV.UK (www.gov.uk). Email the completed document to jemimah.smith@environment-agency.gov.uk by 24/06/2024 for review.”

98. An updated EMS was not sent to the Environment Agency.

26 June 2024 – Inspection at Appellants Site

99. On 26 June 2024, Environment Agency officers carried out an inspection at the Appellants Site to assess compliance with actions set in CAR form 50066 / 0478595.
100. The Appellant had not complied with the actions to stop processing trommel fines through the soil processing facility ‘wash plant’ or to update their EMS.
101. Officers spoke to the Appellant during this inspection. The Appellant claimed he had not seen the previous CAR form and that their consultant was dealing with it. The Appellant stated they had no intention to stop processing trommel fines through the wash plant, as actioned in the previous CAR form, instead they are going to apply to vary their permit and conduct an end of waste self-assessment and apply to the definition of waste service to get an opinion on whether their wash plant output, which includes trommel fines from mixed waste input, to meet the end of waste criteria.
102. The Environment Agency officers explained that it is the responsibility of the permit holder to ensure actions are completed and the site is operating in accordance with the Permit. Officers also explained that for waste to meet the end of waste criteria it should not be contaminated and must be of an equivalent standard as quarried material.
103. A CAR form was produced following the inspection, reference 50066 / 0512074 and sent to the Appellant on 30 July 2024. A copy of this CAR form can be found in **Appendix 18**. Photographic images taken during the site inspection can be found in section 2 of the CAR form. Photograph 2 shows the stone aggregate, an output from the wash plant, which is heavily contaminated with metals, glass and plastics. This material is sent offsite as a product.
104. Within this CAR form, reference was again made to the processing of trommel fines from mixed waste through the wash plant–

“Section A1: Permitted activities, specified by permit

You have been scored a Category 3 breach of permit condition 2.1.1 because it poses a minor risk to the environment. The aggregates which are derived from the waste including trommel fines have the potential to leach contamination, from the mixed waste trommel fines input, at the site where the aggregates are used.

The permit condition states:

'The operator is only authorised to carry out the activities specified in schedule 1 table S1.1 (the "activities") A2' which states 'Treatment of wastes listed in table S2.2 consisting only of washing, sorting, screening, separation, crushing and blending of waste for recovery as a soil, soil substitute or aggregate'

Table S2.2 includes the waste code 19 12 12 but only for waste that meets the description of Treated bottom ash including IBA and slag other than that containing dangerous substances. The condition has been breached because trommel fines from the treatment of mixed household, commercial and industrial waste – 19 12 12 are being processed through the soil processing facility. This does not meet the description of the 19 12 12 within table S2.2 therefore it is not permitted to be treated through the wash plant.

Action: Stop processing any 19 12 12 which does not meet the description of waste within table S2.2 'Treated bottom ash including IBA and slag other than that containing dangerous substances only' through the wash plant by 10am on 13/09/2024."

105. The Appellant was again considered to be in breach of permit condition 2.1.1 as officers observed trommel fines produced by the treatment of mixed waste being processed through the wash plant.
106. The breach of permit condition 2.1.1 was scored as a category 3 breach – a non-compliance with the potential to cause minor environmental harm. This is because the aggregates which are derived from waste including trommel fines have the potential to leach contamination at the site where the aggregates are used.
107. The CAR form also refers again to the EMS being inadequate –

"Section C2: General Management – Management procedures and operating system

You have been scored a category 3 breach of permit condition 1.1.1 (a) because it poses a minor risk to the environment as explained in the breach above and due to the potential fire risk associated with storing large volumes of waste which has not been risk assessed within the EMS.

The permit condition states:

'The operator shall manage and operate the activities: (a) in accordance with a written management system that identifies and minimises risks of pollution, including those arising from operations, maintenance, accidents, incidents, non-conformances, closure and those drawn to the attention of the operator as a result of complaints'

You have been breached for this permit condition because:

The current EMS (Version 10.0, 11th March 2022) is inadequate because it does not accurately reflect the processes onsite which are permitted and it does not fully meet the criteria stated within the guidance: <https://www.gov.uk/government/publications/assessing-and-scoring-environmental-permit-compliance> or implement appropriate measures required by guidance Non-hazardous and inert waste: appropriate measures for permitted facilities - Guidance - GOV.UK (www.gov.uk).

At the time of the inspection the wood pile and plasterboard pile were large, extending out of their respective bays and exceeded the height of their bay walls (see photographs X and X). The current EMS does not include the maximum amount of wood and plasterboard you will store in terms of volume and the maximum height of each of their storage piles onsite as required by the Environment Agency guidance: Develop a management system: environmental permits - GOV.UK (www.gov.uk).

There is not an adequate drainage plan within your current EMS as required by the Environment Agency guidance. Currently your EMS only includes a description of the drainage systems onsite which is inconsistent with the drainage system the permit holder described to officers during the inspection.

We also consider the EMS being inadequate as the root cause of the breach of permit condition 2.1.1 because it does not include a process to ensure only permitted waste types listed in table S2.2 are processed through the soil processing activity.

Action:

- 1) Update your Environmental Management System (EMS) to identify and minimise all risks of pollution as per guidance: Develop a management system: environmental permits - GOV.UK (www.gov.uk) and implement appropriate measures as per guidance Non-hazardous and inert waste: appropriate measures for permitted facilities - Guidance - GOV.UK (www.gov.uk).*

The revised EMS shall include the following information:

- a) The steps you take to ensure that only those activities authorised by your permit will be carried out.*
- b) The steps you take to prevent trommel fines from the treatment of mixed waste (19 12 12) being processed through the soil processing facility, activity A2*
- c) The procedures in place to ensure all outputs from the waste treatment process are appropriately classified as waste or meet end of waste criteria.*

- 2) Send the revised EMS to jemimah.smith@environment-agency.gov.uk by 10am on 13/09/2024."*

108. The appellant was considered to be in breach of permit condition 1.1.1 because the EMS had not been updated and therefore still remained inadequate as it did not identify and minimise risks of pollution, in particular from processing mixed waste trommel fines through the wash plant and storing the trommel fines and output materials on a drainage system which drains to surface water. This breach was also considered the root cause of the breach of permit condition 2.1.1.

109. The breach of permit condition 1.1.1 was scored as a category 3 breach – a non-compliance with the potential to cause minor environmental harm as explained within the breach of permit condition 2.1.1.
110. Section 3 of the CAR form states that the Environment Agency will now consider what enforcement action is appropriate.
111. The Appellant has not challenged this CAR form.
112. Despite the Appellant stating during the inspection that they were going to submit an application to vary the permit and to carry out a self-assessment to certify the outputs, the officer was not made aware of any attempt to complete this between the inspection and the CAR form being issued.
113. Continuing to carry out the unpermitted activities, processing trommel fines through a wash plant without properly managing associated risks through implementing procedures set out within an EMS, poses an environmental risk. These risks are expanded on below.
114. Trommel fines are stored at the rear of the site near the wash plant, which according to condition 2.10.1d within the Appellant's EMS V10.0 (dated 11 March 2022) found in **Appendix 13** and the most recent EMS V11.0 (dated 13 September 2024) found in **Appendix 21**: *'The washing plant section of the site drains to surface water or a soakaway via a Class 1 by-pass interceptor.'*
115. The trommel fines which are derived from mixed waste are a highly unpredictable waste stream which sampling and analysis has shown have the potential to contain hydrocarbons, heavy metals, and asbestos at hazardous levels. A class 1 by-pass interceptor only intercepts oils (hydrocarbons) meaning any leachate which runs off the waste will enter the surface water drainage system. This leachate has the potential to contain hazardous levels of heavy metals and asbestos which would cause pollution to the environment and human health. Heavy metals entering surface water will contaminate water and surrounding soils and sediments.
116. This can cause harm to aquatic and terrestrial ecosystems by accumulating in organisms, inhibiting growth, reproduction and suppress oxygen consumption. By entering organisms, heavy metals could contaminate the food chain and impact plants and crops, in turn impacting human health to those who consume the contaminated crops. Heavy metals are toxic to humans and cause damage to organs and lead to cancer. If consistently exposed, heavy metals bioaccumulate in the environment worsening impacts over time. Similarly, asbestos fibres entering the environment could cause impacts to human health through entering the food chain by bioaccumulating within soils and water. Asbestos is a carcinogen and can cause serious health problems.
117. Furthermore, the output from the wash plant, which is produced by processing mixed waste trommel fines, includes stones, sand grit and filter cake. Any hazardous components within the trommel fines could be contained within the outputs, which is stored on the area where it could enter the surface water drainage system and pollute the environment in ways described above.
118. The stones and sand grit produced from the soil processing facility 'wash plant' are sent offsite as aggregates for use as product. This material was heavily contaminated with

plastics, metals, cables and a battery which can be seen in photograph 2 within section 2 in CAR form reference 50066 / 0512074 found within **Appendix 18**. For waste to become product it must meet the requirements of the end of waste criteria, as set out within the guidance summarised in paragraphs 34-39 of this document, to ensure the material is of an equivalent quality to freshly quarried material and therefore appropriate to be used in place of it. To qualify as having reached the end of waste criteria, a material must comply with the relevant quality protocol, undergo a self-assessment, or have an opinion from the Environment Agency's Definition of Waste service confirming that it is not waste. The operator currently does not meet the requirements of the relevant quality protocol, WRAP quality protocol: Aggregates from inert waste, because trommel fines are not an input material listed within Appendix C. A copy of the WRAP quality protocol can be found in **Appendix 19**. A self-assessment of the aggregates has not been conducted, and the Appellant has not received an opinion from the Environment Agency's Definition of Waste service that the material is not waste. Therefore, the material produced from the wash plant is waste and should be sent for further processing or disposal at an appropriately authorised facility.

119. However, this waste is being sold as a product. The contaminants in this material, such as plastic, can persist in the environment for a considerable time after being deposited at the receiving site. As previously mentioned, the potentially hazardous components found in the trommel fines, from which the aggregates are derived, could lead to pollution through leachate entering the soil and groundwater at the receiving site.
120. Permitted sites are required to have a written EMS to identify and minimise the risk of pollution from activities covered by the permit. The guidance which can be found in **Appendix 4** sets out in more detail what should be included within the EMS.
121. If waste is sent off the site as a product, then the definition of waste guidance found within Appendix 5 requires the EMS to prove compliance with the end of waste criteria.
122. The EMS which the Appellant had produced prior to the issue of the Enforcement Notice, V10.0 (dated 11 March 2022), found in **Appendix 13** did not identify or minimise the risks of pollution arising from site activities, ensure only permitted activities take place or meet the requirements of the permit, or prove that the material they sell as product has met the end of waste criteria.
123. For example, it did not include procedures to minimise the risk of pollution from storing trommel fines, and other wastes on a surface water drainage system. It doesn't contain information about waste storage and quantities of waste, and therefore does not minimise the environmental risks posed with the fire risk of storing large quantities of combustible wastes. It did not include site infrastructure plans or explain the processes which take place onsite. The Appellant was made aware of these issues within CAR form 50066 / 0478595 which expands on the reasons for the EMS not meeting the requirements within the guidance, and which is included at **Appendix 17**.
124. The Appellant received a category 2 breach of 2.1.1 in 2021 and a second category 3 breach of 2.1.1 in 2023. The site has also received multiple breaches of 1.1.1 (EMS) in the past, and a CAT 3 breach of 1.1.1 in September 2023.
125. While the Appellant has told the Environment Agency that they intend to vary the Permit, they have not submitted a variation application.

126. The Appellant has also made no attempt to regain compliance with the Permit despite the multiple CAR form breaches, each with actions with reasonable time frames giving the Appellant multiple opportunities to rectify issues without the use of enforcement action.
127. Furthermore, the Appellant has been avoiding extra costs by washing trommel fines to produce aggregates which has caused the Site to become non-compliant. Other legitimate businesses who are complying with their permit are incurring the cost of disposing of trommel fines legitimately. This undermines legitimate businesses.
128. Due to the environmental risk associated with the non-compliances, lack of any progress towards achieving compliance, and unwillingness from the Appellant to regain compliance despite numerous CAR form actions, the Environment Agency decided it was reasonable and proportionate to issue a Regulation 36 Enforcement notice.
129. The Environment Agency decided the most appropriate Enforcement Notice was a Regulation 36 to regain compliance with permit condition 1.1.1 which was identified as the root cause of the breach of 2.1.1. The Enforcement Notice required the Appellant to update their EMS as well as to include procedures to ensure only permitted waste is treated through the soil processing facility. If complied with, this would also avoid further breaches of condition 2.1.1.
130. Prior to issuing the Enforcement Notice, the Appellant had numerous opportunities to submit representations about the breaches identified by the Environment Agency and the actions required to remedy them. The Appellant has been aware of the issues since at least 2023. In that time the issues have been discussed multiple times during meetings onsite, in an online meeting and through a CAR form challenge.

Section 5. Requirements of the Enforcement Notice

131. On 29 July 2024, the Environment Agency issued the Appellant with an Enforcement Notice under Regulation 36 of the Regulations, which is included in **Appendix 1**.
132. The Enforcement Notice was signed and dated on 29 July 2024 and sent to the Appellant on 30 July 2024 by post to the Appellants site address.
133. The Enforcement Notice set out the Environment Agency's position that the Appellant was contravening Permit condition 1.1.1 because their current environmental management system (EMS) (version 10.0, 11th March 2022):
1. does not adequately identify and minimise the risks of pollution arising from waste acceptance, storage and treatment
 2. does not adequately describe the activities carried out so as to ensure the activities carried out are limited to those authorised by your permit
 3. does not provide measures to prevent trommel fines from the treatment of mixed waste (19 12 12) being processed through the soil processing facility, activity A2.
 4. does not include procedures to ensure all outputs from the waste treatment process are appropriately classified as waste or meet end of waste criteria.
134. The Enforcement Notice specified the required steps to be taken: -

“1) Update your Environmental Management System (EMS) to identify and minimise all risks of pollution as per guidance: Develop a management system: environmental permits -GOV.UK (www.gov.uk) and implement appropriate measures as per guidance Non-hazardous and inert waste:appropriate measures for permitted facilities - Guidance -GOV.UK (www.gov.uk).

The revised EMS shall include the following information:

- a) The steps you take to ensure that only those activities authorised by your permit will be carried out.*
- b) The steps you take to prevent trommel fines from the treatment of mixed waste (19 12 12) being processed through the soil processing facility, activity A2.*
- c) The procedures in place to ensure all outputs from the waste treatment process are appropriately classified as waste or meet end of waste criteria.*

2) Send the revised EMS to jemimah.smith@environment-agency.gov.uk.”

135. A compliance deadline of 10am on 13 September 2024 was given. This gave the Appellant 6 weeks to comply. It takes into account the amount of work required to update the EMS, particularly with the benefit of comprehensive advice and guidance which the EA has already provided to the Appellant in this regard.

136. The Appellant has been aware of the requirement to stop processing trommel fines through the wash plant since 2021 when they received a CAT 2 breach of permit condition 2.1.1. They were then given the same action in September 2023. The Appellant has also been aware that their EMS is inadequate since September 2023.

137. The Appellant did not submit an updated EMS by the deadline specified in the Enforcement Notice.

138. The Environment Agency Officer emailed the Appellant on 13 September 2024 at 14:44, after the deadline stating the following:

“The Environment Agency have not received an updated Environment Management System (EMS) which was due by 10am today as required by a Regulation 36 notice dated 29/07/2024.

A letter to confirm non-compliance with the notice will be issued in due course.

The requirement to update and send your EMS is still outstanding and must be completed to comply with your permit.

Please let me know of any issues.”

139. At 16:13 on 13 September 2024 the Appellants Consultant responded stating:

“The EMS update is attached. We would point out that it is almost impossible to comply with your notice without closing the wash plant and making staff redundant. The only reasonable way of stating that case is by appealing the notice as the Agency has undertaken a complete U-Turn in the way it regulates the site over the last year

or so and has not responded fully to the permit holder's concerns. The appeal deadline is 29/09/24. An appeal will be submitted for a hearing or enquiry procedure before that date."

140. The above email chain can be found within **Appendix 20**.
141. The updated EMS, V11.0 dated 13 September 2024, sent by the Appellants consultant within the above email, after the Enforcement notice deadline, can be found within **Appendix 21**. This updated EMS was inherently similar to the previous EMS (V10.0 dated 11 March 2022) and it does not include the information and procedures required by the Enforcement Notice to identify and minimise the risk of pollution arising from site activities.
142. A letter to confirm non-compliance with the Enforcement Notice was issued by post on 18/09/2024 which can be found in **Appendix 22**.

Section 6. Environment Agency response to the grounds of appeal

143. The Environment Agency has had concerns about the Appellant processing trommel fines through the wash plant since December 2021 and having an inadequate EMS since September 2023. Despite multiple CAR form breaches, actions and discussions, no attempt to gain compliance with the Permit has been made.
144. The Appellant has not challenged, appealed or disputed the contents of the CAR form from the site inspection conducted on 26 June 2024.
145. The Appellants Grounds of Appeal against the Enforcement Notice are set out within section F of the appeal document.
146. The Appellant's 5 Grounds of Appeal can be summarised as –
- The reason for the EMS being inadequate is imprecise;
 - There has been a change in regulatory approach;
 - The EMS should not contain measures to prevent the washing of trommel fines;
 - The EMS does include evidence of meeting the End of Waste Criteria.
 - The requirements of the notice are onerous and excessive.

Ground 1 – The reason for the EMS being inadequate is imprecise

147. The Appellant states in his appeal document that he disagrees with reason 1 within the Enforcement Notice which states:

'does not adequately identify and minimise the risks of pollution arising from waste acceptance, storage and treatment'

because –

'This reason is imprecise as it does not draw the appellant's attention to the parts of the EMS the Agency consider to be deficient to enable a full response to be made.'

148. Regulation 36 requires an Enforcement Notice to specify the matters constituting the permit contravention. The Enforcement Notice meets that requirement as it clearly

contains three further specific reasons why the Appellant's EMS is deficient, describes the specific steps which have to be taken to remedy the contravention, with links to supporting guidance, in addition to the summary referred to by the Appellant in this ground of appeal.

Ground 2 - There has been a change in regulatory approach

149. The Appellant states within their appeal document that:

"The regulator has changed its interpretation of the sites environmental permit, requiring the permit holder to cease processing specific waste types, namely trommel fines in the wash plant"

The appellant maintains that Environment Agency officers have inspected the facility many times and have not formed the same view as the current regulatory team i.e that condition 1.1.1 is being contravened by operating the wash plant in the way it has been operated since the permit was varied to allow the washing process over 13 years ago 17/08/11.

When the permit was issued the operation of the wash plant was considered in full and the permit was issued to cover the proposed activities which included waste material from the transfer station. When the permit was issued the Agency did not refer to the material as trommel fines, which is a more recent construct. Since 2011 the EMS and associated procedures describe that waste material from the transfer station would be processed in the wash plant, otherwise inspecting officers would have taken a different approach. The wash plant also received a grant from WRAP."

150. The Environment Agency's interpretation of the Appellant's Permit has not changed. The Permit clearly sets the permitted activities and the types of wastes which can be treated and stored as part of those activities, including the waste types which can be processed through the soil processing facility.
151. During site inspections Environment Agency officers do not assess compliance with every aspect of the permit. Officers have to decide what aspects to prioritise for an inspection.
152. The permit itself has not changed over the past 13 years and while this particular issue may not have been identified in previous inspections and CAR forms, the fact is that the Appellant has been contravening the permit throughout that period by processing trommel fines through the wash plant.
153. From 2021 onward the Environment Agency's officers began to scrutinise certain aspects of the Appellant's activities at the Site in more detail and identified that this was a breach which needed rectification.
154. The terminology used within the waste industry may have changed over time, but the conditions of the Permit which authorise which types of waste can be treated through the wash plant have remained the same throughout the material time.

155. Although the Environment Agency did not detect that the EMS was non-compliant due to inadequate procedures surrounding the treatment of trommel fines in the wash plant prior to 2021, this does not indicate that the Environment Agency had approved the EMS or expressly allowed this activity to occur.

Ground 3 – The EMS should not contain measures to prevent washing of trommel fines

156. The Appellant states within their appeal document that:

“The appellant maintains that the EMS should not contain measures to prevent the washing of trommel fines for the reasons previously stated. No waste coded 19 12 12 or described as trommel fines is brought into the site from external sources for processing.”

157. As written in the CAR forms and expanded on in section 3 of this document, there is a risk of pollution from processing trommel fines through the wash plant. As required by the permit the EMS must identify and minimise risks of pollution. The trommel fines produced on site from the mechanical treatment of mixed waste involve a risk of pollution. They should be segregated from other waste types.

158. Therefore, the Environment Agency maintains their position that the EMS should contain procedures to prevent the mixing and washing of trommel fines, including those produced on site.

159. The Appellant also stated that:

“There is no requirement to code waste which is part way through the treatment process on site. Table S2.2 in the permit applies to wastes brought into the site from external sources and not part processed waste on site, which is advice we have previously been given by Agency permitting officers.”

160. This is incorrect. Permit condition 2.1.1, which sets out what wastes can be processed through the soil processing facility states:

“The operator is only authorised to carry out the activities specified in schedule 1 table S1.1 A2’ (soil processing facility) which states ‘Treatment of wastes listed in table S2.2 consisting only of washing, sorting, screening, separation, crushing and blending of waste for recovery as a soil, soil substitute or aggregate’ Table S2.2 ‘Permitted waste types and quantities for A2 – Soil processing’”

161. This permit condition sets out that only the only waste types permitted to be treated within the soil treatment facility are those listed in table S2.2. It does not only apply to wastes brought into the Site from external sources, as alleged by the Appellant.

162. The EMS guidance referred to in Section 2 and found within **Appendix 4** provides that an EMS should break down the operations into different activities and processes, list the waste types that will be produced by each activity or process, and the steps that will be taken to prevent or minimise risks to the environment from each activity, process and type of waste. This ensures that only suitable, permitted waste types are treated within each permitted activity or process. The Appellant’s EMS does not meet that standard.

163. The Appellant may be referring to permit condition 2.3.2 which refers to Table S2.1 which sets out waste that can be accepted onto the Site, under the A1 Activity - Household, commercial and industrial waste transfer station. This was a concern raised within the challenge of CAR form 50066 / 047859 and responded to by the Environment Agency. To clarify, this condition does not mention Table S2.2 which sets out waste types and quantities specific to the A2 Activity specifically limited to the Soil Processing Facility (Wash Plant).
164. Permit condition 2.3.2(a) provides that only wastes listed in Table S2.1 can be accepted at the Site.
165. For any waste accepted at the Site, the permitted activities which the Appellant is authorised to carry out are defined in condition 2.1.1 by reference to schedule 1, table S1.1.
166. Table S1.1 has three column headings: Activity reference, Description of activities for waste operations and Limits of Activities. The activity limits, including the permitted waste types for each activity, are based on environmental risk assessments.
167. For activity A2 – Soil Processing Facility, the activity limits clearly provide that the waste types which are permitted to be treated are listed in table S2.2. As the restrictions on permitted waste types for each activity are based on environmental risk assessments, they apply to wastes which are accepted at the Site and wastes which have been produced within the Site following treatment under Activity A1. Any other interpretation would undermine the purpose of designating separate permitted activities in table S1.1, each with defined activity limits and permitted waste types.
168. The waste that is put through the wash plant is not part way through a treatment process. The mixed waste has undergone mechanical treatment which has produced the trommel fines. Any further treatment of trommel fines is a separate treatment process and is not permitted to occur under the Permit on this Site. The wash plant operations are not the second part of a single treatment process, instead it is a separate activity with a separate authorisation under the Permit.
169. Classifying waste in accordance with WM3 in between the separate authorised activities is required to ensure the composition of the waste is known and any further processing or treatment is appropriate, despite duty of care requirements only beginning once waste is transferred to another holder. If this was not the case for example, wastes with unknown compositions would be processed through treatment plants and could contain combustible and hazardous substances and result in fires, explosions or pollution incidents.
170. Furthermore, the EMS guidance also states that waste operators must include a waste storage plan to ensure there are appropriate pollution prevention measure in place having regard to the types of waste being stored. Trommel fines from the mechanical treatment of mixed waste have different environmental risks compared with inert waste and this should be reflected in the waste storage plan and associated pollution prevention measures.
171. The Environment Agency recognises that previous EMS produced by the Appellant were provided to the Environment Agency set out processes which were carried out that were unpermitted. However, the Appellant's EMS is subordinate to the conditions of the

Permit. The authorised activities and waste types are set out in the Permit. Permit condition 1.1.1(a) requires the Appellant to operate the permitted activities in accordance with an EMS that identifies and minimises risks of pollution. The EMS cannot expand the scope of permitted activities or waste types or supersede the authorisation of the Permit. In the event of any conflict between conditions of the Permit and the EMS, the conditions of the Permit prevail. The authorised activities and waste types specified in the Permit can only be varied by following the variation procedure in EPR Regulation 20.

Ground 4 – The EMS does include evidence of meeting the End of Waste Criteria

172. The Appellant states that Reason 4 within the Enforcement Notice is ‘incorrect’. Reason 4 states that the EMS -

"does not include procedures to ensure all outputs from the waste treatment process are appropriately classified as waste or meet end of waste criteria."

173. The Appellants reasoning for the belief that reason 4 is incorrect is that -

"The appellant has procedures in place in Version 10.0 of the EMS, which relate to testing outputs for waste and product classification. Those procedures are not limited to the EMS and include additional documentation, sample analysis results and professional interpretation and classification of the waste and products. The results of this process have been sent to the Agency. The requirement is also a duty of care issue and is covered in other operational documents, which have been sent to the Agency."

174. EMS V10.0 does not contain procedures to ensure outputs are correctly classified as waste or meet end of waste criteria. Section 3.13 within the EMS does refer to WM3 waste classification guidance, however the assessments which are required by that guidance are solely for determining which EWC code should be applied to the waste type, not whether a substance meets the end of waste criteria.
175. The only other operational documents which the Appellant sent the Environment Agency in relation to ‘product classification’ is the ‘Nick Brookes aggregate protocol v2 full’ which can be found in **Appendix 23**. This document is from 2008 and is not a valid end of waste self-certification.
176. The Appellant’s classification of the output as a product is not valid. The Appellant’s EMS does not prevent unsuitable input wastes from being put through the wash plant and used in the aggregate production process. As a result, substances which the Appellant describes as aggregate may contain contaminants which risk causing harm to the environment.
177. Paragraph 3.5.6 of the EMS states that waste which is predominantly inert is put directly through the wash plant.
178. Paragraph 3.13.2 of the EMS states that fines from the trommel which are less than 10mm in size are put through the wash plant.
179. These provisions of the EMS do not reflect the conditions of the Permit and will inevitably result in unsuitable, unpermitted waste types being treated through the wash plant.

180. Paragraph 3.6.2 of the EMS describes some outputs from the treatment process but has minimal detail or procedures on how those outputs are classified appropriately as waste or verified to meet End of Waste criteria.
181. It is insufficient for the Appellant to simply claim the material has met end-of-waste. It is set out in both legislation and guidance that suitable management systems and procedures are necessary to prove compliance with end of waste criteria, including quality control, self-monitoring procedures and accreditation. The Appellant's EMS does not contain any of the information required by Article 6(2)(d) to meet the end of waste test.

Ground 5 – The requirements of the notice are onerous and excessive

182. The Appellant states within their Appeal that:

“An updated EMS has been submitted to the Environment Agency, which was a requirement of the notice. However, it was not possible to include the four items above because the requirements are onerous, excessive and disputed by the appellant.”

183. The Environment Agency did receive an updated EMS (V11.0 dated 13 September 2024) after the deadline set out on the Enforcement Notice. This EMS was inherently similar to the previous EMS (V10.0 dated 11 March 2022) and the required changes had not been made to remedy the breach.
184. The Environment Agency does not accept that the requirements of the Enforcement Notice are onerous and excessive. The steps in the Schedule to the Enforcement Notice are reasonable, proportionate and necessary to ensure that the environment is protected and the Permit conditions are complied with.

Section 7. Conclusion

185. Based on the information available, the Environment Agency considers that the Appellant is contravening condition 2.1.1 of the Permit by processing trommel fines from the treatment of mixed waste through the soil wash plant, and condition 1.1.1 of the Permit because the EMS does not identify and minimise all risks of pollution from the permitted operations or ensure that only permitted activities are carried out at the Site. This provides grounds for the Environment Agency to issue the Enforcement Notice.
186. These contraventions of Permit conditions involve a risk of pollution to the environment and human health.
187. The Appellant is also avoiding extra costs by processing the trommel fines to produce aggregates which are being sold as product, rather than disposing of the fines in the appropriate manner at a suitably permitted facility. This is undermining legitimate businesses who are complying with their permits and relevant legislation, and who are incurring the costs of disposing of trommel fines appropriately.

188. The Appellant has been aware of the permit breaches, and actions required to remedy them, from several Environment Agency site inspections recorded in CAR forms.
189. Since the breaches were initially highlighted, the Environment Agency has allowed the Appellant a reasonable opportunity to return to compliance voluntarily prior to the issue of the Enforcement Notice, but the Appellant has refused to take the necessary action.
190. The decision to issue the Enforcement Notice to require the breach to be remedied was an appropriate and reasonable escalation of enforcement response, to ensure protection of the environment and human health. The decision was consistent with published guidance.
191. The terms of the Enforcement Notice are clear and unambiguous. The steps and timescales required in the Enforcement Notice to remedy this breach are reasonable and proportionate.
192. Therefore, as an environmental regulator with duties to protect the environment by enforcing the conditions of environmental permits, the Environment Agency respectfully submits that the appeal should be dismissed, and the Enforcement Notice should be affirmed in full.

Section 8. List of Appendices

Appendix 1 – EPR Regulation 36 Enforcement Notice

Appendix 2 – Extracts from DEFRA Environmental Permitting – Core Guidance (revised March 2020)

Appendix 3 – The Environment Agency's Enforcement and Sanctions Policy

Appendix 4 – Environmental Management System (EMS) guidance

Appendix 5 – Definition of waste guidance

Appendix 6 – Guidance on appropriate measures for waste facilities

Appendix 7 – The Permit

Appendix 8 – Extract from Waste classification technical guidance WM3

Appendix 9 – CAR form 50066 / 0412384

Appendix 10 – CAR form 50066 / 0412384 challenge letter

Appendix 11 – Environment Agency response to CAR form 50066 / 0412384 challenge

Appendix 12 – CAR form 50066 / 0478595

Appendix 13 – EMS V10.0 dated 11 March 2022

Appendix 14 – Email chain between the Environment Agency and the Appellant's Consultant between 15 September 2023 and 30 October 2023

Appendix 15 – CAR form 50066 / 0478595 formal challenge

Appendix 16 – CAR form 50066 / 0478595 formal challenge outcome

Appendix 17 – Reissued CAR form 50066 / 0478595

Appendix 18 – CAR form 50066 / 0512074

Appendix 19 – WRAP quality protocol: Aggregates from inert waste

Appendix 20 – Email chain between the Environment Agency and Appellant's Consultant on 13 September 2024

Appendix 21 – EMS version 11.0 dated 13 September 2024

Appendix 22 – Letter confirming non-compliance with Regulation 36 enforcement notice

Appendix 23 – Nick Brookes aggregate protocol v2 full