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 COMMENTS ON APPELLANT'S PRE-INQUIRY STATEMENT

1. Most of the issues raised in the Appellant's Pre-Inquiry Statement have already been covered in the Environment Agency's (EA) Pre-Inquiry Statement. It is not the EA's intention to reiterate its arguments within this document and the EA is only responding to certain points to confirm or clarify its position. Where matters are not responded to in this document, that should not be taken to indicate agreement.

2. The EA's comments in relation to the three principal issues identified in the Appellant's Statement of Case are set out below.

Terms of Enforcement Notice and requirements of EPR Regulation 36

3. The EA does not accept that the Enforcement Notice fails to meet the requirements of EPR Regulation 36, or that it is vague, imprecise or not specific enough to respond to.

4. The Enforcement Notice specifies the matters constituting the contravention. It states that the Appellant's EMS does not meet the standard required by condition 1.1.1(a) and lists specific areas where the EMS is deficient.

5. It is self-evident from these deficiencies that the Appellant's EMS fails to identify or minimise any risks of pollution associated with those areas. It was not necessary for the Enforcement notice to itemise the particular risks of pollution missing from the EMS.

6. The Enforcement Notice also specifies the steps which must be taken to remedy the contravention. It requires submission of an updated EMS which meets the standard required by condition 1.1.1(a) and addresses the deficiencies identified. The supporting guidance linked within the Enforcement Notice sets out how pollution risks should be identified and managed within a written management system.

Interpretation of the permit

7. The EA's position regarding the interpretation of the Permit has been set out within its Pre-Inquiry Statement. The EA submits that there is no ambiguity in the wording used in the relevant conditions of the Permit. The Inspector can discern the natural, obvious and ordinary meaning of the words by reading them. This follows the approach set out in R v Atlantic Recycling Ltd [2024] EWCA Crim 325.

8. The EA submits that it is neither necessary nor appropriate for the Inspector to consider the historical circumstances surrounding the regulation of the site to discern the meaning of the Permit conditions. The starting point is not the historical backgrounds as the Appellant claims at paragraph 6 of the Pre-Inquiry Statement.

9. However, to the extent that the Inspector considers it necessary and appropriate to consider the historical circumstances, the EA does not accept that those circumstances support the interpretation of the Permit asserted by the Appellant.

10. None of the documents referred to in the Appellant's Pre-Inquiry Statement demonstrate that the EA intended to authorise treatment of mixed waste trommel fines through the wash plant when determining the Appellant's variation application. There is no evidence that EA Officers expressly endorsed the use of mixed waste trommel fines in the Appellant's aggregate production process. In fact, some of the documents submitted within the Appellant's Pre-Inquiry Statement show that the EA had concerns over many years about the Appellant using unsuitable wastes in aggregate production, and failing to effectively identify and minimise the environmental risks associated with that activity.

11. The Appellant's documents produced at the time of the variation application also contain misleading and inconsistent descriptions of the waste types to be treated in the wash plant.

12. Some of those documents refer to inert waste, or soils, being treated in the wash plant and state that the inert fraction is removed from mixed waste to be processed through the wash plant. For example, paragraph 10 of the 2008 Nick Brookes Aggregates Protocol (found at the Appellant's Appendix 1) states "The inert wastes suitable for aggregate production are separated from non-hazardous wastes". This suggests that inert waste would be separated from the non-hazardous waste and used within the wash plant to produce aggregates.

13. Appendix A within this document states that the trommel separates inerts and recyclables from mixed waste and refers to soil/fines/hardcore being transferred to the aggregate wash plant. This is a misleading description as it implies that soils/fines/hardcore are all similar when this is not the case. Soils and hardcore may be inert but fines produced from the treatment of mixed

waste through the trommel are not inert, they are a combination of the fines fallen from the mixed waste.

14. Officers have observed fines at the Appellant's site being produced from a mixed waste input which contained plastics, cables, WEEE (Waste Electrical and Electronic Equipment), treated wood, paint containers, metals, green waste, and soils, some of which are hazardous waste.

15. This distinction is critical because the Appellant is using these trommel fines to produce aggregates that are sold as products and deposited in the environment. If the waste was inert, it would undergo no significant physical, chemical, or biological transformations. Furthermore, the total leachability and pollutant content of the waste, as well as the ecotoxicity of its leachate, would be insignificant. This has not been demonstrated to be the case with the trommel fines produced by the Appellant, as fragments of the observed inputs may include hazardous components such as heavy metals or biodegradable materials. These could leach from the aggregate, potentially harming the environment.

16. The Appellant's Pre-Inquiry Statement suggests that the Environment Management System (EMS) version 7.1 dated 8 April 2011, submitted with the permit transfer application, anticipated that wastes from the transfer station would be submitted internally to the wash plant. However, the EMS does not explicitly state that the fines produced from the treatment of mixed waste through the trommel would be put through the wash plant and used to produce aggregate. The section within the EMS which discusses these operations was not approved as part of the Appellant's Permit variation application.

17. It is the responsibility of an applicant to clearly set out within their permit application what they are seeking authorisation for, including the proposed activities and waste types. The application is then assessed and determined by the EA's permitting team on its merits, taking all relevant information into account. The EA may decide to refuse the variation completely, or to grant it with a more restricted list of permitted waste types than the applicant had applied for.

18. The Appellant's application for a permit was made after the EA identified that he was mixing unsuitable waste types with inert wastes, which were outside the scope of his paragraph 13 exemption. The Appellant was also notified that due to the quantity of waste processed they were non-compliant with the

exemption. The Permit issued by the EA authorises the Appellant to treat a wider range of waste types, and a larger quantity compared to his previous exemption, but the conditions of the Permit still restrict the types of waste which can be treated in the various activities authorised by the Permit.

19. By issuing the Permit to allow more waste types to be treated at the Appellant's Site this does not indicate that the EA was authorising the Appellant to carry out all the activities that that he was previously carrying out before the Permit was issued, including use of unsuitable waste types in aggregate production.

20. Once the EA had determined the variation application, the Appellant had the opportunity to appeal against the conditions set out in the Permit if he considered them to be unacceptable or ambiguous.

21. The EA maintains that the only waste types permitted to be treated in the A2 soil treatment facility are those listed in table S2.2.

22. The Appellant asserts that the restriction on permitted waste types authorised for treatment in the A2 soil treatment facility only applies to wastes produced by third parties and does not apply to waste resulting from the Appellant's A1 waste transfer station activity. The Appellant also asserts that it would be absurd and illogical to require re-coding of any waste resulting from the A1 waste transfer station activity before it is transferred to the A2 activity for further treatment.

23. In response to those assertions, the EA submits that it is necessary to properly understand the composition of waste before transferring it to a separate activity for further treatment, to avoid unacceptable risks to the environment. This is particularly important when dealing with wastes produced from treating a mixed waste stream as it could contain combustible, polluting or hazardous substances which could result in fires, explosions or pollution emissions if processed through treatment plants. Therefore, despite duty of care requirements only applying once waste is transferred to another holder, the composition of waste must still be known and considered for any waste treatment operation. This is the reason the Permit restricts permitted waste types for separate activities.

24. The Appellant also asserts in paragraph 39 of the Pre-Inquiry Statement that the EA has assigned trommel fines to waste code 19 12 12, whatever their

origin and even if the fines, for instance, were to come from material classified under code 17.01 (concrete, bricks, tiles and ceramics). It should be noted that the fines produced at the Appellant's site do not come from material classified under code 17.01. The fines are produced from mixed waste and were coded 19 12 12 by the Appellant, not the EA, when the Appellant sent some of this waste stream to landfill. The Appellant provided the EA with waste transfer notes confirming this, which are included in the Appellant's Appendix 32.

Requirement for end of waste criteria in EMS

25. Permit condition 1.1.1(a) requires an EMS to identify and minimise risks of pollution from the permitted waste activities. This means the EMS must identify which substances on site are wastes and which substances are products. Without this, the pollution risks associated with wastes on site cannot be effectively identified and minimised.

26. The EMS must show how end of waste criteria will be met, including quality control procedures, self-monitoring procedures and how accreditation will be achieved, where appropriate.

27. The requirement for end of waste criteria to be included in an EMS is consistent with the EA's published guidance on the definition of waste found within Appendix 5 of the EA's Pre-Inquiry Statement.

28. Paragraph 82 within the Appellant's Pre-Inquiry Statement suggests that the WRAP quality protocol: aggregates from inert waste (WRAP QP) is an effective end of waste document. To clarify, the WRAP QP (found within Appendix 19) is a guidance document which can be followed to produce a set of procedures setting out how a waste meets the end of waste criteria and therefore can be sold as a product, in the form of a factory production protocol. The procedures envisaged by the guidance in the WRAP QP would need to be set out within the EMS.

29. The Appellant asserts that he follows the WRAP QP to meet end of waste criteria, but this is not supported by the evidence.

30. The Appellant has not supplied the type of procedures described in the WRAP QP. Also, the Appellant's activities do not meet the requirements of the WRAP QP because he uses trommel fines from the treatment of mixed waste. Those

fines are not inert, and they are not an acceptable input material listed within Appendix C of the WRAP QP.

ECHR

31. Property rights under Article 1, Protocol 1 of the ECHR are qualified rights. The EA is entitled to enforce laws that are deemed necessary to control the use of property in accordance with the general interest: in this case protection of the environment.

32. The provisions of the EPR and the EA's enforcement approach, as summarised in the EA's Pre-Inquiry Statement, deliver a fair balance between the public interest in avoiding risks of pollution to the environment and the protection of individual rights.

33. As set out in the EA's Statement of Case, the aim of the Enforcement Notice is to enforce permit conditions which are designed to protect the environment. The decision to issue an Enforcement Notice and the requirements of the Enforcement Notice are proportionate to that aim and there is no unlawful interference with the Appellant's rights.

03 June 2025