IN THE MATTER OF:

The Environmental Permitting (England and Wales) Regulations 2016; Regulation 31(1)(f) appeal

BEFORE:

THE PLANNING INSPECTORATE (PINS Ref APP/EPR/684)

Nick Brookes T/A Nick Brookes Demolition And Waste Disposal

APPELLANT

v.

Environment Agency

RESPONDENT

Appeal – Regulation 36 Notice
Permit reference: EPR/EP3798CS
Appellant: Nick Brookes t/a Brooks Demolition and Waste Disposal
Facility: Green Lane, Wardle, Nantwich, CW5 6DB

Appellant's Comments on the Environment Agency's Pre-Inquiry Statement dated 1 May 2025

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Section 1. Introduction

1. In this document:

    a. "EA" means the Respondent (the Environment Agency);

    b. References to a "Statement of Case" (or "SoC") are to the EA's Statement of Case (its *Pre-Inquiry Statement*) unless the context demonstrates otherwise;

    c. References to "EPR 2016" are references to the Environmental Permitting Regulations 2016.

    d. "The Permit" refers specifically to the varied and consolidated permit EPR/EP3798CS by which the Appellant operates the Site at Wardle.

    e. Additional references are as per the Glossary at the commencement of the Appellant's Statement of Case.

2. The Appellant provides his comments on the contents of EA's Statement of Case under the same section headings as those used by the EA.

3. These comments are intended primarily to ensure that the parties prepare the evidence necessary to enable the Inspector to make determinations as to matters of fact. The absence of a reply to a specific paragraph of the EA's Statement of Case should not be taken to mean that the Appellant agrees with the contents of that paragraph. The Appellant does not comment on matters to which the EA has referred which are only of minimal or tangential significance.

4. The Appellant's case is fully set out in his Statement of Case, but, in summary, it is as follows:

    a. immediately prior to the variation/consolidation of the Permit on 17 August 2011, indeed from the date of the installation of the Wash Plant, fines from the trommel at the waste transfer station, namely fine material consisting of soil or stones extracted from the input material (now known as trommel

fines), were conveyed to the Wash Plant at the Site for use in the manufacture of aggregates. This process, supported and explained by a *Secondary Aggregate Production Protocol* [App/A1], was known to, and understood by, EA officers, as waste streams being mixed.

b. Since the process was not considered by EA officers to meet the conditions of the paragraph 13 exemption registered to the Appellant (under the Environmental Permitting Regulations then in force), the Appellant was required to apply for a permit which would expand the permitted area to include the Wash Plant. It was understood and agreed with EA officers that so long as this was done, testing of fines would not be required on their transfer to the Wash Plant. Accordingly, the Appellant submitted his application, supported by version 7.1 of his Management System (succinctly identifying the aforesaid process) and the Permit was varied/consolidated into its present form.

c. Since 17 August 2011 and until about December 2021, EA officers have regulated the Site on an interpretation of the Permit by which the above process is authorised.

d. It follows that the correct interpretation of the Permit is one which continues to permit the process of transfer of fines to the Wash Plant without re-testing. Alternatively, the EA is estopped from denying that the correct interpretation of the Permit allows the process to continue. No legislative measure has come into force since 17 August 2011 which requires the original interpretation of the Permit to be revised.

5. Paragraphs 1-5 of the SoC are uncontroversial. As to (1), (2) and (4) of the matters said to constitute the contravention of the Permit, the requirements of the notice do not comply with reg.32(2)(b) EPR 2016. So too the notice does not comply with reg.36(2)(c) and the period provided for compliance under reg.36(2)(d) was too short.

6. Save that the Appellant cannot comment on the first sentence of para.7, paras.6-8 of the SoC are wrong. In accordance with its duty of

candour, the Appellant calls on the EA to produce any document recording the information considered and its reasons for the decision to issue the Enforcement Notice (redacting any privileged material).

7. As to para.6, it is telling that the EA is vague as to when the Appellant has been "persistently contravening the Permit conditions". The Appellant has not changed his operations since 17 August 2011. If the EA were correct, then it would follow that the Appellant has never complied with the conditions of the Permit, even from the first day of operation.

8. As to para.7, the EA has produced no evidence to show the existence of harm either to the environment or human health. There is a burden on the EA to do so to and to an extent which would recognise and outweigh other relevant considerations, in particular the closure of the process and its economic and social consequences, the impact on the application of the waste hierarchy, the consequences for the circular economy, the principles of the Regulators' Code and the interference with Appellant's right to use his property as he wishes. The same considerations will apply to the Inspector since he/she stands in the shoes of the EA.

9. As to para.10, the Appellant assumes that the EA's SoC has sufficiently identified the various matters which it is said that its witnesses will address in their proofs. If any additional materials are to be referred to, then the Appellant will expect to be notified in advance so that he can address them as necessary in own proofs of evidence.

Section 2. Legislation and Guidance

Directive 2008/98/EC

10. Paragraph 11 is incorrect / incomplete. For instance, by reason of s.5(1) Retained EU Law (Revocation and Reform) Act 2023, the nomenclature of 'Retained EU law' no longer exists. As from the end of 2023, 'Retained EU law' became known as 'Assimilated law'.

11. Paragraph 12 is incorrect since Art.3(1), WFD does not provide a definition of "waste" (save for the purposes of the Directive itself) and

there is no recognised concept of "discard test". Account must be taken of all the circumstances of the specific case, regard being had to the aims of the Directive and the need to ensure that its effectiveness is not undermined. It is accepted, however, that the materials received at the Site are (non-hazardous) waste.

12. As to para.13, it is accepted that by Art.6(1), WFD, waste which has undergone a recycling or other recovery operation is considered to have ceased to be waste if it complies with conditions (a) to (d) as cited.

13. As to para.14, Art.6(2) is irrelevant on its own since no detailed end-of-waste criteria have been developed in respect of the types of waste recovered at the Site. Article 6(2) is concerned with the EU recognition of binding end-of-waste criteria with a view to establishing EU-wide implementing Acts. There is a WRAP protocol (*Aggregates from inert waste*) which sets out end-of-waste criteria, compliance with which *normally* results in the resulting outputs ceasing to be waste (see further below). The Appellant has complied with this protocol (and its previous iteration) since the grant of the Permit, output material being classed as waste until tested to confirm compliance with a recognised specification.

14. It is accepted that para.15 of the SoC sets out the contents of Art.13, WFD. This says nothing about the all-important question as to the meaning of "risk" in the context of the EPR 2016 or how risk should be assessed. Appropriate means for assessing and dealing with environmental risk are to be found, for instance, in *Greenleaves III*.[1]

15. As to para.16 of the SoC, the EA presumably has Art.23.1 and 23.3, WFD, in mind. These articles state inter alia as follows:

> "[23.1] Member States shall require any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority. Such permits shall specify at least the following: …

[1] https://www.gov.uk/government/publications/guidelines-for-environmental-risk-assessment-and-management-green-leaves-iii

(c) the safety and precautionary measures to be taken;

(d) the method to be used for each type of operation;

(e) such monitoring and control operations as may be necessary.

…

[23.3] Where the competent authority considers that the intended method of treatment is unacceptable from the point of view of environmental protection, in particular when the method is not in accordance with Article 13, it shall refuse to issue the permit."

16. It follows that, on the basis that the EA is asking the Inspector to conclude that the Permit was granted in compliance with Art.23:

    a. when the Permit was obtained on the strength of version 7.1 of the Appellant's Management System which identified the aforesaid process (as to which see for instance sections 3.5 and 3.6 on pp.21-22 [App/A10, pp.75-76]), the EA agreed that the application did indeed meet with all the conditions of Art.23, that the operation of the Site under the terms of the Permit was acceptable from the point of view of environmental protection and that the methods to be used were in accordance with Art.13.

    b. In particular, when the EA assessed the application, it would have appreciated that no provision was made for the testing of fines conveyed to the Wash Plant. This supports the Appellant's case that it is only since about December 2021 that the EA has sought to impose a new, unjustified, regime or interpretation of the Permit on the Appellant.

The Environmental Permitting (England and Wales) Regulations 2016

17. Paragraphs 17-22 are very broadly an acceptable summary of the regulations cited from the EPR 2016. The Inspector will not assess the merits of the appeal on the basis of a summary alone.

Defra Environmental Permitting – Core Guidance (revised March 2010)

18. Paragraph 26 provides a selective summary of para.11.1, which provides first and foremost that risk-based compliance should target those facilities that pose the greatest risk to the environment or human health.

19. Relevant sections from the Core Guidance also include section 7.1-11 (*Determining applications*), 7.23 (*Avoiding pollution risk*) and 11.37-38 (*Variation of conditions by the regulator*).

The Environment Agency's Enforcement and Sanctions Policy

20. As to para.31 and Appendix 3 of the EA's SoC, the full enforcement and sanctions policy can be found at: https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy

21. Various sections of the policy paper are relevant in addition to those cited by the EA, including section 2 (Outcome and focused enforcement), section 3 (Enforcement and sanctions regulatory principles, noting in particular 3.3 (Be consistent) and section 4 (Enforcement and sanction penalty principles).

Environment Management System (EMS) Guidance

22. As to para.34 of the SoC, it is accepted that Appendix 4 is a print copy of the current (non-statutory) guidance document available at: https://www.gov.uk/guidance/develop-a-management-system-environmental-permits

23. The guidance document acknowledges that a Management System is to be treated as part of a permit: "Once you are operating you must implement your management system or you will be in breach of your permit". The Appellant repeats that since the date of the Permit he has been operating the trommel fines / Wash Plant process in accordance with the detail provided by v.7.1 of the Management System (as repeated in subsequent iterations), which expressly allowed for fines from the trommel at the Waste Transfer Station to be accepted at the

Soil Washing Plant, and so too without any sampling or testing (3.5.2 and 3.6.1-2 on pp.21-22). In other words, he has continued to implement the management system.

Definition of waste guidance

24. As to para.36, the web page *Check if your material is waste* is a generic summary available to undertakings to help them understand how to decide whether material is waste, or whether it meets end-of-waste or by-product criteria. It is a loose summary of common law and EU law principles and contents of the WFD. It does not constitute guidance other than in this sense and it does not set out any binding legislative criteria.

25. The only relevance of this web page so far as the processes with which the Inspector will be concerned, is the statement under *Quality protocols and resource frameworks* which says "If you follow all the criteria in a quality protocol, your material will not be classed as waste".

26. As stated in para.13 above, the Appellant follows the WRAP Quality Protocol *Aggregates from inert waste*, the original version of which is at [App/C1] and the updated version of which is at [App/C3].

27. As to paras.38-41, the EA's appeal is to Art.6(1)(d), WFD. This requires a detailed assessment for instance by a Court or tribunal (or an Inspector) of materials which the party relying on Art.6(1)(d) considers relevant. This is not the intention of the document *Check if your material is waste*, the 'guidance' within which cannot replace a full assessment based on primary materials and Art.6(1) itself, the circumstances of the specific case and the aims of the Directive.

28. There is no such thing on an analysis of Art.6(1)(d) as a "comparator approach". Article 6(1)(d) itself does not mandate any reference to comparison material, although in many cases such an approach will be useful.

29. Whatever the web page *Check if your material is waste* may say about Art.6(2), Art.6 itself does not mandate the application of Art.6(2). Article 6(2) only becomes relevant where Art.6(4) applies, and Art.6(4)

itself only requires that where necessary, an end-of-waste assessment may reflect the Art.6(2)(a)-(c) criteria where an individual case assessment is required (a decision on a "case-by-case" basis). The Appellant relies on the EA's promise that compliance with the *Aggregates* protocol will result in material not being classed as waste (see paras.25-26 above).

Section 3. The Appellant, the Site and the Permit

The Appellant

The Site

30. Save that the filter cake referred to in para.50 of the SoC is not a "sludge" (but better classified as a "clay"), the Appellant agrees with paras.44-50 and notes para.51.

The Permit

31. Paragraphs 52 and 54 of the SoC are correctly reproduced from the Status log of the Permit.

32. As to paragraphs 58-63:

    a. the Appellant repeats his SoC seriatim, which sets out the chronological approach to be undertaken in order to identify the appropriate factual matrix in order for the conditions of the Permit properly to be interpreted.

    b. The EA's approach, which is apparently to isolate the three different permitted activities as though they are separate and distinct, is wrong. They constitute different aspect of one set of operations covered by the Permit (see *Schedule 1- Operations*). It is significant that for the waste streams identified under Tables S2.1 and S2.2, the maximum quantity is 299,500 tonnes combined. As discussed in the Appellant's SoC, the historical background which led to the terms of the Permit as granted, contemplated that trommel fines could be moved to the Wash Plant in order to be recovered as product.

c. There is no legislative justification for treating anything from the trommel as "trommel fines" under LoW category 19 12 12.

d. The Appellant has an obligation to ensure that waste coming on to site is non-hazardous, an obligation with which he complies.

e. Further, there is no duty of care obligation to undertake a re-testing of waste once it has been through the trommel. The duty of care at s.34, Environmental Protection Act 1990, is mainly concerned to ensure that other people do not breach specified legislative conditions or requirements. At most, so far as the duty of care concerns waste in the possession of the holder himself, there is a duty "to take all such measures … as are reasonable in the circumstances … to prevent the escape of the waste from his control" (see s.34(1)(b)). In the particular circumstances applicable to the Appellant it cannot be said that the scope of this duty requires him to test trommel fines, indeed section 3.3 of the statutory guidance *Waste Duty of Care Code of Practice* (November 2018) militates against such requirement (see the final paragraph). (See para.79 of the Appellant's Statement of Case.)

f. The Appellant makes the additional point in relation to para.63, that if his primary factual case is accepted, i.e. that the EA approved the washing of trommel fines for the production of aggregates, then there is no requirement for the Appellant to make any reference to the process in the management system because the process was not thought by the EA to give rise to a real risk of pollution which needed identification or minimising.

Section 4. Chronology of events, etc.

33. As to paras.65 and 66, for the reasons provided in the Appellant's SoC as further explained above (summarised at para.4), the Appellant is not in breach of condition 1.1.1 of the Permit and he does not have to amend the EMS in such a way as to specify procedures which would

prevent trommel fines being treated in the Wash Plant. Indeed to do so would be contrary to the way in which the Appellant and the EA have agreed that the Site should be operated for more than about 10 years. When in para.65 the EA states that a supposed breach was "brought to their attention", is this a figure of speech, or was there some 'notification', and if so by whom?

34. As to the remainder of this section:

    a. The contents of this section appear to be advanced by the EA as evidence to support the issuing of the Enforcement Notice, in other words they are matters said to constitute the contravention of the Permit. They should have been specified in the Notice under reg.36(2). It is procedurally unfair for them not to have been specified in the Notice. The Appellant does not accept that the factual assertions are correct or correct to the extent or degree suggested by the EA. Without prejudice to this submission, the Appellant comments as set out below.

    b. So far as the Appellant can determine, the inspection on 16 December 2021 was the first occasion on which the EA changed its position in reliance on an erroneous reading of the Permit (see para.63, Appellant's SoC).

    c. As the EA correctly observes in paras.72 and 73, the Appellant challenged the contents of CAR ref.0412384 by letter dated 17 March 2022, reiterating his central position that trommel fines are permitted to be treated in the Wash Plant.

    d. It would be pointless to continue to repeat the above points in respect of the various inspections and documents to which the EA refers in its section 4, so that the Appellant will confine himself to additional comments as set out below.

    e. It is significant that the EA does not choose to rely on any inspections or documentation prior to the inspection on 16 December 2021. In particular it does not examine the factual matrix relevant at the time of the grant of the Permit. It does not suggest that there has been any legislative development

which requires the Permit to be interpreted in a way which prevailed as of the date of the grant.

16 December 2021 – Inspection at Appellant's Site

35. As to paras.68-76, the Appellant comments are as set out below.

36. As to gypsum, as the Appellant pointed out in the consultant's letter dated 17 March 2022, the EMS had been updated to include plasterboard management procedures including procedures for the reception and segregation of gypsum (*Action 1*). Gypsum had never been accepted for washing (*Gypsum wastes/wash plant*).

37. If there had been a real gypsum issue which gave rise to a breach of Art.13, then the EA could and should deal with this by a variation to the Permit. In any event this is not an issue which is connected with Wash Plant outputs, which is the only issue which can be said to conform with the legislative requirements connected with enforcement Notices (namely the duty to specify reasons).

38. The Appellant objects to references by the EA to the 'potential' risks brought about by the use of gypsum as though the existence of any potentiality should inevitably have an enforcement consequence at a permitted site. Such an approach is wrong since it is contrary to a proper approach to the assessment of environment risk, which requires a true assessment of both 'likelihood' and 'harm' and also a triaging of these risks which can sensibly be put on one side at the commencement of a risk assessment approach. The Appellant repeats para.14 above.

39. The EA's inappropriate approach to what constitutes a "risk" is relevant to the EA's position as set out throughout its SoC and the Appellant will not repeat his comment as set out above. The EA's underlying insistence that any potential for harm constitutes a 'real risk' would result in an inappropriate approach to regulation and contravene the waste hierarchy as well as the Regulator's Code and the Growth Duty.

14 September 2023 – Inspection at Appellant's Site

40. As to paragraph 81:

a. It is not accepted that a battery was present in the materials seen at the time of the inspection. It is not accepted that the materials photographed or observed either came in from the trommel or went off-site as product, but in any event a 1% tolerance of constituent materials such as metals, plastics and woods may be permitted (see X in Table B3 of the WRAP protocol *Aggregates from inert waste* [App/C3, p.445]). The Appellant objects to the suggestion that there was output was "heavily contaminated", whatever that is intended to signify within the wording of the protocol.

b. All the materials used to make products including the trommel fines from the waste transfer station which are conveyed to the Wash Plant constitute "inert" waste for the purpose of the WRAP protocol.

c. As the EA is aware, no self-assessment has been undertaken and there is no decision from the EA's Definition of Waste Service. The Appellant's products will be considered products by the EA because they fall within the ambit of the WRAP protocol.

26 June 2024 – Inspection at Appellant's Site

41. As to para.104, not for the first and only time in its various references in this section the EA refers to a category 3 score of the Permit conditions (a "minor risk to the environment") because of the use of (washed) trommel fines in aggregate product, a score apparently awarded because of the "potential to leach contamination". This shows a lack of a true risk assessment and demonstrates that in the absence of evidence of either real likelihood or any harm, that there is no breach of the Appellant's duty of care. Since no hazardous waste is brought on to the Site (pace para.43 below), and in all the circumstances, there is no rational basis for the EA's requirement that trommel fines from the waste transfer operation need to be re-tested to conform to a notional 19 12 12 (rather than 19 12 11*) code. Such an approach would be wrong and in any event disproportionate. See the considerations at para.8 above.

42. As to para.107, the EA cites extracts from the CAR form referring to alleged breaches not connected with the issue of trommel fines. These include piles of wood and plasterboard said to have exceeded the height of bay walls and an inadequate drainage plan. The Appellant remains uncertain from this evidence about exactly what it is that he needs to do in respect of the EMS to ensure compliance with the reg.36 Notice. See also paras.122-123 of the EA's SoC. If the EA requires the EMS specifically to make provision in respect of a drainage plan, waste storage or the risk of fire from excessive quantities of combustible material in order to comply with the Enforcement Notice (by way of examples), then these requirements need to be specified in the Notice itself. The Appellant cannot be expected to second-guess the requirements of the EA and he cannot effectively challenge the Notice give the lack of specificity within the Notice itself (save for the trommel fines issue as set out under (3) of the first page of the Notice, which he understands). Breach of an enforcement notice can have criminal consequences.

43. Paragraphs 115-117 are a particularly egregious example of the EA's lack of as coherent approach to risk in what is supposed to be a 'risk-based' approach to regulation (see para.39 above). In para.116, for instance, the EA raises the spectre of contamination of the food chain by heavy metals and a consequential impact on human health. In the same paragraph there is a throwaway reference to asbestos, which is permitted only to be stored at the Site, for which special provisions apply and which does not come into contact with other wastes. These invalid references without an evidence-base have no part in the Inspector's determination.

44. As to the first sentence of para.118, the Appellant repeats paras.22-23 above.

Section 5. Requirements of the Enforcement Notice

45. As to section 5 of the EA's SoC, the Appellant repeats his complaint that, save for the assertion by the EA (under (3) on p.1) that condition 1.1.1 of the Permit is allegedly breached because EMS v.10 does not

provide measures to prevent trommel fines being processed through the soil processing facility, the Enforcement Notice is defective because it does not meet the requirements of reg.36(2)(b),(c), EPR 2016 (see para.53ff of his SoC).

46. The defects in the Notice are not cured by the EA's SoC, uncertainty still existing by the vague and unspecified way in which the EA has continued to make complaints about the EMS. See for instance para.42 above. In any event, the alleged bases for the Notice as set out in (1),(2) and (4) should be dismissed because the procedure has been unfair. The Appellant did not have any opportunity to make out his case in his Grounds of Appeal and he should not be expected to make up lost ground by his SoC. Indeed he has been prejudiced since there has not been sufficient opportunity to him to gather the material on which he would otherwise wish to rely, for instance details as to drainage.

47. As to para.135, a six week deadline for compliance is far too short a period.

Section 6. The Grounds of appeal

48. The Appellant has redrafted his grounds of appeal as set out in the SoC, so that the "grounds" as addressed by the EA cannot altogether be considered comprehensive. Nevertheless the Appellant has the following comments to make.

Ground 1

49. The Appellant's position as to lack of precision is adequately dealt with in the Appellant's SoC as amplified above, and the Appellant has no further comments to make.

Ground 2

50. The Appellant's principal objection to Ground 2 is made out in his SoC and additional comments set out above. Paragraph 150 is wrong.

51. No credence can be given to paras.151-153 or 155. On the contrary, the contemporaneous documentation and exchanges between the EA (led by Rachel Argyros) and the Appellant's consultants show that the

parties knew that the variation / consolidation of the Permit permitted the treatment of trommel fines in the Wash Plant for the purposes of aggregates. As to para.153, the position is that new officers, without reference to the previous history of the Site, have sought to interpret the Permit in a vacuum, in a manner which does not accord with commonsense, which does not correspond with a true-risk based approach or the waste hierarchy.

52. If the EA were correct, then this would imply a lack of competence on the part of numerous officers involved in inspecting the site, including Rachel Argyros, Andy Jobson, Adam Blacklock, John Woolley, Phil Gibbon, Kerry Hammick, Tammy Finlayson, Stuart Bodsworth, Ashleigh Courage, Chris Woodcock, Anthony Alvis Makin, Sharon Holliday and Richard Lever.

53. The Appellant agrees with para.154, but with different consequences.

Ground 3

54. The Appellant repeats his reasons for opposing the Enforcement Notice so far as it concerns trommel fines treated in the Wash Plant and used to produce aggregates. The EA is correct that the EMS does not provide measures to prevent trommel fines from being processed as part of the A2 activity because, for all the reasons explained in the SoC and above, this very process is permitted and has been so since 17 August 2011. Further, this Section 3 of the SoC contains examples of the EA's inappropriate approach to regulation about which the Appellant has complained elsewhere in his appeal. Thus the EA's assertion in paragraph 157 that there is some "risk of pollution" involved in processing trommel fines through the wash plant, thereby requiring their segregation, cannot be made out and is an example of the EA's inappropriate and disproportionate approach to environmental risk. Likewise, the suggestion in para.169 that the classification of waste in accordance with WM3 is "required", despite the concession that duty of care obligations do not begin until transfer, is wrong. The Appellant repeats paras.14, 32(e) and (f) and 39 above.

55. The Appellant otherwise expresses his concern as to this part of Section 3 of the SoC. The contents of the SoC go much further than (3) on page 1 of the Enforcement Notice, which is clear enough. Paragraph 170, for instance, emphases an apparent complaint about the lack of a storage plan, but no such complaint is made in the SoC and no reasons for this complaint are specified. The storage provisions in the EMS are themselves satisfactory.

Ground 4

56. The Enforcement Notice itself is insufficiently precise as to what is meant by "all outputs" or as to what the alleged defects in the procedures might be. The Appellant cannot know what aspects of his procedures allegedly need to be tightened up or why.

57. The EA's Statement of Case in no sense cures the defect in the Notice, which contravenes reg.36 in being non-specific about its requirements. In any event the Appellant emphasises that a regulatory notice such as an Enforcement Notice must be capable of being read on its own without reference to external documentation (such as a Statement of Case). This is by reason of the potential criminal sanctions.

58. In any event, the point made by the Appellant in his original Reasons for Appeal (section F) is a good answer to the EA's complaint. (A) an EMS does *not* need to contain all the requirements of an end-of-waste protocol. Alternatively (b), the EA forgets that an EMS is a "system" and does not need to be recorded in one single document. It should be no surprise that section 9.5 of the Core Guidance refers to "management systems" as an issue of competence. A set of management systems can be recorded not only in a document described as an "EMS", but is likely to exist in other documentation at a Site. The Aggregate Production Protocol and sampling and inspection plan are demonstrations of the proof of that proposition.

59. As the Appellant's original reasons make clear, the Appellant has procedures and records in place elsewhere which ensure that outputs are appropriately classified and meet the Aggregates protocol requirements as necessary. It is lawful and appropriate for operational documents to be kept in this way. The WRAP protocol itself says

nothing about keeping procedures and test processes within a written Environmental Management System, referring to a "Factory Production Control". Not the least of the relevant documentation maintained by the Appellant to ensure compliance with the WRAP Protocol, for instance, is his Site-specific Aggregate Protocol (which incorporates WRAP's stipulated Factory Production Control).

60. There is an important point of principle here. The effect of requiring end-of-waste processes, for instance, to be recorded in an EMS would be to bring non-compliance into the criminal sphere. Condition 1.1.1 is a condition of a permit, and if it were established that an EMS should contain the details required by a WRAP protocol (of which there are currently 13), then any breach could render an operator subject to criminal enforcement. Rendering non-compliance with a WRAP protocol a criminal offence should only be done after Parliament has considered whether this is an acceptable outcome. It is not for the EA (or an inspector on an appeal) to enlarge criminal sanctions in this way.

61. In any event, not only did EMS version 10 did make sufficient reference to end-of-waste, but, as the Appellant points out in section F of his original Reasons for Appeal, EMS version 11 was updated sufficiently to deal with the concerns of a regulator acting reasonably (see section 3.5).

62. As to para.181 of the SoC, the inspector should be cautious. The EA is wrong to suggest that there is "guidance that suitable management systems … are necessary to prove compliance with end-of-waste criteria". Further, an EMS is **not** required to "contain … information required by Art.6(2)(d) to meet the end-of-waste test": the Appellant repeats para.60 above, since such a requirement would also lay an operator open to potential criminal sanctions for a breach of a supposed (and unstated) need to provide a written record of proof of Art.6 without consideration by Parliament.

Ground 5

63. The requirements are onerous and/or excessive for all the reasons given in the SoC and above.

Section 7. Conclusion

64. As to para.186, the Appellant repeats that the EA does not understand, or apply, a true risk-based approach to regulation of this Site. To say "there is a risk" is meaningless in the absence of evidence as to likelihood of an occurrence of harm and evidence as to the harm which would occur.

65. Paragraph 187 is an inappropriate comment. The Appellant runs an appropriate and well-managed Site.

66. As to paras.189 and 190, the Appellant repeats the regulatory history of the Site since the grant of the Permit to the EA's new and inappropriate approach as from about 21 December 2021 (as to which the EA is silent). Further, the EA has not considered the option of variation of the Permit, which would have allowed the possibility of discussion and an appeal without the threat of further sanctions for an alleged breach of an enforcement notice. The EA's conduct has been wrong, as to which the Appellant repeats para.8 above.

67. The Appellant calls for production of any internal decision document which may have been prepared for the purpose of the decision to issue this Enforcement Notice (see para.6 above).

68. The Enforcement Notice should be quashed.

GORDON WIGNALL

DYNE SOLICITORS LIMITED

2 June 2025

LIST OF ADDITIONAL REFERENCES

Section D:

Item 1

Greenleaves III, Guidelines for Environmental Risk Assessment and Management (Summary only provided). See: https://www.gov.uk/government/publications/guidelines-for-environmental-risk-assessment-and-management-green-leaves-iii

Environmental Permitting: Core Guidance (March 2020), sections 7-7.12, 7.23 and 11.37-11.40 *Waste Duty of Care Code of Practice* (November 2018), sections 1 and 3.3.