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BY EMAIL ONLY

Date: 17 March 2022

Our Ref: 202-001-MMv2

Your Ref: EPR/EP3798CS/V003

Dear Iain,

EA COMPLIANCE ASSESSMENT REPORT ISSUED 4/01/22 (50066/0412384) – NICK BROOKES

Please accept this letter on behalf of Nick Brookes in response to the above Compliance Assessment Report (CAR). Our client wishes to challenge the Category 2 permit breaches on the CAR and comment on a number of other issues, which are of direct relevance to the plasterboard audit, without prejudice to any future complaint or legal challenge.

We are in receipt of a number of CARs from other sites, which I cannot comment on in this letter because of client confidentiality. However, I can comment that the common theme in all of the CARs received is the absence of detailed information to support the Category 2 breaches.

The Section 5 notes on each CAR state that a C2 breach is "A non-compliance which could have a significant environmental effect". The presence of a significant environmental effect which is attributable to our client's site has not been demonstrated. We cannot find any support for this type of scoring in the gov.uk guide "Waste operations and installations: assessing and scoring environmental permit compliance". The guidance states "We only categorise and score non-compliances that relate directly to permit conditions" so it is difficult to draw a firm conclusion based on the detail of this and historical CARs and the significant issues experienced at Walleys Quarry arising from alleged illegal waste activities (referred to on the EA's consultation web pages).

We agree that continuous improvement throughout the industry with regard to segregation of waste types that have the potential to cause problems in landfill is an important issue. With that in mind we would have expected the EA to issue further guidance on gov.uk regarding the procedures expecting in management systems to require site-specific gypsum waste management plans, for example. There is also appears to be an absence of regulatory effort in relation to waste producers, who hold the duty to classify waste in accordance with the guidance document "WM3 Guidance on the classification and assessment of waste".



All sites that have been subject to the audit will now be in a poorer compliance band (E minimum) and face much higher subsistence fees, despite having no history of non-compliance with regard to plasterboard in their CAR history. The manner in which the audit has been carried out is disappointing, given the absence of comment from other regulatory officers during recent inspections, which gives the impression that the audit is primarily a reaction to the recent High Court Case and public interest. There is also the issue of the historical guidance on gypsum wastes in landfill, which since the 2005 ban, allowed (whether intentionally or not) up to 10% in loads until the guidance was updated in 2011. Given the time for plasterboard to degrade in landfill, the significant historical deposits cannot be overlooked and must form part of any technical review, either internally or in any judicial proceedings.

Action 1 – EMS revision

The EMS has been updated to include plasterboard management procedures, which further document the procedures carried out on site for reception and segregation of gypsum containing wastes. It should be noted that the location of the plasterboard bay is on the site layout plan (dated 29/09/20) in Version 9 of the EMS. Version 10 contains the new procedures. Version 9 was reviewed in detail by EA officers and a CAR was issued on 27/05/21 to confirm that it was the most up to date version, following some confusion regarding the extant copy held by the EA. Your CAR refers to version 8.1 (March 2015). We object to the C2 score, which is unreasonable and does not reflect the Agency's inspection record and relationship with the site. To apply a C2 score implies one of two scenarios i.e. that your colleagues have not properly inspected the site previously and this inspection carries more weight or this inspection is part of a wider campaign that has completely disregarded, ignored or rescinded the previous inspection history.

Action 2 – Cease 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.

Actions 3 & 4 – Filter Cake WM3 assessment & Written Sampling and Testing Plan for WAC/WM3

The WM3 assessments for the site are carried out by Ian Fenny of New Tech Environmental Ltd, who also responded to the CAR dated 11/06/21, a copy of which is included with this letter. Whether or not there is a protocol in the EMS for carrying out a WM3 assessment does not preclude one being carried out independently as assessing whether waste is hazardous or not is carried out to comply with the Duty of Care Code of Practice (2018). Mr Fenny has undertaken regular sampling of



qualifying fines which are destined for Walley's Quarry and has presented the results to the landfill operator on behalf of Nick Brookes, which includes landfill WAC analysis. Gary Edwards has sent information to the EA as well. Samples of the filter cake have also been analysed and are sent with this letter. It should be noted that the site only processes non-hazardous waste, which is a well understood industrial process (WM3 Step 4) and the chemical composition of the filter cakes has been assessed. The application of a C2 score to this issue is also disputed.

The assumption that the site is failing to remove plasterboard from incoming waste is incorrect. The photographs on page 6 of the CAR are labelled "source-segregated gypsum waste stockpile on the separate yard". The stockpile includes both source-segregated material and material removed from the waste during initial sorting and from the picking line. The site has a dedicated yard operative whose sole role is the segregation of plasterboard, including checking mixed loads and removing plasterboard for deposit in the stockpile. This has become necessary because many customers add other non-hazardous C&D waste to their plasterboard skips, which has to be removed to be processed on site.

Action 5 – EWC coding

Additional staff training will take place in relation to coding of waste and the duty of care to ensure that the plasterboard tonnages logged are accurate (see waste returns below).

Waste returns

The CAR refers to the mismatch between the amount of gypsum received and exported, which we admit does require a response but the figures alone are not an indication that the plasterboard waste has been processed rather than removed from site. It is more likely to be an error in the waste return, which is due to the issue mentioned above regarding contamination with other wastes. Drivers have tablets to log collections and take photos of loads collected and incoming loads are also photographed on site. Where customers have placed non-plasterboard waste in the skip it is usually discovered after deposit and then separated out. The load will be logged in as plasterboard and the tonnage logged for that skip applied to the plasterboard total in the waste return. An additional review is being carried out to find the most effective way to ensure that this issue does not impact upon the waste return figures. The waste types accepted are within the descriptions allowed by the permit and the site, in common with many other sites, deals proactively with the problems created by waste producers. The ISYS Gatehouse system is used on site to log the incoming and outgoing waste (<https://isys-systems.co.uk/>).

Gypsum wastes/wash plant

It should be noted that gypsum wastes are a permitted feedstock for the wash plant but have never been accepted for washing because gypsum is not wanted in the aggregate outputs and gypsum manufacture is not an activity that the wash plant was set up for. If gypsum were to be used in the wash plant it would not be a permit breach.

Phase 2 findings

We disagree that there is no evidence of any segregated plasterboard in the building or yard. Visual observation of the stockpile does not give confidence that this conclusion can be reached. The CAR states that “this is supported by your waste returns data” without explaining how the conclusion was arrived at. The explanations above also demonstrate what happens on site.

Fines/steaming comment

The CAR refers to “visibly steaming” fines and that they are not inert yet refers to the fact that they arise from trommelling mixed waste, which is not an inert feedstock. The presence of visibly evaporating water vapour does not constitute steaming but is the loss of moisture when from waste that is warmer than the ambient air.

Permit non-compliance

We disagree with the suggestion that root cause of alleged procedures is the failure to include sufficient measures in the EMS when this issued has never been scored against. The absence of detailed procedures does not mean that segregation of plasterboard is not taking place and we reiterate that the matter has not been raised previously.

Odour incidents at landfills

Walley’s quarry has been operational under the current permit since June 2005 and was transferred to Red Industries in October 2016. We are in receipt of the CARs for 2019 to 2021 are reviewing them on behalf of our clients as it evident that the odour problems are a longstanding issue. As stated above New Tech Environmental carry out compliance sampling and liaison with the operator to meet the landfill WAC requirements and have been in communication with the Agency over such matters.

If you have any queries with this letter, please do not hesitate to contact me on the details below.

Yours faithfully



**Marco Muia | BSc MSc MCIWM
Managing Director**

cc. Nick Brookes, New Tech Environmental Ltd

enc. EMS v10, filter cake analysis





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