

Marco Muir
Oaktree Environmental Limited
Lime House
2 Road Two
Winsford
Cheshire
CW7 3QZ

Date: 26 March 2024

Our Ref: EAWML/50066

Your Ref: 0202-005-01-MM

Environment Permitting (England and Wales) Regulations 2016
Nick Brookes, Green Lane, Wardle, Nantwich CW5 6DB
Nick Brookes Demolition & Waste Disposal EAWML/50066 - EPR Ref - EP3798CS

Dear Marco

Thank you for your letter dated 24 November 2023, in which you formally requested that the Environment Agency review the submissions therein with a view to amending the scores findings as set out on our CAR form dated 14 September 2023 (reference Number 60055/0478595) as issued on 30th October 2023.

In your submission you set out four key areas of contention. Each of these concerns are addressed below:

Consideration 1: Has there been a change of interpretation of Condition 2.3.2 by the EA?

Condition 2.3.2 states "Waste shall only be accepted if: (a) it is of a type and quantity listed in schedule 2 table S2.1. The consistent interpretation of this condition since the permit was issued has been that the wastes listed in the tables are those which can be accepted into the site from external sources. The waste treatment operations at the site have been inspected by numerous EA officers since the permit was issued on 17th August 2011. We have not been given a reason for this change in interpretation and disagree with the scores applied in the CAR form. The aforementioned email provides further information on the history. As mentioned in the Teams meeting WRAP were heavily involved in the design and commissioning of the wash plant as it was one of the first in the country to be set up and was part funded by a WRAP grant.

While the CAR Form did not record a breach of this condition, I have included a response to the query about this condition as I feel it would be beneficial to clarify matters for future reference.

Condition 2.3.2 refers only to Table S2.1 which sets out waste that can be accepted onto site, under the A1 Activity - Household, commercial and industrial waste transfer station. The condition does not make mention of Table S2.2 which sets out waste types and quantities specific to the A2 Activity specifically limited to the Soil Processing Facility (Wash Plant).

It can therefore be concluded that the Environment Agency has not changed its interpretation of Condition 2.3.2 and there is no ambiguity in the condition. There is no indication of tacit or direct approval by the Environment Agency that Condition 2.3.2 applies any differently than was intended, nor any indication that the Environment Agency changed its interpretation of the condition, nor any suggestion that Condition 2.3.2 overrules or supersedes the clear distinction made between Activity A1, Activity A2 and Activity A3, and the permitted waste types for each separate activity set out in Tables S2.1, S2.2 and S2.3.

The Environment Agency is therefore correct in its interpretation and application of Condition 2.3.2 in this instance.

Consideration 2: The WRAP Quality Protocol

The CAR form refers to WRAP Quality Protocol. The Quality Protocol is entitled “End of waste criteria for the production of aggregates from inert waste”, however, the wastes listed in Appendix C include some non-hazardous wastes but we can agree that the wastes listed in Table C1 are acceptable inert waste input materials. Some of the EWC codes are given restrictions, which serve as a guide to interpretation of the codes used. During the Teams meeting we were informed that EWC 19 12 09 refers to naturally occurring minerals only, which we disagree with and would refer you to the precise wording in Appendix C, which restricts the presence of contaminated concrete, bricks, tiles etc. It does not prohibit the presence of concrete, bricks etc. Table B3 shows the maximum permitted quantity of cohesive materials in manufactured aggregate (1%). The products manufactured in Nick Brookes’ plant are much cleaner than the 1% limit.

During telecon discussions, the operator was informed that EWC 19 12 09 refers on the permit to minerals (for example sand, stones). The dictionary definition of minerals is a solid, naturally occurring inorganic substance. Concrete, bricks and tiles do not meet this definition.

The comments about 19 12 09 waste are not in themselves relevant to the CAR form challenge but were discussed during a meeting subsequent to the inspection regarding the suitability of certain wastes.

From the Environment Agency’s position this argument misses the more relevant concern that the mixed waste trommel fines (typically 19 12 12) cannot be considered “inert waste” without an appropriate Waste Acceptance Criteria assessment that will prove it can be defined as such. As this waste type is not included in the list of wastes in Appendix C of the Quality Protocol, it is not considered to be inert and acceptable for the production of recycled aggregates.

Consideration 3: The flowchart in Nick Brookes’ Secondary Aggregate Production Protocol v2.0

The flowchart in Nick Brookes’ Secondary Aggregate Production Protocol v2.0 (12th September 2008), which was agreed with the Agency refers to the trommel and the fines arising from separation of wastes using the trommel, diverting to the wash plant. The only area of disagreement at the time was the potential for non-compliance with the Paragraph 13 exemption so Nick agreed to submit a permit variation application to include the wash plant and the permit was issued in agreement with the permitting and inspecting officers.

The Environment Agency considers that the presence of the flowchart does not constitute approval for trommel fines being submitted to the wash plant. Nor does it invalidate or supersede the criteria set out in Activity A2 and the permitted waste types set out in Table S2.2. The permit holder is still therefore subject to the restrictions set out in Condition 2.1.1 as specified in Schedule 1, Table S1.1, and the associated permitted waste types set out in Tables S2.1 and S2.2

Consideration 4: Permit variation application to add 19 12 12

Whilst we disagree with the content of the CAR we are considering the submission of a permit variation application to add 19 12 12 and other codes to the permit, which would resolve the current disagreement. We would engage in pre-application discussions to ensure that the outcome of the permitting process results in a revised permit which is agreed by all parties. It is unacceptable to request that the wash plant stops processing trommel fines by 6th December 2023 and may be subject to legal challenge if pursued.

From the Environment Agency perspective this raises two primary areas for consideration as advice and guidance and not directly relevant to the scoring of permit breaches recorded on the relevant CAR form.

Firstly, while it is the prerogative of the permit holder to apply for a variation to add 19 12 12 to the permit, from the Agency's perspective this only solves one part of the problem, in that if Table S2.2 is varied to include 19 12 12 then it would enable the permit holder to treat 19 12 12 in the wash plant.

The concern from there is that the output from the wash plant would still be waste, as 19 12 12 is not an acceptable input under the WRAP Aggregates Quality Protocol. Without significant improvement in the Waste Acceptance Criteria testing of the materials being fed into the process and coming out of the process, the material would not meet End of Waste Criteria.

Furthermore the use of 19 12 12 in the wash plant, if mixed with inert waste, would render all of the material being produced by the wash plant as waste and would mean that the WRAP Quality Protocol could not be used, as waste types not listed in Appendix C of the Protocol would have been blended into the process.

The only way this material could then be deemed to meet end of waste would be to conduct an in depth self-assessment of the waste to prove it meets end of waste criteria, which would be a difficult and repetitively expensive process given the non-homogenous nature of the input and/or to approach the Definition of Waste Service to ask for an opinion from the Environment Agency, and have the output assessed to see if it meets end of waste criteria.

In conclusion:

The findings of the CAR Form dated 14/09/2023 are justified and reflect both the conditions of the permit and the activities as identified at the time of the inspection.

To that end the scores and the actions deemed to be necessary are reasonable and proportionate to the risk posed in accordance with the Regulators Code of Practice.

While it is understandable that the pressing of these issues, especially the cessation of processing of mixed waste derived trommel fines through the wash plant, represents a potentially costly impact to the permit holder, it must be pointed out that these activities have never been permitted by the permit conditions and have been identified as breaches of permit since at least 2021. The permit holder has had sufficient time to make relevant adaptations to resolve these matters.

In addition, the Operator has also been treating the mixed trommel fines on an area that drains to surface water/groundwater, and not on an impermeable surface with sealed drainage, as required by the management system.

It is therefore concluded that the operator must stop the activity, due to the environmental risk. They can continue with the soil washing activity, using permitted waste types.

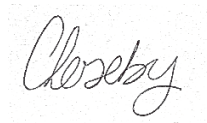
The notion that tacit or direct approval for the processing of trommel fines has allowed this activity to continue unchallenged until 2021 is unfounded. The Permit conditions are clear about what activities are permitted, and the permit holder agreed to those conditions at the time of permit issue. The suggestion that any form of approval has been given because the Environment Agency has not identified the issue on all inspections since Permit Issue is therefore without merit.

If the storage of trommel fines to the rear of the waste building is to persist, then the site infrastructure will need to be upgraded to instal an impermeable pavement with a sealed drainage system in that area.

While it is the prerogative of the permit holder on whether to apply to vary the permit or not, it is advisable that the potential implications of such a variation are made clear.

If you feel this issue has not, however, been resolved then you can raise a dispute through our official [Complaints Procedure - Environment Agency - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/complaints-procedure).

Kind Regards



Chloe Loseby
Environment Management Team Leader, Cheshire Waste Team

**Environment Agency, Greater Manchester, Merseyside & Cheshire, Richard Fairclough House,
Knutsford Road, Warrington, WA4 1H**

Cc. Nick Brookes, Green Lane, Wardle, Nantwich CW5 6DB - Permit Reference EAWML/50066 - EPR
Ref - EP3798CS