

**PROOF OF EVIDENCE
OF
JEMIMAH SMITH BSc
FOR
THE ENVIRONMENT AGENCY**

**REGARDING AN APPEAL BY NICK BROOKES
AGAINST THE ISSUE OF AN ENFORCEMENT NOTICE UNDER REGULATION 36 OF
THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) REGULATIONS 2016.**

PINS APPEAL REFERENCE NUMBER: APP/EPR/684 (ENV/3353252).

1. Introduction

Personal information

1. This proof of evidence has been prepared by Jemimah Smith. I am currently employed by the Environment Agency as a Waste Regulatory Specialist, and I have held this post since August 2025. Prior to this post, I was employed as an Environment Officer from August 2022, a role which also involved the regulation of permitted waste sites.
2. I hold a Bachelor of Science in Environmental Science. I am a professional member of the Institute of Sustainability and Environmental Professionals (ISEP) and have achieved a Certificate in Environment Management as part of the process of becoming a practitioner Member.

References

References to documents in the Core Document Library for this appeal in this proof of evidence are given in the form “**CD#**” where # is a core document number.

Scope and structure of proof

3. This proof of evidence has been prepared to assist the Inspector appointed to determine the appeal. The Appellant operates at a site known as Nick Brookes Demolition and Waste Disposal, Green Lane, Wardle, Nantwich, Cheshire CW5 6DB (“**the Site**”). The appeal concerns the environmental permit (ref. EPR/EP3798CS) (“**the Environmental Permit**”) that authorises the Appellant’s operations at the Site.
4. My evidence is structured to address the following matters:
 - a. Brief outline of my involvement in the regulation of the Site.
 - b. The Environment Agency’s reasons for issuing the Regulation 36 Enforcement Notice that is the subject of this appeal.
 - c. Pollution risks associated with the Site’s activities.
 - d. The issues identified by the Inspector at the Case Management Conference, namely:
 - i. Whether the current Environmental Management System (“**EMS**”) adequately identifies and minimises the risks of pollution arising

from waste acceptance, storage and treatment whilst having regard to the classification of waste and end of waste criteria.

- ii. Whether the scope of the Environmental Permit permits trommel fines to be processed within the A2 soil processing facility, having regard to the purposes of the Environmental Permitting (England and Wales) Regulations 2016 (as amended) (“**EPR**”).
- iii. Whether the Enforcement Notice meets all the requirements of Regulation 36(2) of the EPR.
- iv. Whether the doctrine of estoppel prevents enforcement action with regard to the processing of trommel fines at the Site.

- 5. My evidence does not cover technical information surrounding trommel fines, and the Environment Agency’s role in regulating trommel fines. This is covered by my colleague James Pearson in his proof of evidence that I rely upon in this regard.
- 6. My proof of evidence should be read together with the Environment Agency’s Pre-Inquiry Statement of 1 May 2025 (**CD1.1**) and our comments on the Appellant’s Statement (**CD1.4**).

2. Brief outline of my involvement in the regulation of the Site

- 7. I conducted two inspections of the Site prior to the issuing of the Regulation 36 Enforcement Notice. These inspections took place on 14 September 2023 and 26 June 2024.
- 8. During these inspections I observed the activities carried out at the Site. This included the acceptance of mixed waste which 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 non-recyclable larger fractions of waste are sent for disposal.
- 9. 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 a wash plant that comprises the A2 soil processing facility is located. Construction and demolition waste is tipped in the rear yard and 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.
- 10. The Environmental Permit also allows for an A3 composting facility as a separate process, but this is not currently operated by the Appellant.

11. Following the inspection on 14 September 2023 a Compliance Assessment Report (“**CAR**”) form was produced, and issued, detailing the non-compliances and required actions (**CD5.8**). 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, which is unpermitted (see section 6 of this proof of evidence for more detail about how the permit was interpreted, which ultimately led to this conclusion). The inspection also identified that the Appellant’s EMS Version 10.0, found at **CD4.7**, was inadequate as it did not reflect activities onsite which are permitted; it allows the trommel fines to be processed through the wash plant, which is unpermitted, and fails to identify and minimise the risks from this activity. This was a breach of Environmental Permit Condition 1.1.1 (a) and also identified as the root cause of permit condition 2.1.1.
12. The September CAR form was challenged by the Appellant but was upheld following a review by an Environment Agency Waste Regulatory Specialist (**CD8.19**). Following the review, the CAR form was reissued on 27 March 2024 with extended deadlines (**CD5.9**).
13. On 26 June 2024, I carried out a further inspection at the Site to assess compliance with actions set in the CAR form issued on 27 March 2024. During this inspection I identified that the Appellant had not taken any steps to comply with the actions necessary to comply with permit conditions 2.1.1 and 1.1.1 (a). The Site continued to process trommel fines through the wash plant and the Appellant had not updated its EMS therefore the Permit conditions were still being contravened, and breaches of these permit conditions were scored within a CAR form (**CD5.10**).
14. In Section 2 of this CAR form (**CD5.10**) the Appellant was informed that the Environment Agency that a Regulation 36 Enforcement Notice would be issued. The CAR form was not challenged by the Appellant.
15. I scored the breaches of Permit condition 2.1.1 and 1.1.1 (a) within the CAR forms a category 3 in accordance with the assessing and scoring environmental permit compliance guidance (**CD6.10**), because they were considered to have the potential to cause a minor impact on the environment, human health or quality of life.
16. The risk associated with processing trommel fines from mixed waste through the wash plant arises both offsite and onsite. Offsite, aggregates derived from waste, including trommel fines, may leach contaminants at the locations where they are used. Onsite, trommel fines, and the other wash plant outputs derived from the trommel fines including aggregates and filter cake are stored at the rear of the site near the wash plant, where drainage flows to surface water or soakaways. This means that any leachate, or

runoff containing contaminants from the mixed waste inputs could enter the surface water drainage system.

3. Reasons for issuing the Regulation 36 Enforcement Notice

17. The issues surrounding the processing of trommel fines through the wash plant were initially identified in 2021 by Ian Storer, a Senior Installations Technical Specialist. A category 2 breach of Permit condition 2.1.1 was scored within CAR form (**CD5.6**). The Appellant was then notified on two further occasions that it is non-compliant with Permit condition 2.1.1, and twice that it is non-compliant with Permit condition 1.1.1 (a) and that this was the root cause of the breaches within CAR forms (**CD5.9, CD5.10**). 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, no attempt to comply with the Permit conditions were made.
18. Furthermore, during the inspection I conducted on 26 June 2024 the Appellant informed me that he had not seen the 27 March 2024 CAR form (**CD5.9**) and that the Appellant's consultant was dealing with any actions within it, despite the actions not being complied with by the deadline. The Appellant also stated he had no intention to stop processing trommel fines through the wash plant, as actioned in the previous CAR form.
19. In this way, the Appellant has been avoiding extra costs by washing trommel fines to produce aggregates which are not classified as waste. Other legitimate businesses which are complying with their permits are incurring the cost of managing and disposing of trommel fines legitimately. The Appellant's approach therefore undermines legitimate businesses.
20. Overall, due to the environmental risk associated with the non-compliances (which is covered within section 5 of this proof of evidence), lack of any progress towards achieving compliance, and unwillingness from the Appellant to comply despite numerous CAR form actions, the Environment Agency decided it was reasonable and proportionate to issue a Regulation 36 Enforcement Notice.
21. My judgment was that the root cause of the breach was the inadequacy of the Appellant's EMS (see **CD5.9** and **CD5.10**), consistent with Environment Agency guidance (see principle 4 in **CD6.10**). In addition, the Environment Agency's policy is for enforcement notices to include positive steps, such as the updating of the EMS in this case. The Enforcement Notice accordingly requires the Appellant to update its EMS 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.

4. Pollution risks from Site activities

22. The Environment Agency informed the operator of the potential risks to the environment posed from the unpermitted activities within CAR forms. These risks are expanded on below.
23. Firstly, trommel fines produced from the screening of mixed waste, as at the Site, are a variable and unpredictable waste stream with the potential to be hazardous even at non-hazardous sites. This is addressed in more detail in James Pearson's proof of evidence.
24. No assessment of the trommel fines is carried out prior to it being stored, or processed through the wash plant, to determine if it contains components which are potentially damaging to the environment e.g. hazardous components, persistent organic pollutants, biodegradable materials. Similarly, no assessment of the aggregates are undertaken prior to removal offsite. Therefore, the actual impact to the environment from these activities is unknown.
25. During my inspections of the Site, including the inspection following the deadline of the Enforcement Notice on 17 September 2024, I observed the mixed waste, which was waiting to be processed through the trommel to contain a large variety of waste types including waste which is classified as hazardous including paint containers. This can be seen in photographs 1 and 2 within **Appendix 1** to this proof of evidence.
26. I observed the trommel fines to be steaming during an inspection carried out on 14 September 2023 which can be seen in photograph 3 within **Appendix 1**. This demonstrates that the trommel fines contain biodegradable wastes which are not inert. Trommel fines were also identified to be steaming during an inspection on 16 December 2021 and photographs included within the associated CAR form (**CD5.6**). I also note that within the CAR form of 8 June 2021 (**CD5.4**) visible dark leachate was identified leaving the fines pile. This is a further indication of the diverse nature of this waste stream which includes components which give rise to concerns about damage to the environment.
27. I also observed during the inspections that the aggregate outputs were contaminated with plastics and metals, and contain WEEE (Waste Electrical and Electronic Equipment) components, cables and batteries, which are classified as hazardous and contain persistent organic pollutants ("**POPs**") (see photographs 4, 5 and 6 within **Appendix 1** to this proof of evidence).
28. Trommel fines are stored at the rear of the site near the wash plant, which I understand drains to surface water or a soakaway "*via a Class 1 by-pass interceptor*" (see

Appellant's EMS V10.0 (dated 11 March 2022) (**CD4.7**) at section 2.10.1(d), and the same section of the most recent EMS V11.0 (**CD4.8**). 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, which could cause harm to the water, surrounding soils, wildlife as well as cause long term damage to ecosystems and human health.

29. Aggregates are deposited directly in the ground at the receiving construction sites which could cause water and soil contamination (via leaching of harmful substances), air pollution (via particulate matter release), and the potential for long-term damage to ecosystems and human health (e.g., long term contamination can disrupt ecosystems, lead to long-term ecological damage and/or human health problems). Due to the risk associated with mixed waste trommel fines, as discussed above and by James Pearson, this potential for environmental impact is considered particularly relevant.

5. Whether the current EMS adequately identifies and minimises the risks of pollution arising from waste acceptance, storage and treatment whilst having regard to the classification of waste and end of waste criteria.

30. EMS Version 10.0 dated 11 March 2022 (**CD4.7**) was current at the time of the inspections carried out on 14 September 2023 and 26 June 2024. I considered the EMS to be inadequate as because it does not reflect activities onsite which are permitted and does not meet the criteria stated within the Environment Agency EMS guidance (**CD6.6**) and elsewhere, to minimise risk to the environment from site activities. The Appellant was notified about the deficiencies to their EMS (v10.0) within a number of CAR forms (**CD5.9**, **CD5.10**).

31. EMS Version 11.0 dated 13 September 2024 (**CD4.8**), which purports itself to comply with the Enforcement Notice, is inherently similar to the previous EMS (V10.0, **CD4.7**). Therefore, it does not fundamentally change the Environment Agency's position. It remains defective as it does not include the information and/or procedures required to identify and minimise the risk of pollution arising from the activities, specifically those relating to the washing of trommel fines from mixed waste.

32. Neither EMS v10.0 nor v11.0 adequately identifies or minimises the risks of pollution arising from waste storage and treatment. They also do not set out how the end-of-waste criteria is met or include procedures which allows them to effectively classify and identify risks associated with waste prior to it being treated onsite. The main aspects of these deficiencies are set out below. These included but were not limited to the following.

33. Firstly, the EMS is defective because it requires but does not include a process to ensure only permitted waste listed in table S2.2 are processed through the soil processing activity. 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.
34. Secondly, permit condition 1.1.1 (a) requires the EMS to identify and minimise the risk of pollution from the Site's activities. The trommel fines produced on site from the mechanical treatment of mixed waste involve a risk of pollution, explained in section 4 of this proof of evidence. The EMS guidance (**CD6.6**) provides with regards to site operations 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 EMS does not identify any risks associated with the activity of processing trommel fines through the wash plant, therefore the EMS fundamentally fails to meet the standard required.
35. While section 3.13 of EMS v10.0 and v11.0 (**CD4.7, CD4.8**) discusses how the Appellant will identify the appropriate classification of 19 12 11*/19 12 12 wastes, this applies only to wastes moved offsite, not those treated onsite. Therefore, it does not address the classification or risk assessment of wastes transferred between treatment activities, nor does it ensure that such wastes are permitted or non-hazardous. Furthermore, the Appellant has been informed since 2023 that the sampling procedure is inadequate, as noted in multiple waste audit reports (**CD5.7, CD5.11, CD5.12**). These reports assessed the sampling plan provided (**CD7.1**) and found it to be inadequate, and not properly followed, preventing a comprehensive assessment.
36. The EMS guidance (**CD6.6**) states that waste operators must include a waste storage plan to ensure there are appropriate pollution prevention measures 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, however this is not considered within the EMS.
37. The EMS also does not include an adequate drainage plan as required by the guidance (**CD6.6**). The EMS only includes a description of the drainage systems onsite which

states that the drainage system on the wash plant section of the Site, where the trommel fines are stored, drains to surface water or soakaway.

38. As the Site is producing a product, originating from waste, it must comply with the end of waste criteria and follow the definition of waste guidance (**CD6.9**), derived from the requirements of the Waste Framework Directive ("**WFD**") (**CD9.7**). This guidance requires management systems to prove compliance with the end of waste criteria and include any relevant quality control procedures, self-monitoring procedures and how accreditation will be achieved.

39. However, the EMS does not include any procedures or evidence proving the aggregates produced meet the end-of-waste criteria.

40. Despite claims from the Appellant, the aggregates produced do not meet the requirements of the relevant quality protocol, *WRAP quality protocol: Aggregates from inert waste* (**CD6.2**), because trommel fines are not an input material listed within Appendix C, therefore the Appellant cannot be compliant with this protocol.

41. In fact, there is no relevant regulation or quality protocol for trommel fines, therefore the only way to meet the end of waste criteria is by doing a self-assessment or getting an opinion through the Environment Agency's definition of waste service. To conduct a self-assessment, an operator must take into account any guidance published by the Environment Agency or Defra as detailed in the definition of waste guidance (**CD6.9**). This includes assessing and confirming that the material proposed for end of waste fulfils all relevant product, environmental and health protection requirements, as well as conducting robust sampling of the material and an assessment of risk against an equivalent non-waste material (with accompanying risk assessment as required) (see the discussion in **CD 6.9** under condition (d)). The comparison with non-waste and the risk assessment must show that the use of the material does not lead to overall adverse environmental and human health harm – that is, material must not be of significant risk to the environment or human health.

6. Whether the Environmental Permit allows trommel fines to be processed within the A2 soil processing facility, having regard to the purposes of the EPR

42. As explained above, the Environment Agency considers the inadequacy of the Appellant's EMS to be closely connected to, and so the root cause of, the breach of condition 2.1.1 relating to the scope of the Permit. The Appellant's contention, in contrast, is that the Permit allows the processing of trommel fines in the A2 soil processing facility and so the activity – and the risks to which it gives rise – should be tolerated.

43. To approach the task of establishing whether a specific activity or waste type is authorised by the Permit I read the Permit in a logical manner, establishing what activities are permitted, what waste types can be accepted and any other environmental controls required. Only in exceptional circumstances would I read the entire compliance, and permitting history, particularly for a permit which was issued 13 years ago.
44. Prior to the first Site inspection I carried out on 14 September 2025 through to present, I understand the Permit to read in relation to the permitted waste types through the wash plant as follows.
45. Firstly, 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.
46. Secondly, 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 European Waste Catalogue (“**EW**C”) code which are allowed to be stored and treated as a part of activities A1, A2, A3 respectively.
47. The wash plant makes up the soil processing facility – Activity A2. Table S2.2 lists the EWC codes permitted to be processed through the wash plant.
48. EWC code 19 12 12 is a EWC code listed within Table S2.2, however only where it falls within the specific definition specified which is “*Treated bottom ash including IBA and slag other than that containing dangerous substances only*”.
49. Trommel fines from the mechanical treatment of mixed waste should be classified as EWC code 19 12 11*/19 12 12 in accordance with *Technical Guidance WM3: Waste Classification - Guidance on the classification and assessment of waste* (**CD6.5**).
50. Trommel fines from mixed waste do not meet the definition in Table S2.2 and therefore are not permitted to be processed through the wash plant.
51. Thirdly, Permit condition 2.1.1 is clear that the Permit only authorises the activities specified in Table S1.1, where the specified limits of the soil processing facility activity include “[t]reatment of wastes listed in table S2.2 consisting only of washing, soring, screening, separation, crushing and blending of waste for recovery as a soil, soil substitute or aggregate.” The Permit cannot sensibly be read as meaning treatment of those wastes and other wastes that are not specified.
52. I accept that this breach of Permit condition 2.1.1 and/or condition 1.1.1(a) does not appear on the information available to have been identified prior to 2021 or assessed in

the earlier CAR forms. However, it is the responsibility of the permit holder to ensure compliance with their permit. Therefore, as the Permit has not changed in this respect over the past 13 years, it may be that the Appellant has been contravening the Permit throughout this period by processing trommel fines through the wash plant.

53. However, after the Appellant initially challenged the findings from the inspection I conducted on 14 September 2023, I agreed to review any documentation provided by the Appellant indicating the Environment Agency approving the treatment of trommel fines, produced from the treatment of mixed waste, through the wash plant (**CD8.12**).

54. From the information provided by the Appellant at the time, as well as that set out by the Appellant as part of this appeal, I maintain the view that no documents demonstrate with any degree of confidence that the Environment Agency intended to authorise treatment of mixed waste trommel fines through the wash plant when determining the Appellant's variation application in 2011. There is no evidence that Environment Agency 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 indicate instead that the Environment Agency had concerns over the Appellant using unsuitable wastes in aggregate production, and failing to effectively identify and minimise the environmental risks associated with that activity (**CD8.1, CD8.4, CD8.5**).

55. Prior to the variation, officers informed the Appellant that if the activity did not comply with the exemption in paragraph 13 of Schedule 3 to the then applicable EPR (**CD9.4**), a permit variation would be required to continue operations. However, this did not guarantee that a permit for processing trommel fines from mixed waste through the wash plant would be granted. The National Permitting Service reviews the submitted information, assesses the activities based on risk, and issues a permit reflecting those assessments, subject to agreement with the operator.

56. I also note that the Appellant's documents produced at the time of the variation application contain misleading and/or inconsistent descriptions of the waste types to be treated in the wash plant.

57. 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 (**CD4.1**) states "[t]he 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. Contrary to the Appellant's arguments at paragraph 14 and following of its Statement of Case (**CD1.2**),

the text in the 2008 Aggregates Protocol does not state clearly that trommel fines from mixed waste would be used for aggregate production.

58. The flowchart in Appendix A to the 2008 Aggregates Protocol (**CD4.1**) does include a box that states “*SOILS/FINES/HARDCORE STOCKPILED FOR TRANSFER TO AGGREGATE WASHING SITE*”. That is a somewhat vague or unhelpful description as it lumps soils, fines and hardcore together and implies that they are all similar, which is not the case. Soils and hardcore may be inert, but fines produced from the treatment of mixed waste through the trommel may not be inert, they are a combination of the fines fallen from the mixed waste. Overall, I do not think that the 2008 Aggregate Protocol can be said to evidence “*full knowledge*” of the Appellant’s processing of trommel fines in the wash plant as is claimed (see para.20 of the Appellant’s Pre-inquiry Statement).
59. Furthermore, 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.
60. In response to those assertions, it is necessary properly to 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.
61. The EPR serves as a legal mechanism to control and manage activities which have the potential to have significant environmental impacts. It legislates the requirement for certain activities, including a range of waste management activities, to have a permit which sets out control measures required to manage the risks of these activities, to ensure the environment is protected. Furthermore, Article 13 of the WFD sets out that all necessary measures, must be in place to ensure that waste management is carried out without endangering human health and environment.

62. Environmental permits are produced with the above in mind. Separating specific activities occurring onsite which require separate environmental controls is common practice, and essential to adequately minimise the risks.

7. Whether the Enforcement Notice meets all the requirements of Regulation 36(2) of the EPR

63. I understand this issue will be addressed by way of roundtable discussion at the inquiry. The Environment Agency's case is set out in paragraph 147-148 of our Pre-inquiry Statement (**CD1.1**) and paragraphs 3-6 of our comments on the Appellant's Statement (**CD1.4**).

64. The Environment Agency does not accept that the Enforcement Notice fails to meet the requirements of EPR Regulation 36, or that it is vague, imprecise or insufficiently specific.

65. 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.

66. It is self-evident from these deficiencies that the Appellant's EMS fails to identify or minimise any risks of pollution associated with the treatment of trommel fines in the A2 soil processing facility. It was not necessary for the Enforcement Notice to itemise the particular risks of pollution that needed to be addressed in the EMS. The Environment Agency's position is that the risks can only be properly addressed by the Appellant ceasing to process trommel fines in the wash plant, this is due to the offsite and onsite risks explained above.

67. 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.

68. This case is completely different from *R (European Metal Recycling Ltd) v Environment Agency* [2012] EWHC 2361 (Admin); [2013] Env LR 14 (**CD10.5**), cited at paragraph 44 of the Appellant's Pre-inquiry Statement (**CD1.2**). *EMR* concerned a suspension notice which was challenged by way of judicial review. The notice provided no specific steps at all, instead simply stating that the operator must design and implement measures that eliminate the risk of serious pollution from noise. Here, the matter comprising the breach – the processing of trommel fines in the wash plant so as to give rise to a risk of pollution

– is clearly set out in the Enforcement Notice, and the steps that are required to be taken are set out in Schedule 1.

69. It is clear that the Appellant understands the issue from its Pre-inquiry Statement. The argument that there is a contravention of Regulation 36(2) of the EPR is therefore a technical point of no merit. In any event, if the Inspector considers that the reasons or the steps in the Enforcement Notice should be amended to add clarity, the Environment Agency considers that this could be done in accordance with Regulation 31(4)(b) without prejudice to the Appellant.

8. Whether the doctrine of estoppel prevents enforcement action with regard to the processing of trommel fines at the Site

70. Estoppel is a legal doctrine on which I am not qualified to comment. However, I am informed that it is a private law concept of no application in planning and environmental controls, where third party interests are at stake: see **Appendix 2** to this proof of evidence and the associated case law. That makes sense to me: environmental impacts – or risks – should not be tolerated simply because no objection has been taken to them in the past, or even because a public official has in the past tolerated their existence.

71. In any event, as set out above, I do not consider that there has in this case been a clear or unequivocal representation by the Environment Agency that the Permit allows trommel fines to be processed in the A2 soil processing facility.

9. Conclusion and endorsement

72. The Appellant is contravening Permit 1.1.1 (a) and Permit condition 2.1.1 which involves a risk of pollution to the Environment. The Enforcement Notice was issued due to ongoing non-compliance, and the Appellant's unwillingness to comply. The terms of the Enforcement Notice are clear and unambiguous, and the steps and timescales are reasonable and proportionate. The Enforcement Notice should be affirmed in full.

73. The evidence that I have prepared and provided for this appeal (PINS Ref APP/EPR/684 (ENV/3353252)) in this proof of evidence is true. I confirm that the opinions expressed are my true and professional opinions.

Signed: 

Dated: 14 October 2025

Jemimah Smith

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