

SUMMARY 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. I am a Waste Regulatory Specialist at the Environment Agency, and I have held this post since August 2025. Prior to this, I was employed as an Environment Officer from August 2022, a role which also involved the regulation of permitted waste sites.
2. My evidence supports the Regulation 36 Enforcement Notice issued to the Appellant, concerning non-compliance with Environmental Permit condition 1.1.1 (a).
3. The Appellant is contravening Permit condition 2.1.1 because trommel fines from the treatment of mixed waste are being processed through the wash plant, which is not permitted. The root cause is a breach of Permit condition 1.1.1 (a), i.e. the Appellant's EMS v10.0 is inadequate as it allows the trommel fines to be processed through the wash plant, which is both unpermitted and fails to identify and minimise the risks from this activity.
4. The trommel fines are used to produce aggregates which are sold as a product, despite not meeting the end-of-waste criteria. Trommel fines are not listed as acceptable input material under the *WRAP quality protocol: Aggregates from inert waste* and no adequate self-assessment or opinion has been gained – or, on the evidence, would be likely to be gained – from the Environment Agency to demonstrate compliance with end-of-waste requirements.
5. Trommel fines are unpredictable and potentially hazardous. During inspections, I observed hazardous waste components, steaming fines (indicating biodegradable elements), and contaminated aggregates.
6. Processing trommel fines poses environmental risks both onsite and offsite. Offsite, aggregates may leach contaminants where used. Onsite, trommel fines and wash plant outputs are stored near drainage that flows to surface water or soakaways, meaning contaminated runoff could enter the drainage system.
7. Despite multiple CAR form breaches, each with reasonable timeframes for action, the Appellant made no attempt to comply voluntarily. Given the environmental risks and the Appellant's unwillingness to comply, the Environment Agency determined that issuing a Regulation 36 Enforcement Notice was reasonable and proportionate.
8. The Site's EMS does not adequately identify or minimise pollution risks from waste storage and treatment. It also fails to demonstrate how end-of-waste criteria are met, or to include procedures for classifying waste before it is moved between activities onsite, or to identify and minimise the risks associated with the activity. EMS Version 11.0, submitted in response to the Enforcement Notice, remains materially similar and equally deficient in these respects.

9. The Permit does not authorise the treatment of trommel fines classified under EWC codes 19 12 11*/19 12 12 in the wash plant. No documentation shows that the Environment Agency intended to authorise this activity. In fact, documents from the variation application contain misleading or inconsistent descriptions of the waste types proposed for treatment.
10. The Enforcement Notice meets the requirements of Regulation 36(2) of the EPR, clearly stating the contravention and required remedial steps.
11. The doctrine of estoppel does not apply in environmental regulation, and in any event no clear representation was made by the Environment Agency authorising the activity.
12. Therefore, as an environmental regulator with duties to protect the environment by enforcing the conditions of environmental permits, the Environment Agency respectfully submits that the appeal should be dismissed, and the Enforcement Notice should be affirmed in full.

14 October 2025