

CW5 6DB, NICK BROOKES

APPEAL REFERENCE APP/EPR/684

Appeal by Nick Brookes against an Enforcement Notice issued under Regulation 36.

APPELLANT'S SUBMISSIONS AS TO COSTS

Numbers in square brackets below are references to the document references in the Core Document Library

COSTS

1. The conduct of the EA has been unreasonable in that:
 - 1.1. the EA refuses to countenance the interpretation of the permit in the context of its background history, contrary to the ambiguities and uncertainties created by a plain textual reading of the permit. This is not in accordance with contemporary legal interpretation.
 - 1.2. If the EA had read the background material then it would have realised that the permit should be interpreted on the basis that material from the A1 site can be moved and washed on the A2 site, this being the heart of the EA's complaints.
 - 1.3. The EA refused to consider repeated representations from Mr Muia's firm about the background material (see paras.53-59 of JS' proof), persisting in its objection that "no documents demonstrate with any degree of confidence that the EA intended to authorise the treatment of mixed waste trommel fines through the wash plant" and that there was a "logical" interpretation of the permit taken in isolation. (No one was expecting Ms Smith to read "the entire compliance and permitting history" (see her proof at para.34).)
 - 1.4. There is no legitimacy in the new suggestion that 'trommel' fines are inevitably a 19 code waste, requiring mid-process testing on this site to establish whether or not the material is a code 19 12 11* waste or otherwise.
 - 1.5. The EA has sought to support its Notice by making unsupported assertions as to "risk" without providing any scientific assessment or the application of any evidence base (see for instance the proof of Ms Smith at para.29), even though (i) there are plenty of delivery notes and test results for it to interrogate and (ii)

it could easily have taken its own samples on- and off-site. This is a practice which is contrary to the Regulators' Code and which should be discouraged by an award of costs. The safety of the trommel material used in the wash plant and also of the WRAP products are assured by the waste acceptance procedures and testing undertaken at the end of the process, results which the EA has either interrogated or not requested.

- 1.6. The EA's position gives no weight to the regulation by the EA over 12 or so years where no such 'trommel fines' issues have been taken as are now taken. The EA has attached no weight to the ISO audited status of this site. In short, the EA has turned the clock back right back to where the parties were when the wash plant was introduced on site.
- 1.7. The uncertainties in the wording of the Notice are objectionable, which 'misfires'. The search for an (unpublished) "positive steps" approach (proof of JS at para.21), leading to reliance on condition 1.1.1 has been misguided. A direct targeted Notice alleging breaches of condition 2.1.1 would have been fairer to A (and easier for the inspector).