

The Hub

NRW Suspension Notice

TTH Summary Statement – 08.12.20

The Treatment Hub Limited [TTH] is currently unable to function due to the need to comply with a suspension notice issued by NRW. The suspension notice was issued as NRW considered TTH operations presented an environmental risk from sending hazardous waste to unsuitable sites. It is our firm contention that the notice is fundamentally flawed on both procedural and technical levels.

TTH has been unable to function since the issuing of the first Suspension Notice on the 15th July 2020. There has been extensive correspondence with NRW from the date of the first notice through to the issuing of an appeal notice on the 16th September 2020. Copies of the relevant correspondence is provided in the folder 'Relevant Correspondence Prior to 16.09.20 – Excluding Substantive Response 11.09.20'.

TTH has engaged Burges Salmon [BS] to act on our behalf. BS has submitted letters and other correspondence and has engaged with Jane Chapman of NRW in discussions relating to the notice. Copies of this correspondence is provided in the folder 'Correspondence with Jane Chapman'.

TTH has provided a comprehensive response on the 11th September 2020 to the points raised in NRW's letter dated 27th August 2020. This response is provided in the folder 'Substantive Response to NRW letter 11.09.20'.

Relevant correspondence subsequent to the issuing of the appeal notice is provided in the folder 'Relevant Recent Correspondence'.

TTH has produced a summary statement in 'bullet point' format for ease of reference. This is provided below.

Background and History:

- TTH was incorporated in 2013 to provide a much-needed recycling capability for the South Wales market in particular. The decision to form the company followed site remediation works carried out by Envirotreat Technologies Limited [ETL] at a site in Llanelli, where it was realised that there was no facility of this nature in South Wales and therefore such a facility was badly needed to service the Welsh market. At the time the only option for any soils requiring off-site disposal was to ship to landfill sites in England involving significant costs which rendered projects non-viable in most cases. This particularly applied to sites in Swansea for example, where there was (and still is) a requirement for materials to be removed from site as a legacy of South Wales industrial heritage, necessitating off-site disposal of surplus soils generated.

It was decided that ETL employees would manage the TTH operations with intention of imparting their specialist knowledge gained over 20 years in contaminated land remediation. This specialist knowledge and experience has ensured that TTH has operated professionally and with due cognisance to the necessary protection of the environment.

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In this respect it should be noted that ETL has carried out over 150 on-site remediation projects to date with the full support of the regulators (including several projects regulated by NRW).

These projects have included both on-site treatment and effective management of soils on site. In a number of cases we have also controlled the offsite disposal of waste soils through effective and professional waste classification processes in accordance with WM3 requirements.

It is clearly evident therefore that TTH senior staff have the necessary qualifications and experience to effectively manage TTH and to protect the environment. All senior staff are qualified chemists which is essential to manage such a facility and to effectively understand and implement the requirements of WM3.

- At the time of the TTH's incorporation in 2013, ETL was in discussions with Tata Trostre regarding the acceptance and processing of filter cake from their Llanelli facility. Tata Trostre was very keen to promote recycling as it was necessary for the Trostre operation to ensure that they were seen to be promoting recycling from a group perspective (this was essentially to demonstrate long term viability of the plant against competing European facilities in this respect and it was seen as a very important exercise). Accordingly, Trostre wished to progress a recycling option (at that time material was sent for disposal at landfill in Shropshire) for the filter cake with ourselves, which prompted a need for a local facility for this purpose. The recycling approach would have involved the use of ETL's proprietary E-Clay Stabilisation technology to convert the filter cake material into a recycled material for use in bricks etc (producing a product). The initial permit ZP3393NJ was primarily designed for this purpose with the capability to also process and/or treat soils if required. In reality the Trostre waste stream did not materialise and the emphasis of TTH, as a natural course of events, became focused primarily on the processing and recycling of soils.

The first contract that TTH entered into was for the processing of soils from the Hitachi Rail Facility in Swansea. These soils were fully processed and recycled for a number of applications utilising the appropriate regulatory protocols. The processing and recycling of these soils won an award from the waste management industry (Chartered Institute of Waste Management - CIWM).

- Since TTH's inception in 2014, TTH has processed and recycled significant quantities of soils for the full benefit of the South Wales market. As stated repeatedly in our comprehensive response to NRW's letter dated 27th August 2020, we have carried out minimal, if any, treatment of these soils as there has been no requirement to do so – in this respect treatment has only previously been carried out where there has been a demonstrable need and/or for a specific purpose i.e. recycling. This is for the reasons stated in the response that on receipt the soils are assessed utilising a range of on-site testing and analysis by an accredited laboratory to provide confirmation as non-hazardous by WM3.

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Operational:

- The operation of TTH over the last 5 years has fundamentally not changed in relation to the assessment and recycling of soils. It is therefore not understood why NRW cannot recognise or seemingly acknowledge the obvious premise that we do not treat soils that do not require treatment.

The original permit and associated EMS focused primarily on the treatment of filter cakes as summarised above; the EMS was not sufficiently detailed to deal with the requirements of recycling contaminated soils and did not reference the inherent heterogeneous properties of soils. This important point was appreciated and understood by Paul Gibson (a more experienced officer who attended the facility Dec 2019) at the time of his visit and by previous NRW officers reviewing our operation over the past 5 years however it appears not to have been taken forward since that time.

To illustrate the point, even as recent as the visit on 2nd July 2020, one of the attending officers asked our Site Manager ‘where is your treatment area?’ The Site Manager was not given the opportunity to either discuss the matter or explain why a treatment area was not required at the time of the visit. This was further compounded by the reluctance of the attending officer(s) to enter into any dialogue with our Site Manager relating to operational activities, notwithstanding the fact that the Site Manager wanted to discuss the matter with the attending officer(s).

This included the need to confirm that only one week prior to the visit there was substantially less soil on site. Photographs were taken on Friday 25th June by the Site Manager showing the site at this time. Subsequent to taking the photographs, TTH received circa 1,600 tonnes of soils during the intervening period – these additional soils were present on site at the time of the NRW visit on Friday 2nd July. These soils had been assessed as being suitable for sending out without treatment (classified as non-hazardous) and circa 1,500 tonnes were sent out between 2nd July and 15th July prior to receipt of the suspension notice. It is therefore fairly evident, that prior to and subsequent to the 2nd July, there were considerably smaller quantities of soils on site.

On the date of the visit on the 2nd July, our Site Manager intended to demonstrate this fact by showing the attending officer(s) photographs taken on 25th June. This was intended to also illustrate the operational dynamics of the facility. The Site Manager was fully prepared to discuss this however the attending officer(s) showed no willingness to view the photographs nor to engage or acknowledge this fact. This is referenced in the comprehensive response and was clearly very poor governance, particularly as a suspension notice was issued shortly afterwards with no further discussions on the subject. The suspension notice was issued without any forewarning, neither verbally on the day of the visit or prior to issuing the notice. In fact NRW made it very clear that the Site Manager and COTC were not required onsite on the day of the visit.

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- There appears to be a fundamental misunderstanding as to the accepted heterogeneous properties of soils and equally the fact that the waste classification attributed at source, can change by virtue of unintentional mixing of the soils through excavation on site, loading on to lorries and transporting to TTH. This is reflected in the fact that soils and stones are regarded as 'mirror entries' for EWC classification purposes (i.e. they are classified as either 17.05.03 or 17.05.04). On receipt of soils at TTH, the necessary pre-acceptance procedures are implemented and the soils are predominantly shown to be non-hazardous at this point. This is reflected in the subsequent processing of the soils (where required) in order to comply with the requirements of the subsequent receiver site for the material. *NRW have not entered into any dialogue with TTH where this is discussed.*

There is absolutely no point in treating soils that do not require treatment, simply because the existing permit refers to treatment – to reiterate the emphasis on treatment in the EMS relates to the original requirement for the treatment of filter cake as previously explained.

As stated in the response, we cannot understand why NRW cannot accept this point as it is custom and practice within the industry. This is further compounded by a statement to the effect that we should reject and return the (hazardous) soils to the point of origin if they are non-hazardous on receipt (i.e. not as described by the waste consignment note). This is clearly illogical and non-sensical.

- The recurring point that NRW keep making is that we are required to treat all soils which bears no relation to what occurs in practice. If the soils have been assessed and classified as non-hazardous by TTH on receipt, what logic presupposes that we would endeavour to make them hazardous as implied by the officer in question (as this would appear to the fundamental 'justification' for issuing the suspension notice). The officer takes this a stage further by implying that the soils should be classified under EWC as an absolute hazardous waste and shipped as such irrespective of contamination concentrations. *This is fundamentally incorrect.*
- *TTH was issued with a suspension notice on 15th July 2020. TTH immediately questioned the validity of this notice and it was subsequently withdrawn. A second suspension notice was issued on 17th July which provided no further justification apart from clarifying that the risk to pollution appertained to hazardous waste being sent out from the facility in NRW's opinion. TTH reiterated that the notice was equally invalid. This remains TTH's position and has been the case for the last five – six months. NRW has provided no justification for the notice and it is clearly based on supposition and false premises.*

TTH has repeatedly refuted the arguments put forward by NRW for the suspension notice and have addressed all the points raised by NRW in our comprehensive response of the 11th September 2020.

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The suspension notice should have by definition included a detailed explanation of the perceived risk of pollution. It was therefore incumbent on NRW to provide same. In this respect a source-pathway-receptor model should have been provided for both the donor site (TTH) and the receptor sites. This has not been provided for either the donor or receptor sites.

The model promulgated by NRW is completely flawed, as it bears no relation to the potential risk of pollution at either the donor or the receptor sites. These are the sources in the model and there is a requirement therefore to identify the respective pathway and receptors at the respective sites. This is the accepted practice which ETL commonly uses and employs for on-site remediation projects, with the full knowledge of the regulators.

The pathway is clearly not the transporting of materials from the donor site to the receptor sites as implied by the officer.

- Furthermore, TTH does not understand how NRW can correlate a risk of pollution based on an assumed EWC absolute waste code as opposed to the actual risk of pollution associated with the nature of the material being shipped out from TTH. As stated, in all correspondence, TTH does not export hazardous materials from its site. Furthermore, it does not export any absolute hazardous waste materials. However, this point is constantly ignored by NRW based on an assumption that materials have been treated and not further processed which would mean the material would be assigned a hazardous/absolute hazardous waste code. *This lack of understanding is the root cause of the problem.* To reiterate, soils are assessed to be predominantly non-hazardous on receipt at TTH and are equally assessed prior to leaving our site to confirm their non-hazardous status. Processing / treatment is undertaken as and when required.
- *It is also the firm contention of TTH that NRW has not acted in accordance with their stated procedures and that the requisite due diligence was NOT undertaken before issuing the Suspension Notice. It can not be carried out after the issuing of the notice.*

Regulation Guidance Notes No 11 [RGN 11] provides guidance on enforcement powers. It is described in the summary as 'high level guidance to our staff on how to use enforcement powers at regulated facilities'. NRW further states that 'we [NRW] are publishing it so everyone can see our approach' and that 'it will help staff and operators identify issues we need to consider before deciding on the appropriate action'. The series of guidance notes are available for review / download on NRW's website.

NRW has argued that these guidance notes are 'out of date' and refer to the Environmental Permitting Regulations [EPR] 2010 as opposed to the Environmental Permitting Regulations [EPR] 2016. These guidance notes are nevertheless still in the public domain / referenced specifically on NRW's website. BS commented as follows in their letter of the 2nd September 2020.

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'First, you [NRW] state that RGN 11 is "out of date". It is important to be precise. It is our understanding that RGN 11 is still the extant Regulatory Guidance Note on Enforcement Powers and, as published guidance (not withdrawn), there is a legitimate expectation that NRW will not deviate from it without good reason. We acknowledged in our 14 August 2020 letter that RGN 11 did not expressly address the EPR 2016 and we asked if NRW would "readily accept" that the guidance in paragraph 3.45 about "justification of the judgement, demonstration of a reasonably likelihood of impact, based on clear evidence, within the area of expertise of the person making the judgement" applied as much to a judgement about the 'risk of pollution' as it would to a judgement about 'risk of serious pollution'. Your answer evades that straight-forward question. It is obvious (and, for the avoidance of doubt, fully accepted) that the threshold for a risk of serious pollution is a different threshold than for a risk of pollution, but in exercising its judgement, the same requirement for "justification of the judgement, demonstration of a reasonably likelihood of impact, based on clear evidence, within the area of expertise of the person making the judgement" must apply'.

Paragraph 3.36 of RGN11 states the following:

'There can be a risk of serious pollution even if the permit conditions are complied with. Compliance with the permit conditions is not a factor to be considered in deciding whether or not to issue a suspension notice'.

This statement is self-evident and equally applies to a risk of pollution. The key point being that the issuing of a suspension notice can not follow from a permit breach – the risk to pollution and the justification for a suspension notice risk has to be assessed / demonstrated as a stand-alone matter.

Paragraph 3.37 of RGN 11 incorporates the following statement:

'We need to be satisfied there is a risk of serious pollution to exercise these powers' as the serving of a suspension notice 'will have serious implications for the operator's business and therefore should not be taken lightly'.

This is another self-evident statement. It was therefore incumbent on NRW to carry out the necessary due diligence BEFORE taking any decisions in this respect. TTH has seen no evidence to support NRW's assertions and we have repeatedly stated that the suspension notices are invalid.

Paragraph 3.39 of RGN 11 states *inter alia* that NRW must 'say what that risk of serious pollution is'. NRW has implied that the TTH are sending out hazardous wastes which has been totally refuted by the TTH – NRW has NOT demonstrated the risk of pollution – see points above in relation to *inter alia* source-pathway-receptor modelling etc.

Paragraph 3.43 of RGN 11 further emphasises this key requirement and states the following:

'You [NRW] must be satisfied that there is a risk of serious pollution – that means that you will have to identify what the serious pollution is and why there is a risk of it occurring or continuing'. NRW has NOT identified what the risk of pollution is and why there is a risk of it occurring / continuing.

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Paragraph 3.45 has been cited by BS in correspondence with NRW (see above) but needs reiterating:

'Whether there is a risk of pollution / serious risk of pollution is a matter of judgement. You [NRW] will have to justify the judgement in relation to the seriousness and risk by showing the effects on the environment and health and demonstrate that there is some reasonable likelihood that these could have a long-term negative impact or a significant immediate environmental impact. You [NRW] will have to have clear evidence from which you make this assessment and be able to justify forming that view'.

TTH has not seen any justification to support the issuing of the suspension notice. BS has formally requested NRW *'to disclose the paperwork for the 'reviews and checks' carried out so that it [TTH] can understand the technical expertise of those involved and the degree of scrutiny and challenge that this decision was subjected to'*. This was requested on the 11th September and TTH has subsequently further requested this key information. To date TTH has not received any response to these requests.

- The letter from BS to NRW dated 2nd September 2020 makes further statements in relation to Regulation 37 of the EPR 2016 as follows – these points are highly relevant:

'Second, we appear to agree (and the EPR 2016 is clear) that there are two limbs to Regulation 37(5): first, there must be a contravention of an environmental permit condition and second, that contravention must involve a risk of pollution. Both limbs must be satisfied. Our client does not dispute that the first limb is satisfied (our client's substantive response will address the factors behind this in more detail). Our client's challenge to the Notice concerns whether there is, in fact, any genuine reason to believe that there is a risk of pollution. We understand from your letter than NRW accepts that there are two limbs and that both limbs need to be satisfied.

Third, a two-limb test would only be necessary if it is possible to have to satisfy one limb without satisfying the other. Therefore, a risk of pollution without a contravention of an environmental permit condition is not sufficient to serve a notice under Regulation 37(5) (noting of course that Regulation 37(1) remains open in such circumstances if the risk is serious). It must also be true that a contravention of an environmental permit condition without a risk of pollution is insufficient to invoke the powers under Regulation 37(5). However, the whole purpose of the environmental permitting regime is to authorise and control otherwise proscribed activities that inherently pose a risk to the environment. Therefore, one might argue that any contravention of an environmental permit condition poses a risk to the environment. Your letter comes close to arguing this point in the following passage: "When an operator fails to comply with the conditions of their Environmental Permit or fails to operate their facility in manner as authorised by those conditions, it presents a risk of that operation negatively impacting the environment through the absence of appropriate controls". If such an argument is being advanced, it is flawed. Such an argument would make the second limb of Regulation 37(5) superfluous and redundant, and that cannot have been the intention of the legislature.

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It is our case that the second limb, the requirement for establishing the existence of a risk of pollution, must require identification a real, specific and quantifiable risk. There are of course other enforcement options for a contravention of environmental permit conditions: suspension notices are reserved only for those cases where there is a specific risk of pollution arising from that contravention, of sufficient magnitude to justify intervention. Reading your letter in its totality, we anticipate that we are in agreement on this point.

Fourth, Regulation 37(5) requires an exercise of discretion. If (and only if) the two limbs are satisfied, Regulation 37(5) provides that NRW “may” serve a notice: it is not mandatory. The exercise of such discretion should be carried out in accordance with published guidance (if any) unless there is good reason to deviate. As you correctly note, RGN 11 does not expressly provide guidance on the exercise of Regulation 37(5) because it was last edited before the EPR 2016, but our client nevertheless has a right to receive the reasons for the decision, including the elements set out in paragraph 3.45 (justification of the judgement, demonstration of a reasonably likelihood of impact, based on clear evidence, within the area of expertise of the person making the judgement). Again, we hope this legal point is not in dispute.

If we are in agreement on these four points of law, then the issues between NRW and our client are reduced to a narrow set of points that remain in dispute: is there, in fact, a risk of pollution from the contravention of the permit (requiring a reasonable likelihood of impact, not just a theoretical risk); and did that risk justify, on an objective basis, the exercise of discretion to serve the Notice?

Please note that, in its substantive response, our client will argue that there is no genuine risk of pollution. Without prejudice to the arguments that our client may wish to present in its detailed submissions in due course, our client asks us to point out that it has been operating in the same manner for over 5 years, with the full knowledge of a number of NRW officers over the period, none of whom had expressed any concern that the operation posed the risk of pollution that is now relied upon in justification for the service of the Notice. Our client acknowledges that the site is operated in a different manner to that set out in its permit application (something which is being addressed through the permit variation) because the nature of site operations changed to provide for soil management from remediation projects alongside treatment operations. Our client acknowledges that it has a responsibility to keep its permit up to date (and is now doing so). However, previous NRW officers have understood the evolution of the business operations and the valuable role that this site serves in providing South Wales with a centre for soil management and processing alongside its original treatment operations, and in doing so promoting a circular economy. Therefore, although the overall maximum tonnage limit has been exceeded throughout this period, it is the nature of the material on the site that is important when considering the risk posed. As such, our client will argue that the suggestion that “the quantity of waste is a fundamental factor” is simply not correct and ignores what is actually happening on site. It is our client’s case that it has at all times retained effective control of the materials within the facility.

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As such, our client's argument is that, once its process is properly understood, it will become clear to NRW that there is no genuine risk of hazardous wastes leaving the facility for receiving sites, which is the one and only justification given for the service of the Notice (the risk of pollution put forward by NRW being a risk at receiving sites). It is also our client's case that previous NRW officers responsible for the site have understood this: it is noteworthy that following Paul Gibson's site inspection in December 2019 when volumes on site were greater than those at the time of the Notice, the conversation focused on varying the permit to ensure that the permit reflected activities on site, rather than talk of suspension notices arising from concerns about a risk of pollution. It is notable that there is nothing in NRW's explanation to date that explains why the operation is considered to be a risk now when it has been operating in this manner for many years.

Our client's substantive response will elaborate on these submissions but our client wanted us to provide this summary in advance to maximise the opportunity for NRW to consider its position in good time before the deadline for the issue of appeal proceedings'.

- It appears to TTH that NRW has issued this notice without fully understanding these key points. Alarminglly NRW has made no effort to discuss these points at all with representatives of TTH (or to equally understand) prior to issuing a suspension notice. The rationale for issuing the notice is fundamentally flawed for the reasons stated in this summary and in all previous correspondence with NRW.

As should be fully appreciated, the issuing of a suspension notice has severely impacted our business and inevitably damaged our reputation within the industry. TTH take issue with the glib comment 'we do not take this lightly' as the ramifications for our business are significant. The reluctance of NRW to enter into meaningful dialogue prior to issuing the suspension notice further supports this notion. TTH does not see how this is consistent with the stated intent of the Welsh Government to promote zero waste where practical to do so and equally how this is viewed as consistent with waste hierarchy principles. NRW should be supporting responsible recycling businesses such as TTH.

Prior to issuing of the suspension notice, TTH was highly regarded within the industry and provided an essential service. Many of TTH's clients have used external experienced environmental consultants to attend site and undertake audits prior to and during acceptance of their waste.

- We are also concerned with the actual/potential damage that was caused to our business by placing what we consider to be sensitive documents on the public portal. These were placed without context and did not include appropriate responses. It was only when we formally raised the matter in our e-mail of the 22nd October 2020 that this matter was addressed resulting in our responses being uploaded to the NRW portal. NRW has a duty to place *all* documentation appertaining to the suspension notice on the portal in accordance with Regulation 46 of the EPR 2016 – NRW was clearly in breach of this regulation until late October 2020 – over three months since the suspension notice was issued.

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TTH took further issue with the subsequent failure of NRW to upload the correspondence dated 22nd October to the portal. This was only uploaded after repeated requests from TTH. It transpired that the e-mail from TTH to NRW was not included as part of the e-mail trail (the full e-mail trail included the e-mail from TTH as the most recent e-mail) – this was later explained as an ‘administrative error’ by NRW. The whole e-mail trail was subsequently uploaded.

This was poor governance and has only compounded the current situation with TTH in terms of reputation and related matters.

- On a similar note, TTH takes significant exception to the issuing of a letter to our landlord which not only involves the landlord in this matter by implication but could seriously jeopardise the continuity of the business should the landlord not be willing to renew our lease or grant a new lease as a consequence. TTH are currently in discussions with our landlord regarding relocating our operations in a larger building on the same site, which is subject to the granting of a new permit application submitted in June 2019.
- It should be reiterated that the problems caused to TTH by the quite frankly, ridiculous amount of time that NRW has taken to process a permit variation which was required *at the specific instruction of NRW* to address the divergences between the historical permit and the activities undertaken at TTH in practice. This required permit variation was required to update the permit to reflect current activities at TTH (in other words to bring the permit in alignment with current activities).

TTH has been formally advised on the 8th December 2020 that our permit variation is now duly made – Revision 4 of the Supporting document is provided in the folder ‘Permit Variation – Revision 4 – Supporting Document’.

This equally applies to our NEW permit application, which is equally at the duly made stage notwithstanding the original submission was made in June 2019.

Under the circumstances and bearing in mind that TTH has been operating under significant constraints since December 2019 (as stipulated by NRW), TTH does not understand why the officer in question simply did not wait for the variation to be issued. The officer in question knows full well that a variation had been submitted in February 2020 and her actions were clearly precipitous under the circumstances. Furthermore, TTH has not caused any risk of pollution since inception and was clearly not considered to be causing a risk of pollution in late 2019 (or at any time previously) so why now, particularly as the volumes of materials at TTH are considerably lower than those identified in the latter part of 2019. The permit variation would have clearly negated the point made regarding the volumes, which incidentally has nothing to do with the nature and classification of the materials leaving the hub (which are fully assessed prior to exiting the site). To reiterate, TTH does not send out any hazardous/absolute hazardous materials based on WM3 assessment – the assertion that we are sending out hazardous/absolute hazardous soils based on an assumed EWC coding is fundamentally incorrect.

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This is the fundamental flaw in NRW's position. Contaminated soils are NOT absolute entries in the EWC list. Therefore, how can they then assume an absolute hazardous waste code, which is what the officer is inferring, if they have been assessed as being non-hazardous on receipt at TTH (and not requiring treatment as a result).

- The issuing of the notice could and should have been avoided by what most people would consider to be good governance i.e. an implicit requirement of the regulator to fully understand the activities undertaken at TTH and to engage appropriately before taking any action of this nature. NRW has an obvious duty of care to carry out the appropriate due diligence in relation to the actual activities being carried out at TTH prior to issuing a suspension notice, which has significant ramifications on a business.

To reiterate, the officer(s) visiting the site on the 2nd July seemingly had no intention of discussing the situation with the Site Manager / COTC despite his request to do so (in fact he had been informed in a previous email that neither he or the COTC (Phil Rees) were required on site during the proposed visit). The Site Manager would have explained the activities being carried out on-site and the nature of the stockpiles had he been given the opportunity to do so. This is clearly very poor governance and is not how a regulator should conduct itself.

- TTH also takes exception to the repeated misrepresentations of comments attributed to the Site Manager in NRW's letter of the 27th August.

The facts are as follows:

- NRW has not followed their own stated procedures and guidelines
- NRW did not request TTH management presence at the inspection. We attended anyway
- NRW refused to discuss the findings of the inspection
- NRW had not collated full details on TTH operations until AFTER the issuing of the suspension notice
- NRW deem the operation to present a risk / significant risk to human health and the environment yet allow it to continue with their knowledge for over five years. The change in approach was triggered by a change in officer and thus is based on differing interpretations and not different evidence.

It has always been our opinion that NRW have acted prematurely / precipitously and without full knowledge of TTH operations. No evidence has ever been provided that the suspension notice was justified. Indeed, the first suspension notice was rescinded due to significant flaws identified to them by TTH. The reissued notice (current suspension notice) has not rectified these flaws and thus our view remains that it is invalid. We have raised this numerous times with NRW but have received no constructive responses. At no point has NRW sought to discuss their view of events that supports their decision. The suspension notice is based on assumptions and a nebulous, qualitative view of risk, which clearly does not meet the requirements of statutory guidance (CLR11/ LCRM) or their own internal guidance (RGN11).

It appears NRW have assumed soils at TTH MUST be treated because such treatment is allowed under our permit. However, just because treatment can be undertaken does not mean it is mandatory. Treatment is undertaken as and when required.

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NRW have assumed that, due to the volumes of soil stored in TTH, we are unable to adequately treat soils. This overlooks the fact that treatment is rarely required.

NRW have then referenced document HWR06. They argue that this document shows partially stabilised soils to be an absolute hazardous waste. They then argue that removal of hazardous waste to disposal sites has resulted in a potential pollution risk and that this risk can only be mitigated through suspension of TTH activities. There are several logical and technical issues with this argument:

- HWR06 does not apply to soils.
- As stated above, TTH rarely undertakes stabilisation. As such this does NOT apply.
- NRW has **WRONGLY** conflated waste classification with environmental risk.

By their actions, NRW have concluded that a risk of pollution has arisen due to volumes of soil at TTH. This is based upon a risk that hazardous waste leaves the site for an unsuitable destination.

- NRW has not presented any evidence that hazardous wastes have left the site
- NRW has not presented any evidence that hazardous wastes are stored in a single stockpile
- NRW has not presented any evidence that wastes have been treated, or partially treated
- NRW has not presented any evidence that pollution has occurred. Their case is theoretical and based purely on false premises

For clarity, TTH does not dispute that volumes are above the permitted level. This has been the case for several years and NRW has been fully aware of the situation. Several audits have taken place over this time-period and NRW has requested volumes be reduced to 5,250t. No deadline was ever set, and we were progressing towards this through consistent volume reduction. The current quantity on-site is within the stated tonnage within the permitted variation.

However, NRW's own guidance is clear that breach of permit conditions is not equivocal to pollution risk.

Risk of pollution is defined as being harmful to human health or the quality of the environment. We have not been presented with evidence of this. In the event that hazardous soils were exported from TTH, which we deny, it is not self-evident that hazardous soils would present such a risk. The risk to human health and the environment is based on a source-pathway-receptor risk assessment process, as set out in CLR11 and LCRM (the guidance change since issue of the suspension notice but this element remains unchanged).

RGN11 and LCRM (CLR11) requires that judgement be made regarding the risk to human health / the environment. NRW must justify their decision by showing the effects on the receptors. This judgement must be made on clear evidence. NRW guidance stipulates that, where forming such a judgement is not within the officer's area of expertise, they should seek advice. BS has sought confirmation as to whether the officer is suitably qualified and whether due consultations were made. We were informed that no consultations were made.

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Based on discussions with the officer, where she has openly stated that she has limited knowledge in this area and based on the source-pathway-receptor linkage provided in response to the withdrawn first suspension notice, it is clear the officer does not have the requisite expertise in this area. Such expertise is presumably available within NRW, but we were informed that no consultation took place. To this end, it is evident that no source-pathway-receptor model that conforms to national guidance has been produced and that no 'clear evidence' was available upon which to support this. Such clear evidence could take the form of a quantitative comparison of soil results for exported material (which NRW has held since July 2020) with risk-based screening values, or on-site monitoring to show ongoing pollution of the environment. To our knowledge neither has been undertaken and thus there is no technical basis for the judgement. It is purely assumption.

NRW reported on their review of validation testing and duty of care documentation in September 2020. The review does not present evidence of hazardous waste having left the site, despite this being their contention in the July 2020 suspension notice. It is also noteworthy that NRW were reviewing the evidence pertaining to the suspension notice two months after issue of the suspension notice. This is not in accordance with their own procedures. Therefore, despite reviewing data for two months after issuing the suspension notice, NRW have not been able to provide evidence to support their case.

In summary, TTH maintains the position it has repeatedly stated from the initial issuing of the suspension notice in mid-July that the suspension notice was and is invalid (as there is no risk to pollution as the soils are demonstrated to be non-hazardous prior to leaving site). The rationale for NRW's assertion is fundamentally flawed for all the reasons stated in previous correspondence and within this summary. It is of great concern to TTH that this action was taken without due consideration or without carrying out the necessary due diligence and fully establishing the facts by engaging and discussing same with the site representatives. The issuing of the suspension notice was precipitous and unjustified and has severely impacted our business and reputation.