

**IN THE MATTER OF THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES)
REGULATIONS 2016**

PINS Ref	3299669
Site	Building 2, Westfield Industrial Park, Waunarlwydd, Swansea
Appellant	The Treatment Hub Limited
Respondent	Natural Resources Wales

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1.0 Introduction

- 1.1 The Treatment Hub Limited (“**Appellant**”) is the operator of a regulated installation under an environmental permit for the treatment and processing of granular hazardous and non-hazardous wastes, primarily filter cakes and contaminated soils. It is based on a CL:AIRE Code of Practice¹ hub and cluster model which is focused around a batch style process treating consignments of contaminated soils in individual separated stockpiles. A copy of the environmental permit (Ref: EPR/ ZP3933NJ) (“**the Permit**”) is reproduced at [**Annex A**].
- 1.2 The Respondent, Natural Resources Wales (“**NRW**”), is the regulator in Wales for the purposes of the Environmental Permitting (England and Wales) Regulations 2016 (“**EPR**”) [**Annex R**]. NRW has existed since 1 April 2013, when the Welsh Government devolved functions of the Environment Agency and the Forestry Commission were transferred to it, along with the functions of the Countryside Council for Wales.
- 1.3 The regulated facility is located at Building 2, Westfield Industrial Park, Waunarlwydd, Swansea SA5 4SF (“**the Site**”). A site plan is provided in [**Annex B**].
- 1.4 The Environmental Permit contains a range of conditions the Appellant is required to comply with to protect the environment, minimise and reduce the risk of pollution and achieve the objectives of UK and European legislation. Failing to comply with permit conditions is an offence under Regulation 38(2) of EPR and can pose a risk of pollution from wastes being incorrectly managed or controlled.
- 1.5 To change or amend any activities or processes in a permit the Appellant must first apply to vary the permit to enable the appropriate assessments to be undertaken. This will include an assessment of an activity’s legality and technical suitability. An operator (as defined by Regulation 7 of EPR) **must not** commence an activity until it has been assessed and authorised.
- 1.6 During inspections (most notably 29th October 2019 and the 2nd July 2020) a number of significant permit breaches were identified, and it was established that the Appellant was not operating the facility in the manner authorised by the Permit. Waste was stored in volumes that exceeded the permitted limit to an extent where the main stockpile filled much of the building and prevented access to the lower section. The quantity of waste on site was such that it restricted the Appellants capacity to treat waste in segregated batches and manage wastes, including hazardous wastes², in the manner authorised by the Permit. Failing to store, treat and manage hazardous and non-hazardous waste correctly can pose a risk of pollution from these wastes leaving the facility and entering the environment at the receiving sites.
- 1.7 To address the issues initially identified in October 2019 the Appellant was requested to reduce the volume of waste on site, store waste in segregated batches and to submit to NRW a plan on how this would be achieved. A permit variation application was also required to reflect the current operations and enable the appropriate assessments to be undertaken on the activity. The actions and timeframe for their completion was agreed with the Appellant in a site meeting on the 16th December 2019. (Report ID: CAR_NRW0036112) [**Annex F**].

¹ The CL:AIRE Definition of Waste: Code of Practice (DoW CoP) <https://www.claire.co.uk/projects-and-initiatives/dow-cop>

² “hazardous waste”, subject to paragraph (7)—in relation to Wales, has the meaning given in regulation 6 of the Hazardous Waste (Wales) Regulations 2005(13);

- 1.8 On the 29th January 2020, a plan and permit variation application were submitted to NRW. The plan and supporting information were reviewed by NRW and concluded that the Appellant had not provided sufficient information to satisfy the actions stipulated in the inspection report. The Appellant had also not demonstrated that measures were being taken to work towards complying with the existing permit limits and conditions.
- 1.9 To gain a clearer understanding of the quantity and composition of waste throughput at the site, NRW served two EPR Reg 61 Notices. The first notice issued on the 13th March 2020 requested copies of the duty of care paperwork for imported and exported waste. The second notice issued on the 10th June 2020, requested information on the sampling and validation results for waste being exported. A review of the submitted information highlighted several additional areas of concern.
- 1.10 On the 2nd July 2020, NRW officers undertook an inspection to determine the volume of waste on site at that time. It was evident that the quantity exceeded the 5,250 tonnes limit and this was confirmed by the Appellant who estimated there to be 9,000 to 9,500 tonnes on site. Whilst the quantity of the waste was estimated to be less than the previous inspection (October 2019), visually the waste reception area had been further filled and the capacity to keep waste segregated further restricted.
- 1.11 In light of the quantity of stockpiled waste, the inability to store and treat waste in the manner authorised by the permit, the hazardous nature of the waste accepted and the issues highlighted, NRW considered that the waste exported from site had the potential to pose a risk of pollution to the environment at the receiving sites. NRW considered it appropriate and proportionate to restrict the further acceptance of waste until the existing stockpiles were reduced to permitted limits.
- 1.12 On the 17th July 2020, NRW issued the Suspension Notice under Regulation 37(1) and (5) as it considered that the Operator was in breach of their environmental permit conditions and that the contravention involves a risk of pollution. The Notice **partially** suspended the Permit and stipulated specified steps to be taken to lift the suspension.

The Suspension Notice:

- partially suspended waste management activities at the site, namely the acceptance of waste;
- outlined specified steps the Appellant must take to remedy the contravention of the permit, namely reducing the quantity of waste stored on site to permitted limits; and
- prior to removal confirm with NRW the waste classification and destination.

If the Appellant complies with the specified requirements on or before 31st January 2021, NRW will withdraw the Suspension Notice.

- 1.12 This appeal relates to a decision by NRW to issue a suspension notice under Regulation 37(1) and (5) of the Environmental Permitting Regulations 2016 (“**the Notice**”) [**Annex N**].

2.0 Background

2.1 The Permit

- 2.1.1 It is a requirement under EPR that any facility that accepts, stores, and treats waste should hold an environmental permit or exemption. The type of permit required depends on the level of risk the activity poses to the environment or

human health. Any facility where the disposal or recovery of hazardous waste exceeds 10 tonnes per day is considered higher risk and requires an A1 activity Installation permit.

- 2.1.2 Environmental permits contain a range of conditions that an operator must comply with to achieve the objectives of UK and European legislation. Some conditions will be detailed with specific limits, whilst others are outcome focussed and require the holder to follow listed operating techniques or management systems. It is the operator's responsibility to understand the limitations of their permit and to make changes to the permit if required. Only once changes have been assessed and authorised are operators permitted to undertake the activity.
- 2.1.3 The Permit issued to the Appellant allows the operation of a Hazardous and Non-Hazardous waste treatment facility. The Appellant is permitted to accept wastes as detailed in Schedule 2, Table S2.2 of the Permit **[Annex A]**. These are primarily filter cakes and contaminated soils, for treatment using modified clays, (or as referred to in the procedures as E-Clays), which incorporate reactive agents to chemically immobilise materials within the clays. This treatment process is known as stabilisation or solidification. Chemical and Cementitious additives (as detailed in Schedule 2, Table S2.1 of the Permit **[Annex A]**) can also be used in the process. Each batch of waste accepted is to be tested prior to treatment, and the additives and process tailored depending on the chemical and physical properties of each batch.

2.2 Operating Techniques

- 2.2.1 As well as the permit conditions, there are specific operating techniques that an operator must follow and are specified in Schedule 1, Table S1.2 of the permit **[Annex A]**. Failing to comply with these operating techniques is a breach of permit condition 2.3.1(a). One of the documents listed in Table S1.2 of the Permit is 'Application supporting document SOL0113ESP01' **[Annex C]**. This document was submitted by the Appellant and assessed as part of the permit application. The procedures and mitigation measures stipulated are those that have been identified and deemed necessary by the Appellant. The control and mitigation measures stipulated were fundamental in the assessment of risk and the decision to issue the permit.
- 2.2.2 The EPR guidance "How to comply with your environmental permit", produced by the Environment Agency and adopted by NRW is also listed under operating techniques. This guidance explains the conditions and rules of the permit and how to comply with them. It is the responsibility of the operator to understand what this entails and to ensure that all staff are aware and trained in requirements and limitations of the permit. A copy of this guidance along with the permit must be kept on site so staff can refer to it when needed. The "How to comply" guidance is listed in **[Annex D]** with other relevant guidance.

2.3 Environmental Management System

- 2.3.1 In addition to the operating techniques, the Appellant is also required to manage and operate the activities in accordance with a written Environmental Management System ("**EMS**") (Permit condition 1.1.1.). **[Annex E]**.
- 2.3.2 EMS is a live document and is developed in line with the requirements of "How to comply with your environmental permit" guidance. The documents and procedures

set out in the EMS will form part of the Permit under condition 1.1.1. Prior to commencing operations, the EMS was agreed with NRW and any changes to the EMS must also be submitted and agreed in writing with NRW.

2.3.3 The Appellant's EMS contains the risk assessments and mitigation measures for the activity and stipulates the procedures the company will implement to minimise any risk. To comply with Permit condition 1.1.2, records must be kept that demonstrate compliance with the EMS and the procedures within it. The procedures listed in the EMS include:

- TH 1.0 Waste Pre-Acceptance
- TH 1.1 Waste Acceptance
- TH 1.2 Waste and Material Storage
- TH 1.3 Document and Data Control
- TH 1.4 Purchasing
- TH 1.5 Chemical Stabilisation and Immobilisation
- TH 1.6 Validation Process
- TH 1.7 Control of Records
- TH 1.8 Training
- TH 1.9 Security
- TH 1.10 Emergency Procedures
- TH 1.11 Complaints

2.3.4 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. The Appellant recognises and acknowledges this in section 3.3.7 of the operating technique SOL0113ESP01 where it states:

“All aspects of the operation will be managed in accordance within a formal Environmental Management and Quality Plan. The plan will define all activities throughout the lifecycle of the treatment process (i.e. pre-acceptance, acceptance, treatment, validation and final off-site transfer). The Environmental and Quality Management system will be designed to meet the requirements of the Environmental Permitting Regulations and associated pollution prevention guidance. The EMS has been designed to ensure

- *The identification of all foreseeable environmental impacts and risks that The Treatment Hub activities pose to the environment.*
- *Prevention or minimisation of any identified risks to practical minimum.*
- *Legal Compliance assurance.*
- *Activities at the site will be managed in accordance with the management system, which will be subject to continuous review, audit and improvement. Specific detailed management system reviews will take place if there is a significant change to the activities, following an accident or if a non-compliance is found.*
- *Furthermore, the whole management system will be subject to annual external audit by competent third parties.*
- *The key aspects of the EMS for the site will include: Preventative maintenance; Operator requirements; Training and competence; Emergency response and incident management; and Monitoring, measurement and reporting.*
- *The identification of all foreseeable environmental impacts and risks that The Treatment Hub activities pose to the environment.*

- *Prevention or minimisation of any identified risks to practical minimum.*
- *Legal Compliance assurance.*
- *Activities at the site will be managed in accordance with the management system, which will be subject to continuous review, audit and improvement. Specific detailed management system reviews will take place if there is a significant change to the activities, following an accident or if a non-compliance is found.*
- *Furthermore, the whole management system will be subject to annual external audit by competent third parties.*
- *The key aspects of the EMS for the site will include: Preventative maintenance; Operator requirements; Training and competence; Emergency response and incident management; and Monitoring, measurement and reporting”.*

2.3.5 During compliance work NRW will identify non-conformances that are symptoms of underlying problems and seek to identify the root cause of the issues. In most cases the root cause of permit breaches is poor management. The Appellants failure to follow the procedures and control measures listed in their EMS has resulted in them accepting and storing waste in quantities, and in a manner, that has breached permit conditions and presented a risk to the environment.

2.4 Regulation and Compliance with the Permit

2.4.1 Failure to comply with or to contravene an environmental permit condition is an offence under Regulation 38(2) of the EPR.

2.4.2 Breaches of a permit are scored against the Compliance Classification Scheme (“**CCS**”). CCS is a means, developed by the Environment Agency, and adopted by NRW, for assessing and classifying the seriousness of a non-compliance. The non-compliances with permit conditions arise from the regulating officers’ compliance assessment work at NRW permitted sites, and are documented in Compliance Assessment Reports (“**CARs**”). The CCS guidance, “Recording non-compliance using the Compliance Classification Scheme” [**Annex D**] was issued by the Environment Agency (including the then Environment Agency Wales) on 26 March 2013. It states within the CCS guidance (page 6):

“Permit conditions are written to protect the environment and to help us to fulfil our statutory duties. Breaching a condition means that an activity might have a negative impact on the environment... we categorise a non-compliance based on the level of impact it might have. We do this by deciding what level of impact is reasonably foreseeable, were the non-compliance to result in an environmental incident.”

2.4.3 All permit non-compliance (except that relating to amenity) is categorised on its **reasonably foreseeable impact** on the environment, and not actual impact.

The CCS classification is as follows:

- **Category 1** – major, serious, persistent and/or extensive impact or effect on the environment, people and/or property.
- **Category 2** – significant impact or effect on the environment, people and/or property.

- **Category 3** – minor or minimal impact or effect on the environment, people and/or property
- **Category 4** – substantiated incident with no impact.

2.5 Waste duty of care - code of practice

2.5.1 The duty of care legislation makes provision for the safe management of waste to protect human health and the environment. The code of practice (“**CoP**”) [**Annex D**] sets out practical guidance on how to meet waste duty of care requirements. It is issued under section 34(7) of the Environmental Protection Act 1990 (“**EPA**”) in relation to the duty of care set out in Section 34(1) of that Act [**Annex R**].

2.5.2 The duty of care applies to anyone who imports, produces, carries, keeps, treats, disposes or has control of controlled waste³ and is referred to as the waste holder. The waste holder must take all reasonable steps to ensure that, when waste is transferred to another party, it is managed correctly throughout its complete journey to disposal or recovery (definitions included in the COP).

All reasonable steps must be taken to:

- prevent unauthorised or harmful deposit, treatment or disposal of waste (section 3.1 of the COP)
- prevent a breach (failure) by any other person to meet the requirement to have an environmental permit, or a breach of a permit condition (section 3.2)
- prevent the escape of waste from your control (section 3.3)
- ensure that any person you transfer the waste to has the correct authorisation (section 3.4)
- provide an accurate description of the waste when it is transferred to another person (section 3.5 and 3.6)

2.5.3 Failure to comply with the duty of care requirements is a criminal offence. It is illegal to deposit controlled waste except under and in accordance with an environmental permit or a registered waste exemption and to treat, keep or dispose of controlled waste in a way that is likely to cause pollution of the environment or harm to human health.

Examples of unauthorised or harmful deposit, treatment or disposal include;

- operating illegal waste sites without the correct permit or appropriate exemption to accept or manage a particular waste;
- misclassification of waste as a non-waste or a waste that does not fit the written description and
- fly-tipping.

2.6 Duty of Care paperwork

2.6.1 When waste is transferred to another party, a written description of the waste is agreed and signed by the current and next holder. For non-hazardous waste this can be done using a waste transfer note and for hazardous waste a hazardous waste consignment note is used. The description of the waste must be accurate and contain all the information, the holder is reasonably in a position to provide, to ensure the lawful and safe handling, transport, treatment, recovery or disposal by subsequent holders.

³ **Controlled waste** is the term used for **waste** that is subject to regulation under the Environmental Protection Act 1990.

- 2.6.2 When a site receives waste, it must ensure the waste matches the written description and that the permit allows the acceptance of such waste. Under the Hazardous Waste Regulations an operator may commit an offence if they do not reject hazardous waste that arrives at site without a consignment note, with a consignment note that is incomplete or incorrect or is a non-permitted waste.

2.7 Waste classification

- 2.7.1 As part of waste duty of care, producers must classify the waste and identify its hazardous properties. The classification:
- must be worked out before the waste is moved, disposed of or recovered;
 - must be included on waste documents and records
 - determines the controls that apply to movement of the waste
 - is needed to identify a suitably authorised waste management option.
- 2.7.2 Guidance on the classification and assessment of waste (1st Edition v1.1) Technical guidance (“WM3”) **[Annex D]** provides guidance on waste classification. It is a comprehensive reference manual for anyone involved in producing, managing and regulating waste.
- 2.7.3 If a waste needs to be classified, the producer must identify the code(s) from the List of Wastes which is a catalogue of waste divided into 20 chapters. The chapters must be used in the correct order of precedence. The producer must identify if an assessment is needed and this is dependent on the type of code(s). There are four types of entry.
- wastes that may be hazardous or non-hazardous, known as ‘**mirrored hazardous**’ (“**MH**”) and ‘**mirrored non-hazardous**’ (“**MN**”) entries
 - wastes that are always hazardous, known as ‘**absolute hazardous**’ (“**AH**”) entries
 - wastes that are always non-hazardous, known as ‘**absolute non-hazardous**’ (“**AN**”) entries.
- 2.7.4 If a waste is classed under a mirrored entry, then an assessment of hazardous properties must be completed to determine if the waste is **mirrored hazardous** or **mirrored non-hazardous**. The assessment will include determining the chemical composition of the waste, identifying if the substances are hazardous or persistent organic pollutants, and assessing the hazardous properties of the waste. A code **cannot** be assigned until this has been done.
- 2.7.5 **It is worth noting that a mirrored non-hazardous waste, although not hazardous, can still contain pollutants that can enter the environment; they are just under the threshold to classify the waste as hazardous.**

2.8 HWR06: Classifying and coding wastes from physico-chemical treatment facilities

- 2.8.1 The guidance document HWR06 provides advice on how to classify and code wastes from some of the methods used to treat hazardous waste **[Annex D]**.
- 2.8.2 All wastes must be coded and classified in accordance with the Annex given in Schedule 1 to the List of Wastes Regulations. Chapter 19 of the catalogue includes “Wastes from Waste Management Facilities”. If a waste code can be found in this chapter, it should be used to classify a treated waste.
- 2.8.3 The following principles should be used when classifying and coding treated hazardous waste.

Pre-mixing and bulking

HWR06 defines the mixing of waste as the combining or blending of waste with other waste or non-waste and states:

“Pre-mixing and bulking are forms of mixing. A chemical reaction should not usually take place during pre-mixing or bulking.

A waste is considered pre-mixed if a hazardous waste is mixed with:

- a hazardous waste with a different EWC code;
- a hazardous waste with the same EWC but different hazardous properties or chemical composition;
- a non-hazardous waste; or
- a non-waste

and a reaction does not take place, then this is considered pre-mixing. This waste is coded 19 02 04 premixed wastes composed of at least one hazardous waste. This is an absolute hazardous waste; threshold criteria do not apply to absolute hazardous wastes. If the pre-mixed waste is not subject to further treatment, this code will apply for onward movement of this waste.*

The guidance defines bulking of waste as:

“Bulking of hazardous wastes is the mixing of hazardous wastes with the wastes of the same EWC code, same hazardous properties, and similar constituents. It is not considered pre-mixing. For example, bulking two similar loads of 08 03 12 waste ink containing dangerous substances together gives a bulk load of 08 03 12* waste.”*

- 2.8.4 It is important to distinguish between pre-mixing and bulking. For a waste to be bulked it must meet all three aspects listed. Simply having the same waste code does not constitute a waste being bulked as wastes sharing the same code can be very different in composition and nature.

Stabilisation and solidification

- 2.8.5 Stabilisation and solidification are very similar processes and the terms are often used interchangeably. They are used to appropriately describe the immobilisation / fixation / encapsulation of wastes into binder materials and are techniques that reduce the mobility and toxicity of dangerous substances within wastes.
- 2.8.6 Section 3.3 of the ‘Application supporting document SOL0113ESP01’ provides details of Appellant’s stabilisation treatment.
- 2.8.7 HWR06 lists definitions for both stabilisation and solidification from the LoW Regs and Waste Treatment BREF⁴. The LoW Regs definition of stabilisation and solidification is:

“Stabilisation processes change the dangerousness of the constituents in the waste and thus transform hazardous waste into non-hazardous waste.” “A waste is considered partly stabilised if, after the stabilisation process, dangerous constituents which have not been changed completely into non-dangerous constituents could be released into the environment in the short, middle or long term.”

“Solidification processes only change the physical state of the waste (e.g. liquid into solid) by using additives without changing the chemical properties of the waste.”

⁴ <https://eippcb.jrc.ec.europa.eu/reference/waste-treatment-0>

Coding stabilised and solidified waste

2.8.8 The guide states:

“The terms solidification and stabilisation are used to appropriately describe the immobilisation / fixation / encapsulation of wastes into binder materials. The materials used most often in these processes are fly ashes and cement. When, for example fly ash or cement, is used to encapsulate hazardous waste materials the output is going to be either

19 03 04 wastes marked as hazardous, partly stabilised; or*

19 03 06 wastes marked as hazardous, solidified*

The use of the solidified / stabilised codes is irrespective of any chemical reactions that may occur during the treatment – chemical reactions are not uncommon during stabilisation and solidification treatments.

It is for the treatment plant operator to decide whether the classification is 19 03 04 or 19 03 06* based on their understanding of their process in relation to the definitions provided above.*

If hazardous waste is solidified, the waste is appropriately coded as 19 03 06. If hazardous waste is stabilised, the waste is appropriately coded 19 03 04*. Both 19 03 04* and 19 03 06* are absolute hazardous waste entries and the concentration of dangerous substances within them is not considered in the assessment of these materials as hazardous wastes.*

If the stabilisation / solidification process is not considered effective in fixing / immobilising / encapsulating the dangerous substances, the waste should be appropriately classified as 19 02 04 pre-mixed waste. The minimum requirement for stabilisation is absorption of the waste – absorption of waste is considered pre-mixing.*

A partly stabilised waste (19 03 04) that undergoes further treatment to remove all of the untreated dangerous substances or convert them to non-dangerous substances, and does not introduce other hazardous properties, may be coded 19 03 05 stabilised wastes other than those mentioned in 19 03 04, which is a non-hazardous waste code. If another EWC code is considered to be more accurate in coding the waste that code may be used.*

2.9 Environmental Permitting Regulation 37(1) and (5) Suspension Notice

2.9.1 Regulation 37(1) of the EPR 2016 enable NRW to suspend an environmental permit by serving a notice. A suspension notice can be used to stop offending or to bring an activity or operation under regulatory control.

2.9.2 The regulator can serve a suspension notice on the operator if the operation of a regulated facility involves a risk of serious pollution (Regulation 37(2)); or if the way in which the regulated facility is being operated both contravenes a permit condition and involves a risk of pollution (Regulation 37(5)). This means that, where the operator has contravened a permit condition, there has to be a risk of pollution, but not of serious pollution.

The Regulation 37(5) notice was brought in under EPR 2016 as an amendment to EPR 2010. EPR 2010 only allowed suspension if there was a serious risk of pollution. In the 2010 Regulations it was not required to show a breach of permit but only a risk of **serious** pollution.

The suspension notice must describe the nature of the risk of pollution and the actions necessary to remove that risk. The notice must specify the deadline for taking actions.

There are two limbs to Regulation 37(5):

- The manner of operating a regulated facility contravenes an environmental permit condition; and
- Such contravention involves a risk of pollution.

Hence, the power is exercisable in relation to circumstances involving risk; there is no requirement for the regulator to establish that pollution has or will occur.(see Paras 14, 14.4 and 15 below).

3.0 History of permit compliance

- 3.1 The table below provides an overview of the Appellants compliance history since commencement of operations. The Compliance Assessment Reports (CARs), issued following site inspections, document the advice and guidance provided to the Appellant and outline the requirements for achieving permit compliance. A copy of the CARs are provided in **[Annex F]**.

Date	CAR ref	Condition breach	CCS
07/07/15	150707/ZP3933NJ	2.2.1	C3
07/07/15	150707/ZP3933NJ	1.1.1, 2.2.1, 2.3.1	C3
07/07/15	150707/ZP3933NJ	2.3.1	C3
21/06/16	CAR NRW0023790	1.1.1	C3
21/06/16	CAR NRW0023790	2.3.1	C3
18/08/17	CAR NRW0032158	1.1.1	C3
18/08/17	CAR NRW0032158	2.3.1	C3
17/07/18	CAR NRW0033664	No condition breaches	-
29/10/19	CAR NRW0036053	2.3.1 (a)	C2
29/10/19	CAR NRW0036053	2.3.6	C2
29/10/19	CAR NRW0036053	2.3.4	C2
29/10/19	CAR NRW0036053	1.1.1 (a)	C2
16/12/19	CAR NRW0036112	2.2.1	C3
16/12/19	CAR NRW0036112	2.3.1	C3
31/12/19	CAR NRW0036339	4.2.2	C4
02/07/20	CAR NRW0036771	2.3.1	C2

- 3.2 A review of previous CARs highlights non-compliances with volume storage limits and failure to follow measures and procedures listed in Operating Techniques and Management Systems. From the progression of CAR forms, it is evident that the Appellant has breached storage limits numerous times and been advised to review and update operating techniques to accurately reflect operations on site.

4.0 Inspection on the 29th October 2019

An inspection on the 29th October 2019 identified several **significant** permit condition breaches. The inspection found that the operation and treatment processes were not in accordance with the activity authorised by the permit, and the listed operating techniques and management systems were not being followed. A copy of the CAR (Report ID: CAR_NRW0036053) is included **[Annex F]**. The key issues found were:

4.1 Volume of wastes on site

- 4.1.1 It was evident that volumes of waste stored were in excess of the permitted limit. Section 4.8.3 of the document SOL0113ESPOL states that no more than 5,250 tonnes of material can be stored internally at any one time. Much of the building had been filled with treated and non-treated wastes running down the length of the building. The bottom section of the building and the lower doors could not be accessed. It was estimated there was in excess of 12,000 tonnes of waste on site. The Appellant was unable to provide an accurate total quantity of waste present. Photographs of the site were taken **[Annex G]**.
- 4.1.2 An action was placed on the Appellant to reduce the quantity of waste on site and to ensure an appropriate outlet was identified. Accurate and detailed records were to be kept for the waste being removed including classification of the waste supported with appropriate laboratory testing as in line with their testing and validating procedures. Confirmation that the receiving site had the relevant authorisations was also required.
- 4.1.3 NRW requested the Appellant submit a plan on how they proposed to reduce the volume of waste on site and this was to be submitted by 31st January 2020. The Appellant was also advised that they were required to submit a permit variation to reflect current operations.
- 4.1.4 The issue of storing waste in quantities greater than 5,250 tonnes has been raised and the site breached in two previous CAR forms (Report ID: CAR_NRW0023790 and CAR_NRW00325158) **[Annex F]**.

4.2 Storage

- 4.2.1 In section 3.3.3 of the application supporting document SOL0113ESPOL **[Annex C]** it states that upon arrival, materials are to be stockpiled within a dedicated bunded containment pad and that each stockpile is to represent a single batch of material and subsequently be allocated a unique batch reference which will be retained throughout the treatment lifecycle. The unique batch reference allows the following information to be collated:
- Period of time when the waste feedstock was produced;
 - Quantities of “as received” waste feedstock;
 - Analytical data relating to the “as received” waste feedstock;
 - Details of treatment operation;
 - Analytical data relating to the treated material;
 - Date shipped offsite, associated quantities and customer.
- 4.2.2 During the inspection it was evident that the quantity of waste on site had caused the ‘pre-treated’ and ‘post-treated’ wastes to merge to form larger stockpiles. Wastes were unable to be stored separately and the quantity of waste had limited the available area within the building to segregate and treat waste. It was confirmed by a representative of the Appellant, Mr Farr, and evident to the]regulatory officer that it was no longer possible to treat wastes in the manner authorised by the permit due to the volume of wastes on site.
- 4.2.3 An action was placed on the Appellant to ensure that incoming wastes were stored in clearly separated stockpiles within the ‘untreated area’ of the building until they were scheduled for treatment. Each stockpile was to be given a unique identity reference to be retained throughout the treatment lifecycle to provide a clear audit trail for waste being received, treated and removed from site. It was evident that this level of detail was not being collated and therefore the Appellant was required to submit details on how they proposed to address this by the 31st January 2020.

4.3 Treatment of waste

- 4.3.1 Section 3.3.4 of the application supporting document SOL0113ESPOL **[Annex C]** states that upon acceptance waste will be stockpiled into batches in readiness for treatment. It notes that the treatment operation will be carried out within an engineered containment cell comprising of a concrete bund and involve both chemical and physical treatment. The treatment process is explained within this section of the document and notes that once the modified clays have been added that the mixed and treated materials will be stockpiled into individual batches and covered with a membrane to prevent the release of any volatile contaminants.
- 4.3.2 Figure 3.4 below shows the treatment operation schematically. (Derived from application document)

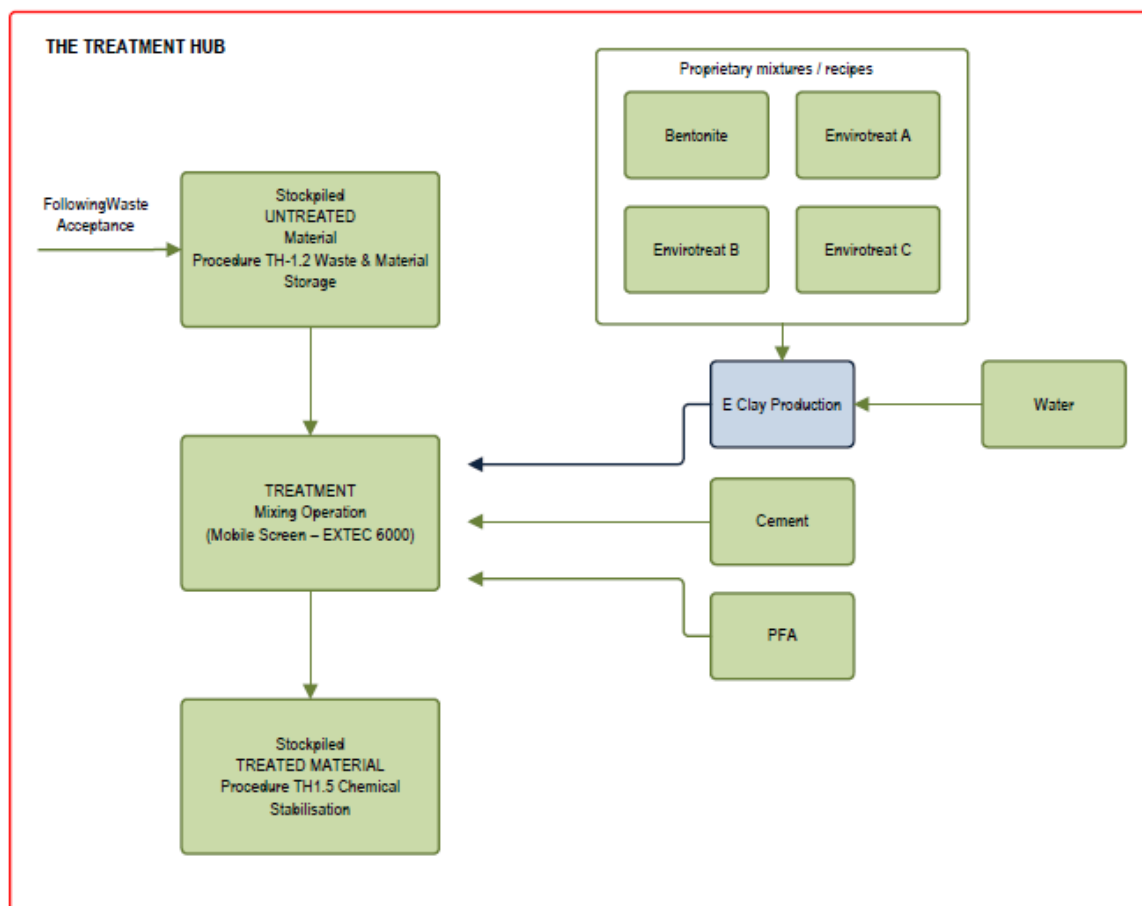


Figure 3.4 Treatment

- 4.3.3 During the inspection it was evident, and confirmed by a representative of the Appellant, Mr Farr, that treatment was not occurring or being recorded as described in the operating techniques and procedures. Due to the volume of waste on site, it was not possible to treat as prescribed individual separated batches of waste or maintain the identity of waste streams within the main stockpile. It was also confirmed that waste was mixed pre and post treatment by the Appellant's representative, Mr Farr. The conversation on site was recorded in Officer's PNB **[Annex H]**.
- 4.3.4 Without this batch system the Appellant is unable to follow the protective control measures listed in their procedures. They were unable to monitor and test the effectiveness of the treatment or determine if the waste required quarantining and further investigation.
- 4.3.5 The Appellant's representative, Mr Farr, also confirmed that the authorised E-Clay treatment process was no longer used to treat all waste streams (see Para 2.1.3

for explanation). It was noted that TPH (Total Petroleum Hydrocarbons) contaminated soil, for example, was merely undergoing bioremediation (via weathering). This treatment process is not authorised by the permit and therefore the risk assessments and control measures around this process had not been assessed for suitability or legality.

- 4.3.6 The Appellant was advised that in order to change any of the treatment processes authorised in the permit they were required to submit an application to vary the permit, supported by evidence-based studies on the proposed treatment activity. An action was placed on the Appellant to apply to vary the permit by 28th February 2020.
- 4.3.7 The failure to operate the facility using the techniques and, in a manner, described in the document SOL0113ESP01 **[Annex C]** was considered a significant breach of permit condition 2.3.1. and the Appellant received a CCS2 score under A1 Sub-criteria (specified by permit) on the CAR.

4.4 Mixing and blending of wastes

- 4.4.1 The Appellant accepts both hazardous and non-hazardous soils and other hazardous and non-hazardous waste. The type and quantities of waste received can be shown through, submitted hazardous waste returns, quarterly waste returns and copies of the duty of care paperwork.
- 4.4.2 During the inspection it was clearly evident that wastes from different sources had been mixed and this was confirmed by the representative of the Appellant, Mr Farr onsite. The activity of blending or mixing hazardous waste prior to submission to other disposal or recovery activities (as listed under Section 5.3A(1)(a)(iii) of Schedule 1 of the EPR) **[Annex R]** is not authorised by the Permit, amounting to a breach of condition 2.1.1.

In addition, condition 2.3.6 of the Permit states:

“Hazardous wastes shall not be mixed, either with a different category of hazardous waste or with other wastes, substances or materials, unless it is authorised by schedule 1 table S1.1 and appropriate measures are taken”.

- 4.4.3 The mixing and blending hazardous and non-hazardous waste is not authorised by the Permit and an action was placed on the Appellant to cease the activity.
- 4.4.4 The mixing of different types of hazardous waste, and of hazardous waste with other waste, substances or materials is prohibited by Article 18 of the Waste Framework Directive (“**WFD**”) **[Annex R]** and Regulation 19 of the Hazardous Waste Regulations 2005 **[Annex R]**. The mixing of hazardous waste with other waste is only permitted if specifically authorised by a permit and be the Best Available Technique (“**BAT**”).
- 4.4.5 It must also be noted that the dilution of hazardous substances to below thresholds is also strictly prohibited under the WFD and this is further supported by the Landfill Directive which prohibits dilution alone as a means to reclassify waste from hazardous to non-hazardous/inert or non-hazardous to inert.
- 4.4.6 Whilst some waste had been mixed and blended as part of the Appellant’s process, it was observed during inspections, that other separate stockpiles had also merged as a result of the volume of waste on site.

4.5 Duty of Care

- 4.5.1 A brief review of the duty of care paperwork for waste leaving the site was undertaken. Only a sample of the paperwork was inspected but it was clear there were errors with its completion.
- 4.5.2 As previously noted (at paras 2.5 and 2.6 above) the duty of care legislation makes provision for the safe management of waste and to prevent unauthorised or harmful deposit, treatment or disposal. Under this legislation it is an offence to misclassify waste as a non-waste or to accept a waste that does not fit the written description.
- 4.5.3 An action was placed on the Appellant to ensure that all waste leaving the site was accompanied with the correctly completed duty of care paperwork and any other relevant supporting information. This was to be implemented with immediate effect.
- 4.5.4 As a facility that accepts and treats hazardous waste, it is imperative that wastes are correctly assessed, classified and accompanied with all the appropriate paperwork. This is to ensure the waste is safely managed and does not present risk of harm to human health and the environment and to ensure that those who receive the waste for onward movement are aware of the nature of the waste.

4.6 House keeping

- 4.6.1 Within the EMS (Section 1.2 rev 0 (Sept 2013)) it states that remediation reagents will be stored on an integral concrete slab and suitably banded and that any spillages will be cleaned up immediately. During the inspection it was clear this was not occurring. IBCs were stored in a manner that showed damage and a general poor level of housekeeping, this was photographed **[Annex G]**. The pictograms on the IBC's indicated that the reagents had hazardous properties including being corrosive and hazardous to the aquatic environment.
- 4.6.2 An action was placed on the Appellant to clear this area and store reagents in the way that was stipulated in the EMS. An overview on how this was to be completed along with an appropriate risk assessment for the activity was to be submitted by 31st January 2020.

4.7 Submitted plan and variation supporting document

- 4.7.1 On the 29th January 2020, the Appellant submitted their response to the actions listed in CAR (Report ID: CAR_NRW0036053) **[Annex F]** from the inspection on the 29th October 2019 and a variation supporting document. **[Annex Q Ref Q3]**.
- 4.7.2 NRW reviewed the Appellants response and did not consider that sufficient information had been provided to satisfy the actions listed in the CAR. No details or plans had been submitted to evidence that waste quantities on site were being actively reduced. No information was provided detailing how the Appellants were ensuring waste was stored in separate piles with a clear audit trail of receipt, treatment and removal.
- 4.7.3 The Appellant was reminded that whilst a permit variation application had been received to increase tonnage limits and change treatment processes, they were required to comply with the existing permit conditions until the permit variation is determined. No proposals had been submitted to demonstrate and evidence that the Appellant was working towards complying with the existing permit limits and conditions. An email informing the Appellant of the above was sent on the 6th March 2020.
- 4.7.4 On the 13th March 2020, NRW received an email from the Appellant highlighting they had made a proactive decision to restrict the acceptance of incoming waste (other than contracted waste) which reduced the weekly acceptance to 150

tonnes. It noted that they were currently exporting approx. 800 tonnes per week of validated material for restoration. It notes:

“This action will allow the Hub to ship treated / validated materials and to reduce overall volumes. This action will create space to enable improved stockpile segregation and any subsequent treatment as and where required”.

The email also notes amongst other things:

- The systems and procedures for the acceptance, treatment, validation and shipment of materials are as detailed in the Permit Variation Supporting Document produced in response to the existing HUB operations, site visits, correspondence and reports.
- Soils are stockpiled in accordance with their treatment requirements. Incoming soils are assigned to a stockpile (based on contamination profile and treatment requirements).

The email chain is provided in **[Annex Q Ref Q5]**.

5.0 Environmental Permitting Regulation 61(1) Notice – Duty of Care

- 5.1 To gain a clearer understanding of the waste throughput at the facility, on the 13th March 2020, NRW issued an Environmental Permitting (England and Wales) Regulations 2016 Regulation 61(1) Notice. **[Annex I]**.
- 5.2 The notice required the Appellant to submit copies of all duty of care paperwork, including waste transfer notes and hazardous waste consignment notes, for waste received and removed between the 1st March 2018 and 1st March 2020. The deadline set for receipt of the information was 24th April 2020.
- 5.3 As a result of the Covid-19 Pandemic, the deadline was extended to the 29th May 2020 to allow additional time to collate the information. All the paperwork was received by the specified date.

5.4 Findings from the review of duty of care paperwork

The duty of care paperwork was reviewed and summarised, and the information was divided and recorded into two categories, incoming waste and outgoing waste.

5.4.1 Waste received

It was calculated that a total of 35,813.64 tonnes of material entered the site between April 2018 and March 2020. From the table it is evident that the majority of the wastes accepted have been classified as mirrored hazardous waste entries (see para 2.7.3 to 2.7.5 above for explanation), 3,580.65 tonnes of which being non-soil waste.

EWC Code	Description	Quantity (tonnes)
11 01 09*	Sludges and filter cakes containing hazardous substances (MH)	1,042.32
11 01 10	Sludges and filter cakes containing other than those mention is 11 01 09* (MN)	160.28

17 03 01**	Bituminous mixtures containing coal tar (MN)	596.32
17 05 03*	Soil and stones containing hazardous substances (MH)	20,824.74
17 05 04	Soil and stones other than those mentioned in 17 05 03* (MN)	6,037.53
17 05 06^	Dredging spoil other than those mentioned in 17 05 05 (MN)	573.1
17 06 03**	Other insulation materials consisting of or containing hazardous substances (MH)	6.7
19 01 11*	Bottom ash and slag containing hazardous substances (MH)	1,831.39
19 01 13*	Fly ash containing hazardous substances (MH)	549.44
19 02 05*	Sludges from physico/chemical treatment containing hazardous substances (MH)	1,135.52
19 02 06	Sludges from physico/chemical treatment other than those mentioned in 19 02 05 (MN)	810.34
19 02 07**	Oil and concentrates from separation (AH)	51.1
19 12 09^	Minerals (for example sand, stones) (AN)	52.82
No code	'untested contaminated soil'	743.98
No code		1398.06
* denotes a hazardous waste code. ** denotes a hazardous waste code that is not permitted under the Environmental Permit (ZP3933NJ). ^ denotes a non-hazardous waste code that is not permitted under the Environmental Permit.		

5.4.2 Waste removed

From a review of the paperwork it was calculated that 35,984 tonnes of waste was exported from site between March 2018 and March 2020. The waste comprised of:

EWC Code	Description	Quantity (tonnes)
17 01 01.	Concrete (MN)	1,601.27
17 05 04	Soil and stones other than those mentioned in 17 05 03* (MN)	963.6
19 12 09	Minerals (for example sand, stones) (AN)	13,129.64
19 13 02	Solid wastes from soil remediation other than those mentioned in 19 13 01*	2,995.59
20 02 01	Biodegradable waste (AN)	53.26
No code	No description	16,329.11
No code	Non waste in description	912.04

5.4.3 Issues identified

The review of the paperwork highlighted several issues and concerns for NRW, including:

- The acceptance of hazardous and non-hazardous non permitted waste.
- Between 8th August 2019 and 13th August 2019, 21 occurrences where waste had been brought onto site under waste code 17 05 04 (soil and stone other than those mentioned in 17 05 03 (MN) (see tables above and para 2.8.3). However, each of the duty of care documents had descriptions mentioning 'hazardous' or 'contaminated'. No hazardous waste consignment documentation accompanied these documents (see paras 2.6 and 2.7 for explanation of consignment notes)

- 16,329 tonnes of waste had been exported without a description or code.
- NRW does not consider 19 12 09 to be the correct code for waste leaving the site.
- It is the responsibility of the producer of the waste to ensure waste is accurately assessed and classified and accompanied by the appropriate paperwork when leaving site. The transfer notes for exported waste were produced either by the carrier or receiving site.
- The Appellant had written one transfer note to cover a period of one calendar month. Waste transfer notes must accompany every shipment of waste unless they are covered by annual 'season ticket'.
- Between April and June 2019 there were 92 duty of care documents where the '19 12 09' (Minerals Sand and stone (AN)) waste code was scratched out with pencil or pen after the document had been printed and replaced with either '19 05 04' or nothing. Waste code 19 05 04 does not exist.
- There is a lack of consistency in waste coding with examples of waste leaving site under one code and being accepted at the receiver site under a different code. It is the responsibility of the Appellant as the producer, to ensure waste is accurately assessed and classified and accompanied by the appropriate paperwork when leaving site.

5.4.4 It was clear from the review that there are a number of issues and errors with the paperwork. Maintaining accurate paperwork enables the safe management and movement of waste and is essential in protecting the environment and human health from the mismanagement of waste. It is also a legal requirement under the Permit, Section 34(7) of the EPA and the Hazardous Waste Regulations 2005. It is also evidence that leads NRW to consider the activities on the site are leading to a risk of pollution.

6.0 Review of Hazardous waste returns

- 6.1 NRW also undertook a brief review of the Appellant's hazardous waste consignee returns. These returns are completed and submitted by the Appellant to inform NRW about the hazardous waste consignments that have been received, removed or disposed at a site. They are a compulsory requirement of the Hazardous Waste Regulations 2005.
- 6.2 The table below provides a summary of the Appellants submitted hazardous waste returns for the time period between 2018 – 2020 (calendar year) **[Annex J]**. From the returns it is evident that the Appellant received consignments of two non-permitted absolute hazardous wastes.

EWG Code	Description	Quantity
11 01 09*	sludges and filter cakes containing hazardous substances (MH)	3,6660.04
12 01 16**	waste blasting material containing hazardous substances (AH)	23.28
17 05 03*	Soil and stones containing hazardous substances (MH)	82,461.08
19 01 11*	bottom ash and slag containing hazardous substances (MH)	3,910.48

19 01 13*	fly ash containing hazardous substances (MH)	2,551.78
19 02 05*	Sludges from physio/chemical treatment containing hazardous substances (MH)	2,379.92
19 02 07**	Oil and concentrates from separation (AH)	102.20
* denotes a hazardous waste code. ** denotes a hazardous waste code that is not permitted under the Environmental Permit (ZP3933NJ).		

6.3 From the hazardous waste returns and the duty of care paperwork it was noted that the Appellant had accepted hazardous wastes containing various hazardous substances. Within the duty of care paperwork, the reasons given for hazardous waste contamination ranged from;

- Soils with elevated petrol, diesel, oil and polycyclic aromatic hydrocarbons.
- Soils with high pH values, soils with elevated alkaline compounds including calcium hydroxide/calcium oxide/sodium hydroxide.
- Soils with elevated metal contamination including zinc/nickel/copper/magnesium/manganese/chromium/lead/zinc chromate.

As such, the most commonly used hazardous property codes in the consignment notes for waste entering the site were:

- HP5 (Harmful),
- HP7 (Carcinogenic),
- HP8 (Corrosive),
- HP10 (Toxic for reproduction),
- HP11 (Mutagenic) and
- HP14 (Ecotoxic).

6.4 The waste quantities observed at the site by NRW were preventing waste segregation and treatment by the Appellant in accordance with their operating techniques, based on the contamination contained within. Ineffective treatment of the hazardous substances using methods authorised by the Permit and supporting documentation means that there was risk of the contamination and associated hazardous properties being transferred to receiving sites through waste exports. These hazards present a risk not just to the receiving site, but the wider environment due to these hazardous substances not having been removed or immobilised.

7.0 Environmental Permitting Regulation 61(1) Notice – Testing and Validation

7.1 Prior to the removal of waste, the Appellant is required to appropriately test and validate the waste in accordance to Procedure TH 1.6 Validation Process and the permit application document referenced SOL0113ESP01 [**Annex C**]. It states:

Following treatment, the treated material will be stored within the “Treated Materials” area. Where upon a number of representative samples will be taken for Validation purposes. The number of samples and type of Validation testing required will differ depending on the waste stream and intended end use. These requirements will be specified on the Contaminated Soils Evaluation Form or Waste Stream Evaluation Form (whichever is applicable).

All samples for chemical testing shall be submitted to an independent UKAS accredited laboratory. Test results will be compared to the Validation Criteria for

compliance, in the event that the treated material does not meet the specified Validation Criteria for compliance then the treated material will be quarantined.

All test certificates will be stored together with other controlled documentation relating to that batch. Stockpiled materials held within the “Treated Materials” area will indicate their Validation status RED = Validation pending, GREEN = Validation approved. The Waste Tracking System will require updating to reflect the status of the batch.

On shipment a Certificate of Conformity may be required by the end user, the nature of this certificate will depend on end user requirements. In the event that a Certificate of Conformity is raised, then a copy will be stored together with other controlled documentation relating to that batch. Shipment dockets relating to the transfer offsite will be stored together with other controlled documentation relating to that batch.

- 7.2 As the Appellant is unable to maintain segregated stockpiles and has mixed and blended individual waste streams, they are unable to appropriately validate the waste as stipulated in the procedures. Test certificates can no longer be assigned to individual waste streams and the waste tracking system cannot be updated.
- 7.3 On the 10th June 2020 NRW served an EPR Reg 61 Notice requesting the laboratory analysis, chemical and physical validation results for all waste removed from the site between the dates of 1st March 2018 to 1st March 2020. The information was to be submitted to NRW by 8th July 2020 **[Annex K]**.
- 7.4 Information was submitted to NRW on the 6th July 2020 and included a spreadsheet listing the time period, receiver site, total tonnage and the analytical report reference numbers associated to the waste. Copies of the analytical reports were also submitted **[Annex L]**.
- 7.5 From the information provided it was not possible to directly link the analytical reports to specific shipments of imported waste and the tonnages did not correlate with the quantities submitted or the volume calculated from the duty of care paperwork review. In addition to this, some of the analytical reports were not included (18-81795-A, 18-81803-A, 18-81801- A)
- 7.6 The testing and sampling paperwork submitted did not demonstrate or evidence that adequate testing was being completed on waste exported from site. Validation samples do not fully cover environmental criteria/contaminants as set out in document SOL0113ESP01 **[Annex C]**. Testing for Polycyclic Aromatic Hydrocarbons (PAH), benzene, toluene, ethylbenzene, and xylenes (BTEx) and speciated hydrocarbons was rare in the solid soil tests (mg/kg) and non-existent in the leachate testing. Leachate analysis was not provided for most samples and where it had been (samples SP8A and SP8B taken 10/5/2019), the contaminants tested for were not as comprehensive as those listed in document SOL0113ESP01 **[Annex C]**.
- 7.7 It must also be noted that landfill Waste Acceptance Criteria (WAC)⁵ testing analysis (specifically leaching test results) **must not** be used for waste classification and hazardous waste assessment purposes. This analysis is only applicable for landfill acceptance and does not give any indication as to whether a waste may be hazardous or non-hazardous or pose a risk to a receiver site.
- 7.8 Within the validation procedure there are a number of forms that should accompany the waste as it goes through the treatment and validation process.

⁵ The Landfill Directive (Article 11) and Annex II, requires that waste is properly characterised and meets specific Waste Acceptance Criteria (WAC) prior to disposal at a landfill site.

These include the Contaminated Soils Evaluation Form or Waste Stream Evaluation Form (whichever is applicable), all the test certificates and a certificate of conformity.

- 7.9 Whilst NRW did not request the specific forms required for validation, in the spirit of complying with the Notice and demonstrating compliance with validation procedures, NRW would have expected this information to have been supplied.
- 7.10 The paperwork supplied provided little confidence that it was a full representation of exported waste, nor did it demonstrate that waste had been suitably treated to remove risk of pollution or detrimental impact at the receiver site. Therefore, NRW considered that the amount of waste on site meant that the waste was not being suitably treated and as such that there was a risk of pollution.

8.0 Inspection on the 2nd July 2020

- 8.1 A site compliance visit was undertaken on the 2nd July 2020 to undertake a basic volumetric assessment of the quantity of waste stored on site. During the inspection it was evident that the quantity of waste continued to exceed the 5,250 tonnes permitted limit. In previous correspondence the Appellant had estimated there to be approximately 9,000 to 9,500 tonnes stored and NRW calculations concurred with this estimation. An accurate calculation of the quantity of the volume of waste could not be established due to its location within the building and its inaccessibility. A CAR was completed following the visit (Report ID: CAR_NRW0036771) **[Annex F]**.
- 8.2 Despite the Appellant estimating there to be less waste on site than the previous inspection, the waste reception area had further filled with waste. This can be demonstrated photographs taken at the site **[Annex M]**.
- 8.3 Whilst on site the attending NRW officers witnessed the delivery of a sludge waste which was deposited onto stockpile marked “treated”.
- 8.4 Officers also gained access to the lower section of the building. In this area were several bags of cement type waste and a damaged IBC containing an unknown substance that had spilled onto the ground – see photographs **[Annex M]**.
- 8.5 The Appellant had previously indicated this area of the building could not be accessed and it was not obvious if vehicle access was possible. The inability to access waste located in this part of the building, and the waste stored for longest period of time, raised further concerns that more recently imported waste was the only accessible waste for removal.
- 8.6 NRW considered that the extent and severity of the permit breaches identified at the facility required further intervention. The Appellant had significantly failed in their obligations to comply with conditions of the permit and environmental legislation and the seriousness was such that the contraventions posed a risk of pollution to the environment. As a protective response, NRW deemed it appropriate and proportionate to restrict the further acceptance of waste until the existing stockpiles were reduced to permitted limits and that the Appellant could therefore treat the waste in line with their documented process.

9.0 EPR Regulation 37(1) and (5) Suspension Notice

- 9.1 Under Regulation 37(1) and (5) of the EPR 2016, NRW may suspend an environmental permit if, NRW **consider** that the manner of operating a regulated

facility contravenes an environmental permit condition, and that such contravention involves a **risk** of pollution. (Emphasis added)

- 9.2 On 15 July 2020, NRW issued the Partial Suspension Notice under Regulation 37(1) and (5) as it considered that permit condition breaches on site were significant and presented a risk of pollution. This notice was withdrawn and superseded on the 17th July to provide further clarity on NRW's assertion of risk of pollution **[Annex N]**.

The extent of the suspension is listed in the Schedules of the Notice.

SCHEDULE 1 EXTENT TO WHICH THE ENVIRONMENTAL PERMIT IS SUSPENDED	
Extent	
The following parts of the Environmental Permit are suspended with immediate effect:	
Input of waste within the boundary of the permit (defined by Schedule 7) pursuant to condition 2.2.1.	

- 9.3 The Appellant is required to take the steps specified in Schedule 2 to remove the risk.

SCHEDULE 2 STEPS TO BE TAKEN TO REMOVE RISK OF POLLUTION	
Steps to be taken	By date
STEP 1: Cease the acceptance of waste onto site. The Operator shall cease to receive waste onto site with immediate effect.	With immediate effect
STEP 2: Reduce the quantity of stored waste to 5,250 tonnes as authorised by the Environmental Permit The Operator shall reduce the quantity of stored waste on site to 5,250 tonnes as authorised by the Environmental Permit. The quantity of waste must be reduced on site to enable wastes to be treated in the manner authorised by the permit.	31 st January 2021

- 9.4 In relation to the remaining activities authorised under the environmental permit, the Appellant is required to take the steps specified in Schedule 3.

SCHEDULE 3 ADDITIONAL STEPS FOR NON-SUSPENDED OPERATIONS	
Steps to be taken	By date
STEP 3: Classify stored waste and submit to NRW prior to commencing removal. The Operator must classify the waste stored on site in accordance with Guidance on the classification and assessment of waste (1st Edition v1.1) Technical Guidance WM3 and HWR06 Classifying and coding wastes from physio-chemical treatment facilities version 5. Prior to the removal of any waste from site, the Operator must submit to Natural Resources Wales for agreement, the determined waste classification and details on the intended destination of the waste.	With immediate effect all waste must be assessed and classified prior to removal.

9.5 The reason provided for the issue of the Notice is stated as:

“Natural Resources Wales consider that the operation of the regulated facility involves a risk of pollution namely: Failure to comply with condition 2.3.1(a) of the Environmental Permit EPR/ZP3933NJ. This conditions states that “The activities shall, subject to the conditions of this permit, be operated using the techniques and in the manner described in the documentation specified in Schedule 1, table S1.2, unless otherwise agreed in writing by Natural Resources Wales”. The two operating techniques listed in table S1.2 are, EPR 1 - How to Comply With Your Environmental Permit and the document referenced SOL0113ESP01 received as part of the application EPR/ZP3933NJ/A001.

The Treatment Hub Limited has not operated the facility or undertaken the treatment activities listed in the document referenced SOL0113ESP01. Storing waste in volumes that exceed the permitted limit restricts the capacity to treat waste in segregated batches and has resulted in mixing of hazardous wastes. Failing to store, treat and manage hazardous waste in breach of the permit, leads to a risk of pollution from these wastes leaving the facility and entering the environment at the receiving sites. These sites are not permitted to receive hazardous wastes and do not have the appropriate controls in place”.

9.6 The Notice issued to the Appellant partially suspends the waste management activities on the site, namely the acceptance of waste. It does not restrict the treatment (as authorised by the permit) or the removal of waste following the requirements listed in Schedule 3.

If the Appellant complies with the specified requirements on or before 31st January 2021, the Notice will be withdrawn by NRW.

10.0 Risk of pollution

10.1 During site inspections significant permit condition breaches were identified and the review of both the duty of care paperwork and validation sampling results raised further concerns regarding the risk of pollution off site.

10.2 By exceeding permitted storage limits, and storing a large volume of waste, the Appellant has been prevented from keeping waste streams segregated and the building has been predominately filled with one large stockpile of waste. From the

review of the duty of care paperwork and the hazardous waste returns it is evident that different types of wastes from various sources have been accepted on site. The inability to keep these wastes separate has produced a “pre-mixed” waste that, as indicated in the HWR06 guidance (explained at Para 2.8.3 above), would be classified and coded 19 02 04* premixed wastes composed of at least one hazardous waste. This waste is an absolute hazardous waste and threshold criteria do not apply.

- 10.3 The quantity of waste on site has restricted the Appellants ability to treat waste in the manner authorised by the Permit and the Appellant has also indicated they no longer treat all wastes using the E-clay system (see para 2.1.3 above) but use bioremediation on certain wastes. This treatment activity has not had the appropriate technical assessment to determine suitability and legality at this facility.
- 10.4 The main stockpile within the building is of a size that it restricts access to waste stored in the lower section of the building therefore only allowing access to the more recently received waste. This raises further concerns with the potential effectiveness of the bioremediation activity.
- 10.5 The Appellant is required to follow a validation and testing procedure for waste leaving the facility that demonstrates that all the waste is suitable for the receiving site. The Appellant has failed to follow this procedure and the submitted validation results do not provide NRW with the confidence that the exported waste does not pose a risk of pollutants⁶ entering the environment at the receiving sites. Investigations at receiving sites are ongoing both to understand how potentially non permitted wastes were received at these sites, and the ongoing impact on the receiving sites and the wider environment.
- 10.6 The review of the duty of care paperwork highlighted a number of significant failings. There is evidence of miscoding and code changing and NRW does not consider that waste leaving the facility should be coded 19 12 09 – minerals (for example sand and stone) (AN). By miscoding the waste, the Appellant is not providing the receiver site all the required information.
- 10.7 For a hazardous waste to be considered non-hazardous, the hazardous substances must either be removed (not diluted) to below threshold levels or transformed into non-hazardous substances. A non-hazardous waste containing hazardous substances can also pose a risk to the environment as it can introduce pollutants where there was once none.
- 10.8 As the quantity of waste on site has reduced the Appellants capacity to treat the waste, the current processes being undertaken does not remove or transform hazardous substances within the waste and therefore there is a risk of these leaching from the waste and entering the environment at the receiver sites.
- 10.9 To provide an example of this, as identified by the hazardous consignee returns, the Appellant accepts hazardous filter cake from a local facility. Information received from this facility indicates that the filter cake has a relatively stable concentration of various heavy metals. They have assessed that Nickel present within the filter cake is in the form of Nickel Hydroxide having concentrations between 0.1 and 1%. Nickel Hydroxide (Ni(OH)₂) has a classification under

⁶ As defined EPR 2016 “pollutant” means any substance liable to cause pollution;

European Chemical Legislation (ECHA extract) as both being acutely toxic to aquatic life (H400) and very toxic to aquatic life with long lasting effects (H410).

10.10 The Appellant has no treatments specified in the sites operating techniques that would either remove Nickel Hydroxide from a waste or transform Nickel Hydroxide into a form that is not ecotoxic. It is also noted from the ECHA extract that Nickel Hydroxide is a carcinogen, toxic for reproduction and a skin sensitizer amongst other hazards properties.

10.11 To summarise the risk of pollution using the source pathway receptor model:

Source – The Appellant accepts hazardous and contaminated wastes and as a result of the volume stockpiled, they are unable to store and treat waste in accordance to approved procedures. This creates a risk of waste, containing hazardous substances, leaving site and entering the environment without the appropriate controls and protective measures.

Pathway – The Appellant has exported waste that has not been stored or treated in an appropriate manner to receiver sites. NRW considers that they have also failed to accurately classify and validate waste removed from site.

Receptor – Waste has been accepted by receiver sites without the appropriate testing and validation. This creates a risk of waste, containing hazardous substances entering the environment without the appropriate controls and protective measures.

10.12 The decision to issue a suspension notice is always carefully considered. In this instance, the severity of breaches was such that NRW deemed it necessary, appropriate and proportionate to restrict the further input of waste onto the site. Allowing the Appellant to continue to accept waste when there had been no visual reduction in volumes since the October visit, would only exacerbate the problem and risk. A reduction in waste to permitted levels would allow appropriate authorised treatment and enable access to waste stored in the lower part of the building. The purpose of the Notice is to provide a protective response and prevent the risk of pollution occurring.

11.0 Environmental Permitting Regulation 61(1) Notice – Evidential information

11.1 On the 11th September 2020, the Appellant submitted to NRW (via Burges Salmon) correspondence, and an accompanying annex, giving the reasons why they consider their current operation and processes do not pose a risk to the environment.

11.2 The information submitted [**Annex O**], contained a number of generalised statements that were neither supported with technical or evidential documentation. NRW cannot take these statements on face value, as they must be reinforced with information that provides appropriate and sufficient evidence to support the claim.

11.3 To enable NRW to review and assess the Appellant's statements, an EPR Reg 61 Information Notice was served on the 16th November 2020 requiring the Appellant to submit documentation that would support and evidence their September correspondence [**Annex P**]. It was also hoped that this information would help narrow the areas of dispute prior to the Planning Inspectorate Appeal. The deadline to submit the information has been extended until 11th December 2020 at request of the Appellant.

- 11.4 NRW is committed to engaging with the Appellant and has agreed to assess and re-evaluate the Suspension Notice.

12.0 Summary of relevant correspondence – Annex Q

Date	Description	Ref
19/10/19	Email from TCM confirming correct EMS	Q1
12/12/19	Updated waste storage plan, processing re-use plan, revised EMS submitted by TCM (with attachments)	Q2
29/01/20	Appellant's response to actions listed in CAR (Report ID: CAR_NRW0036053 and variation supporting documents (attachments)	Q3
06/03/20 – 10/03/20	Email chain confirming insufficient information submitted to NRW and responding comments, response comments.	Q4
13/03/20 - 19/03/20	Email chain requesting duty of care. Interim information provided by the Appellant	Q5
29/04/20 – 04/05/20	Email chain – Appellant providing an update on site operations	Q6
19/06/20 – 23/06/20	Email chain – Appellant update on movement of waste	Q7
14/07/20	Email providing links to WM3 and HWR06 guidance.	Q8
17/07/20 – 23/07/20	Email chain regarding EPR reg 37 Notice	Q9
23/07/20 – 12/08/20	Email chain NRW and Appellant's consultant (Somerton Environmental Ltd)	Q10
05/08/20	NRW response to The Royal Mint	Q11
27/08/20	NRW Response letter to Burges Salmon letter dated 14 th August 2020 including bundle of annexes	Q12

11/09/20	Letter to Appellant providing findings of duty of care and testing and validation review	Q13
20/10/20 – 12/11/20	Email chain regarding EPR reg 61 information notice	Q14
16/11/20	Email confirming extension to the EPR reg 61 notice	Q15

13.0 Relevant legislation

13.1 Environmental Permitting (England and Wales) Regulation 2016

Full document available here: <https://www.legislation.gov.uk/ukxi/2016/1154/schedule/1/made>

The relevant sections include: **[Annex R]**

- Regulation 7 – interpretation: operate a regulated facility and operator
- Regulation 12 – requirement for an Environmental Permit
- Regulation 37 (1) and (5) – suspension notice
- Regulation 38 (2) – breach of permit conditions
- Regulation 61 (1) – Notice of information
- Schedule 1, Chapter 5 – Activities, Installations and Mobile Plant: Waste Management

- Environmental Permitting Regulation 37 (1) and (5)
-
- The power to issue suspension notices is conferred on the regulator by the *Environmental Permitting (England and Wales) Regulations 2016*
- Regulation 37(1) of the EPRs 2016 provides:
- *"The regulator may suspend an environmental permit by serving a notice (a "suspension notice") on the operator under this regulation."*
- Regulation 37(5) provides:
- *" If the regulator considers that the manner of operating a regulated facility contravenes an environmental permit condition, and that such contravention involves a risk of pollution or, in the case of a flood risk activity, a risk specified in paragraph (6), it may serve a suspension notice on the operator.*
- Regulation 37(6) provides:
- *"The following are risks specified for the purposes of paragraph (5)—*
- *(a) risk of flooding;*
- *(b) risk of detrimental impact on drainage;*
- *(c) risk of harm to the environment".*
- Regulation 37(7) provides:
- *"A suspension notice served for the purpose of paragraph (2) or (5) must—*
- *(a) specify—*
- *(i) the risk mentioned in paragraph (2) or (5),*
- *(ii) the steps that must be taken to remove that risk,*
- *(iii) in a case where paragraph (5) applies, the matters constituting the contravention mentioned in that paragraph,*
- *(iv) in a case where paragraph (5) applies, the steps that must be taken to remedy that contravention, and*
- *(v) the period within which the steps mentioned in paragraph (ii) or (iv) must be taken,*

- *(b) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn, and*
- *(c) if the environmental permit continues to authorise the operation of a regulated facility, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when operating that regulated facility.*
- A suspension notice served for the purpose of paragraph (5) must:
- (a) specify-
 - (i) the risk;
 - (ii) the steps that must be taken to remove that risk;
 - (iii) the matters constituting the contravention;
 - (iv) the steps that must be taken to remedy the contravention; and
 - (v) the period within which the steps mentioned must be taken;
- *(b) state that the environmental permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and*
- *(c) if the environmental permit continues to authorise the operation of a regulated facility, state any steps (in addition to those already required to be taken by the environmental permit conditions) that are to be taken when operating that regulated facility.*
- In the EPRs 2016, the term "pollutant" is defined as *"any substance liable to cause pollution"*.
- The definition of "pollution" under the EPRs differs, depending on whether or not it relates to or involves water discharge activity or groundwater activity. Hence—
- *"pollution", in relation to a water discharge activity or groundwater activity, means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may—*
 - *(i) be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,*
 - *(ii) result in damage to material property, or*
 - *(iii) impair or interfere with amenities or other legitimate uses of the environment;*
- *[...]*
- *"pollution", other than in relation to a water discharge activity or groundwater activity, means any emission as a result of human activity which may—*
 - *(i) be harmful to human health or the quality of the environment,*
 - *(ii) cause offence to a human sense,*
 - *(iii) result in damage to material property, or*
 - *(iv) impair or interfere with amenities or other legitimate uses of the environment;"*

13.2 Hazardous Waste Regulations 2005

Document included in **[Annex R]**.

13.3 Environmental Protection Act 1990

Section 34 relating to Duty of Care in **[Annex R]**

14.0 Relevant policy and guidance

14.1 Regulatory Guidance Note Series No. 11- Enforcement Powers

Regulatory Guidance Notes (“**RGNs**”) are guidance documents to help permit holders understand definitions and terms for the EPR. RGN Series No. 11 - Enforcement Powers **[Annex D]** is a high-level guidance note on how to use enforcement powers at regulated facilities under the EPR 2010. It provides guidance on serving an EPR Regulation 37(2) notice, but does not provide guidance on serving a Regulation 37(5) notice (as served on the Appellant).

RGN11 relates to the Environmental Permitting (England and Wales) Regulations 2010, not the 2016 Regulations. NRW is currently reviewing this document.

In point 11 of the grounds of appeal, the Appellant states that the power to serve a 37 (5) suspension must be compared and contrasted with a 37(2) which relates to serious pollution. NRW does not agree with this

As explained above the 2010 EPR Regulations did not include the ability to suspend due to breach of condition and risk of pollution. Therefore the guidance set out in RGN11 below does not reflect/ affect the Notice that was served on the Appellant.

RGN11 provides:

Section 3.35, power to suspend it states:

*“Regulation 37(1) says that if we **consider** that the operation of a regulated facility under an environmental permit **involves a risk** of serious pollution we may serve a suspension notice on the operator. The effect of a suspension is to stop an operation being carried on. **A suspension notice can be used where something has already happened to cause a risk of serious pollution or where we consider that something is likely to happen that will cause a risk of serious pollution.** There will be some cases where it is necessary only to suspend part of the operations or activities allowed under the permit to achieve the outcome. You should not simply automatically suspend the entire permit. You should consider how much of the permit needs to be suspended to deal with the risk of serious pollution.”*

As highlighted, the guidance provides provision for the Regulator to serve a suspension notice not only where it considers a risk of pollution has *happened*, but also where it considers a risk of pollution is *likely* to happen. Even in relation to a Regulation 37(2) Notice a pollution **does not have to occur** for the regulator to serve the notice. It is therefore an error for the Appellant to state that NRW has to prove that there is an actual pollution by demonstrating that the risk is real, specific and quantifiable and material.

In this instance NRW has only partially suspended the permit, namely the acceptance of waste, to prevent the contraventions and risk of pollution from worsening.

Section 3.37 states;

“Suspension notices should be regarded as a measure to be used where it is necessary to prevent a risk of serious pollution (paragraphs 3.43-3.45 below). It cannot be used as a mechanism simply to address a breach of an enforcement notice; we need to be satisfied there is a risk of serious pollution to use of these powers. A decision to serve a suspension notice will have serious implications for the operator’s business and therefore should not be taken lightly but it is likely to be effective at encouraging a prompt response and does not criminalise the operator. However, the implications for the operator should not deter you from serving a notice where you think it necessary to avoid a risk of serious pollution. Suspension of a permit at a waste site may also make the delivery of waste to that site unlawful if that part of the permit is suspended.”

NRW does not take the serving of a suspension notice lightly and is carefully considered prior to doing so. Whilst it was appreciated the impact this would have on the Appellant,

in light of the quantity and nature of the wastes accepted on site, NRW considered it appropriate and proportionate. The Guidance relates to the service of a Reg 37(2) Notice under the EPR Regs 2010 and therefore it is correct that it was not there to simply address a permit condition breach. In both EPR 2010 and 2016 there is an Enforcement Notice under Reg 36. This allows the Operator to continue to trade but requires the Operator to come back into compliance. NRW considered issuing a Regulation 36 Notice. However it would not address the root cause of the risk that NRW believed was being posed (the volume of waste on site). Volumes had been above permitted limits previously and on multiple occasions and had not been reduced to the permit levels of 5250 tonnes as required by multiple CAR forms

The EPR 2016 Regs brought in the additional tool for the Regulator to issue a suspension if there was a breach of condition **and** a risk of pollution due to the fact that it was identified that there was a gap in the ability to regulate if there had to be a **serious** risk of pollution.

Section 3.43 states:

“You must be satisfied that there is a risk of serious pollution. That means you will have to identify what the serious pollution is and why there is a risk of it occurring or continuing”.

Although NRW disagree that NRW have to demonstrate real, specific, quantifiable and material risk. As evidenced in the statement of case, NRW is satisfied that it has identified the risk of pollution and why there is a risk of it occurring. To reiterate the above guidance deals with risk of serious pollution not the level of risk relevant to the Notice that the Appellant was served with.

Section 3.44 states:

“Pollution” is defined in the Regulations as:

Any emission as a result of human activity which may

- a) be harmful to human health or the quality of the environment,*
- b) cause offence to a human sense*
- c) result in damage to material property, or*
- d) impair or interfere with amenities and other legitimate uses of the environment.*

except in relation to water discharge and groundwater activities where it means: the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may—

- a) be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems,*
- b) result in damage to material property, or*
- c) impair or interfere with amenities or other legitimate uses of the environment.*

Section 3.46 states:

“The specified steps can only be steps which are necessary to remove the risk of serious pollution. You cannot go beyond this. The Core Guidance says that a suspension notice should allow activities that are not related to the risk of serious pollution to continue. This means that you should always ensure that you only suspend the permitted activity / activities to the extent necessary to avoid the risk of serious pollution”.

NRW has only partially suspended the permit and the Appellant remains authorised to treat and remove waste from site. By reducing the quantity of waste on site to permitted limit of 5,250 tonnes, the suspension notice will be withdrawn.

Section 3.47 states:

“You must specify the time within which those steps must be taken. The time must be reasonable and take into account both the possibility it can be achieved and the risk to the environment if this time is too long. What is a reasonable period of time may seem shorter to you than to an Inspector having heard from the operator as part of an appeal. You must be able to justify the time you have specified. An operator can always comply and notify us before the specified time”.

It is stipulated within the notice that the quantity of waste on site must be reduced to permitted limit by the 31st January 2021, approximately 6 months

14.2 The Environmental permitting: Core guidance For the Environmental Permitting (England and Wales) Regulations 2016 [Annex D]

Section 11:10 states:

“The regulator can serve a suspension notice on the operator if the operation of a regulated facility involves a risk of serious pollution (see regulation 37(2)); or if the way in which the regulated facility is being operated both contravenes a permit condition and involves a risk of pollution (see regulation 37(5)).

Section 11:11 states:

“This means that, where the operator has contravened a permit condition, there has to be a risk of pollution, but not of serious pollution”.

Section 11:14 states:

“The suspension notice must describe the nature of the risk of pollution and the actions necessary to remove that risk. The notice must specify the deadline for taking actions”.

Section 11:15 states:

“When the regulator serves a suspension notice, the permit ceases to authorise the operation of the entire regulated facility or specified activities depending upon what is specified in the notice”.

Section 11:16 states:

“A suspension notice should allow activities to continue unless their cessation is necessary to address the risk of pollution. While the suspension notice is in force, additional steps may need to be taken in relation to any activities that are allowed to continue. Where this is the case the suspension notice must set out these additional steps”.

Section 11:17 states:

“When the operator has taken the remedial steps required by the notice, the regulator must withdraw the notice”.

NRW's Reg 37(5) EPR 2016 Notice meets the above guidance and NRW would have withdrawn the Notice if the steps within the Schedules were complied with.

14.3 Sector Guidance Note IPPC S5.06 'Guidance for the Recovery and Disposal of Hazardous and Non Hazardous Waste

Regulated facilities or exempt facilities that transfer or treat hazardous waste are expected to meet the requirements of Sector Guidance Note IPPC S5.06 'Guidance for the Recovery and Disposal of Hazardous and Non Hazardous Waste [Annex D].

Chapter 2 provides detailed guidance on techniques for pollution control including pre-acceptance and acceptance procedures, waste storage, general principles for treatment and specific guidance on immobilisation (2.1.5).

14.4 Government response to consultation on enhanced enforcement powers and other measures to tackle waste crime and entrenched poor performance in the waste management industry October 2015 [Annex D]

14.4.1 Between 26th February and 6th May 2015 the UK and Welsh Government ran a joint consultation exercise seeking views and comments on proposals to enhance existing enforcement powers.

14.4.2 The consultation was in order to seek views on the enhancement of enforcement powers to help regulators to tackle entrenched non-compliance.

14.4.3 Eighty-seven respondents gave their views on Proposal A: 26 from local authorities, 21 from individual companies, 14 from trade associations, 8 from other public bodies, 6 from private individuals, 4 from professional bodies, 5 from consultancies and 3 from NGOs

14.4.4 The weight of argument is in favour of giving stronger powers to the regulators to take action against persistent and entrenched poor performance by some operators in the industry. The Government agrees that enforcement powers should continue to be linked to a risk of pollution rather than simply the breach of an enforcement notice. We therefore propose to make an amendment to regulation 37 of the 2010 Regulations. The amended legislation will expand the regulators' powers to issue a suspension notice where there has been a breach of a permit condition and a consequent risk of pollution. This amendment will apply to all activities regulated under the 2010 Regulations and not just waste operations.

14.4.5 Government therefore rejected the idea of forcing the Regulator to issue an Enforcement Notice in order to issue a Suspension Notice and rather linked it to a breach of a permit condition and a **risk** of pollution.

14.4.6 The Collins English Dictionary definition of "risk" is "*the possibility of incurring misfortune or loss, hazard*". It is clear from the Dictionary Definition that it is not required to prove the result of a "risk". It is described as a possibility. NRW believe that they have gone beyond this in any event but do not agree with the Appellant that the risk has to be real, specific, quantifiable and material.

14.4.7 A risk is exactly that, a possibility, not a definite. NRW do not have to prove that there has been an environmental effect/ damage but just that there is a possibility of such because of the actions of the Appellant, a "risk". It is NRW's contention that this statement of case absolutely shows that there is a risk of pollution due to the breach of the permit condition in relation to the amount of waste on site

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/466879/waste-crime-consult-sum-resp.pdf

Point 21 *The Appellant's case is simple: there is, in fact, no real, specific, quantifiable and material risk of pollution. As such, the legal justification for the service of the Notice is flawed and so the Notice was served in error and should be quashed.*

- 15.1 As has been evidenced throughout this statement of case, the Appellant has significantly failed in their obligations to comply with conditions of the Permit and environmental legislation.
- 15.2 The quantity of hazardous and non-hazardous wastes accepted by the Appellant has meant that wastes have not remained in segregated batches but mixed to form larger stockpiles. The Appellant has not stored, treated or validated waste as is required by the procedures which lists the measures needed to mitigate the risks those wastes pose. Failing to do this creates a risk of waste, containing hazardous substances, and hazardous properties leaving site and entering the environment without the appropriate controls and protective measures.
- 15.3 From the evidence submitted to NRW, the Appellant has not validated or tested exported waste in line with procedures and NRW is not confident that the sampling results provided are an accurate representation of waste exported from site. No evidence has been submitted to NRW to demonstrate the contrary despite additional requests for the Appellant to do so.
- 15.4 It is evident from the duty of care that the Appellant has miscoded exported waste which has significant implications for the receiving sites. Waste has been accepted by these sites without the appropriate testing and validation creating a risk of waste, containing hazardous substances and properties entering the environment without the appropriate controls and protective measures.
- 15.5 All of the above justify the service of the Suspension Notice in NRW's opinion. The volume of waste at the site means that the controls that the Appellant has committed to operate under are not being adhered to.
- 15.6 The Appellant states that the existence of risk must require identification of a risk that is "real, specific, quantifiable and material". These terms are the Appellant's interpretation and not one that exists in legislation or guidance. Please see argument at paragraphs 14.4.6 and 14.4.7. Risk is defined as a possibility and not a definitive but even so, NRW have identified risks to receiving sites because of the volume of waste on site and therefore the inability to follow the processes identified by the Appellant in their application and EMS to restrict these risks.

Point 22 *The material is not "absolute hazardous waste", as alleged by the Respondent. The Appellant will demonstrate in evidence that the material leaving the Facility is non-hazardous, both as a matter of classification under 'Technical Guidance WM3: Waste Classification – Guidance on the classification and assessment of waste', Natural Resources Wales et al., published 1 April 2014, last updated 26 June 2018 ("WM3"), and as a consequence of the actual hazard properties of the material, and therefore there is no risk of pollution at the receiving sites.*

- 15.7 As has been evidenced, the quantity of waste on site has resulted in hazardous and non hazardous wastes including soils and other wastes being mixed. The large stockpile, that fills the building can only be a combination of these wastes.

This is supported by the paperwork, as no other treated waste (from industrial sources) have been exported from site.

- 15.8 As explained in the guidance document HWR06 mixing wastes with other wastes with different waste codes, hazardous and chemical properties is coded **19 02 04* premixed wastes composed of at least one hazardous waste**. This is an **absolute hazardous waste** and threshold criteria do not apply to absolute hazardous wastes. If the pre-mixed waste is not subject to further treatment, this code will apply for onward movement of this waste.
- 15.9 The guidance goes on to confirm that the immobilisation / fixation / encapsulation of wastes into binder materials such as fly ashes and cement to encapsulate hazardous waste materials the output is going to be either **19 03 04* wastes marked as hazardous, partly stabilised** or **19 03 06* wastes marked as hazardous, solidified**. Both these wastes are absolute hazardous waste entries and the concentration of dangerous substances within them is not considered in the assessment of these materials as hazardous wastes. Any site receiving this waste must be authorised to accept it.
- 15.10 As previously noted, the testing and sampling paperwork submitted to NRW did not demonstrate or evidence that adequate testing was being completed on waste exported from site. Validation samples do not fully cover environmental criteria/contaminants as set out in document SOL0113ESP01 [**Annex C**]. Testing for PAH, BTEX and speciated hydrocarbons was rare in the solid soil tests (mg/kg) and non-existent in the leachate testing. Leachate analysis was not provided for most samples and where it had been (samples SP8A and SP8B taken 10/5/2019), the contaminants tested for were not as comprehensive as those listed in document SOL0113ESP01 [**Annex C**].
- 15.11 It must also be noted that landfill Waste Acceptance Criteria (WAC) testing analysis (specifically leaching test results) must not be used for waste classification and hazardous waste assessment purposes. This analysis is only applicable for landfill acceptance and does not give any indication as to whether a waste may be hazardous or non-hazardous or pose a risk to a receiver site
- 15.12 As a commitment to continually review the issue of the notice, NRW has requested the Appellant submit further information to demonstrate that appropriate assessments and testing have been conducted. At the time of writing the statement of case, this information has not been provided to NRW.

Point 23 *The evidential burden sits with the Respondent to demonstrate that there was a real, specific, quantifiable and material risk of pollution at the date of the service of the Notice and that is was a proportionate response to that risk to the serve the Notice.*

- 15.13 As stated above the language used by the Appellant that NRW need to demonstrate that there is a “real, specific, quantifiable and material risk of pollution” does not appear in legislation or guidance. “Risk” is defined as a possibility however the evidence used to determine the risk of pollution has been presented in this statement of case and NRW is satisfied that it has demonstrated this. In fact NRW has gone beyond what is required and has identified, clearly, the risk that the additional volume of waste could lead to.

Point 24 *The explanation given by the Respondent at the time of the service of the Notice and in subsequent correspondence is based on a series of assumptions and misunderstandings which have been shown to be mistaken in the detailed correspondence between the parties prior to the issue of this appeal [Tabs AB08 – AB20, pages 297 - 498]. These grounds of appeal do not seek to repeat all of the reasons why the Respondent’s reasoning is flawed. It is not for the Appellant to counter all of the reasons why there ‘might’ be a risk of pollution. It is for the Respondent to demonstrate that there is in fact a real, specific, quantifiable and material risk of pollution.*

15.14 The evidence used to determine the risk of pollution has been presented in this statement of case. NRW is satisfied that it has demonstrated this. **NRW have throughout showed**

– a commitment to review the issue of the Notice, additional supporting information has been sought from the Appellant. As explained in correspondence, it is simply not sufficient for the Appellant to make generalised statements that the waste and their operation pose no risk; it must be supported with technical and evidential documentation and go through the appropriate channels of assessment.

15.15 The Appellant is not permitted to operate the facility in any other manner than is authorised by the permit.

Point 25 *It is the Appellant’s case that no such risk of pollution exists.*

15.16 NRW considers that a risk of pollution exists as clearly identified in this statement of case.

Point 26 *For the reasons set out above, the Appellant submits that the Notice should be quashed. In the alternative, and in the event that the Respondent demonstrates that a risk of pollution does exist, the Notice should be varied to address that specific risk, and should go no further than is necessary to address that risk.*

15.17 It is NRW’s case that the risk of pollution does exist and has been evidenced and demonstrated in this statement of case. Whilst there are other serious contraventions, NRW considers the excessive volume of waste stored on site significantly increases the risk of contaminated wastes leaving site and entering the environment. By reducing the volume of waste on site, it may be possible for the Appellant to comply with the other conditions of permit including segregation, treatment, testing and validation and also enable access to older waste.

15.18 This position is reflected in the current notice which only restricts the further acceptance of waste and does not restrict the Appellants authorisation to treat or remove waste. Reducing the quantity of waste on site to permitted limits will lift the partial suspension.

16. Summary

16.1 NRW believe that they have issued the Suspension Notice based on both limbs of the necessary test for Reg 37(5) of EPR 2016, namely a breach of condition (accepted by the Appellant) and a risk of pollution.

- 16.2 NRW believe that due to the long-term non-compliance and risk the Suspension Notice was justified and proportionate. NRW take suspending a permit very seriously.
- 16.3 NRW do not accept that the RGN11 Guidance should be applied to the service of this Notice. It is clear from the 2015 consultation that there was a gap in the tools available to Regulators to deal with persistent non-compliant operators. It can be seen from paragraph 3.0 That the Appellant is persistently non-compliant and have not responded to the CAR forms adequately. The Appellant non apologetically accepts that they are in breach of the permit. Therefore the 2016 EPR Regs provided Regulators with more powers to suspend a permit where there is a breach of condition and a risk of pollution.
- 16.4 NRW have identified a large number of non-compliances with the procedures put in place by the Appellant in order to ensure that there is no/limited risk. This is due, in main, to the volume of waste on site.
- 16.5 The amount of waste on site is not allowing operations to be conducted in the manner assessed when the permit was issued to control the risks associated with the waste types accepted for treatment. NRW did not consider they had any option other than to partially suspend the Permit insofar as waste acceptance as a protective response and to prevent the risks from the site increasing or continuing.
- 16.6 The Notice allows the treatment of waste in accordance with the permitted processes.
- 16.7 It was therefore within (and still is) the Appellant's gift to remove the excess waste from site to a landfill if treatment is not possible or deemed necessary once analysis has taken place. Schedules 2 and 3 state that waste can be removed once the appropriate testing has been undertaken. To date no data has been submitted and no waste has been removed (that we are aware of). It has always been within the gift of the Appellant to do the appropriate testing and remove waste and reduce levels to within permit compliance.
- 16.8 NRW considered serving a Regulation 36 EPR Notice requiring the Appellant to comply with their permit. However, because of the history of non-compliance and because the root cause of the risk is quantities of waste on site it was not felt this would deliver the required protective response. Allowing the site to continue to accept waste would not improve the Appellant's ability to treat waste in Hazaaccordance with the permit and supporting documents and therefore would not reduce the risk to the receiving environment from exported wastes.
- 16.9 It was therefore felt that a Regulation 37(5) Notice was required. NRW would reiterate that compliance with the Notice served was within the gift of the Appellant. It is unclear why the Appellant took the Appeal route rather than the compliance route. In fact, to NRW's knowledge no effort has been made by the Appellant to comply with the notice whatsoever.
- 16.10 NRW have issued a proportionate, considered Suspension Notice. Service of any such Notice is deliberated at length and the impact on the Appellant/recipient is always considered together with whether there is any other alternative. It is believed that the Notice was necessary and proportionate and although alternatives were explored they would not have offered the same protection to the environment.

16.11 NRW's Statement of Case has established the risk that the permit breach is significant enough to justify the service of a Reg 37(5) Notice.

Natural Resources Wales

09/12/2020