TTH RESPONSE / COMMENTS

Our comments comprise of an overarching summary and point by point comments which are deemed necessary. The point-by-point comments are shown in red font for clarity.

Summary:

The information pack has been reviewed. As previously stated, we do not accept the officer's notebook due to the fact that it was not reviewed and signed as an accurate record by representatives of The Treatment Hub [TTH] and is therefore inadmissible. However, we have commented on this nonetheless in case.

Work was undertaken by Burgess Salmon to narrow the point of dispute with NRW. The suspension notice is very narrow in its focus. It is entirely based on excess volume leading to environmental risk through export of hazardous waste. This needs reiterating because NRW have provided reams of information on other matters. We deem these other matters irrelevant to the suspension notice. NRW were obliged to have all required evidence to support their suspension notice at the time it was issued / prior to issuing. By trying to broaden the issues to allow other, unrelated materials to be used as justification, it is clear that they can't support the claims made in the suspension notice. We give one example here. NRW have provided numerous sections of duty of care information. This was not in the suspension notice. Furthermore, NRW confirmed in email that the duty of care issue was not related to the suspension notice. Thus, by their own admission and in their own words, significant portions of their submission are not related to the suspension notice.

This is regarded as intentional obfuscation by NRW.

TTH has firmly maintained from inception that the facility has been managed professionally with suitably qualified TTH staff (who are also employees of Envirotreat Technologies Limited [ETL], a highly regarded land remediation company with over 150 land remediation projects successfully completed to date with the full support of the regulatory bodies). ETL has NOT created any pollution risks throughout the company's lifetime and was set up specifically to address pollution risks, not create them. This ethos equally applies to TTH.

TTH's staff are fully conversant with waste regulations and waste related matters. In fact, Neil McLeod and Simon Farr were members of the 'End of Waste' Consultation Panel so the members of staff are both experts on both contaminated land and waste management issues.

TTH's staff routinely use WM3 and related regulatory tools in the 'day-to-day' business. This includes the fundamental need to determine if a "mirror entry" waste is hazardous or non-hazardous. TTH becomes the waste holder on acceptance of the waste so it is incumbent on TTH to carry out the requisite acceptance testing and reclassification if required. This is specifically referenced as a 'duty' in WM3 so it is not a matter for dispute.

Turning to the suspension notice itself. NRW claim excess soil volumes leads to export of hazardous waste which results in environmental risk. This allegation could be evidenced by NRW in one of two ways.

Firstly, NRW could review the soil laboratory data for the material exported from TTH between March 2018 and March 2020 and show that these soils contained unacceptable levels of contamination. NRW have been provided with all data required to make this assessment. They have opted not to do so.

Secondly, NRW could make a series of unjustified and unfounded assumptions to lead them through the argument. NRW's submission shows that this has been their approach. They have rejected the approach based on data for one based on supposition.

This NRW officer has continually refused to engage with TTH. Queries and concerns were not discussed with TTH for clarification. Points made by TTH have fallen on deaf ears. It is this lack of understanding and refusal to listen that has resulted in them adopting the approach they have. It is shown that this was NOT the approach of NRW before this officer was appointed to regulate the facility.

The ill-founded assumptions in their case are stacked one upon the other and are laid out in their submission. They have taken soil volumes and stated that this hinders the ability to treat soils. We have stated that not all soils need treating, but this has not been acknowledged. They have then argued that the failure to treat soils has resulted in hazardous wastes leaving the site. We have provided all data for material leaving the site to support our position that soils are not hazardous. These data have been disregarded. NRW have then equated hazardous soils with environmental risk. We have roundly rejected this.

The officer's particular lack of knowledge and experience in land contamination were laid bare in the first suspension notice, which had to be withdrawn, and in their source-pathway-receptor model.

The above shows that NRW have not justified the suspension notice because they cannot. It is clear that the suspension notice was not necessary or proportionate. NRW have stated that it is, but they have to adopt this position. Their evidence and the track record of TTH shows it not to be.

In NRW's opinion, it was necessary and proportionate to issue a suspension notice to reduce soil volumes in TTH. TTH has shown, and NRW have confirmed, that excess volumes had been reduced to permitted levels once before. TTH has shown, and NRW have accepted and welcomed, that soil volumes were being reduced at the time of the suspension notice. As such the notice is demonstrably unnecessary. NRW have shown that they have not assessed the environmental risk posed by the excess soil volume. They have disregarded the laboratory data from exported soil and instead used waste classification terms from a waste no longer utilised to support their claims. They have not followed land contamination guidance or best practice. The example presented relates to materials that had not been used for 7 months prior to the notice. As such it is an illogical choice of supporting evidence. The suspension notice uncontestably relates to soil as this is all that has been exported since the preceding CAR. And yet they've not commented on soils. Without assessing the risk being mitigated, how can NRW assess proportionality? They cannot and have not. Thus, they cannot state it is proportionate.

It has always been our position that the suspension notice was invalid. The evidence presented supports our position. They have failed to understand TTH operations. They have failed to assess the risks the suspension notice was intended to mitigate. They have failed to factor in our ongoing reduction in underlying non-compliance. They have not shown the notice to be either necessary or proportionate. However, they included reams of irrelevant, unsupported evidence to hide the fundamental flaws in their case.

It is our position that this has resulted from a change in officer, who has acted in a manner that has severely impacted a business without any justification whatsoever (both financially and in relation to our reputation within the industry, which is highly sensitive to such matters). We do not believe a competent officer would have acted like this. None of the previous officers did.

NRW make a scandalous comment in the conclusion section (and we make no apologies for using this word) that TTH has made ‘no effort to comply with the Suspension Notice whatsoever’ – 16.9. The complete opposite is true – the suspension relates to the acceptance of wastes onto site which we have 100% complied with notwithstanding the suffocating damage that this notice has been done to our business. NRW need to fundamentally withdraw this statement which is designed to further besmirch our reputation.

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

STATEMENT OF CASE FOR THE RESPONDENT

Contents

13.1. EPR

13.2. Haz waste regs

13.3. Duty of Care

14. Relevant policy and guidance

14.1. RGN 11

14.2. EPR Core Guidance

14.3. S5:06 IPPC

14.4. Government response to consultation on enhanced enforcement powers October 2015

15. Respondent's Grounds of Appeal

16. Summary

17. Annexes (see separate document)

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 Practice[1] 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]**.

TTH Comment: This introductory statement is incorrect.

TTH does not currently operate as a hub and cluster as set out in CL:AIRE guidance, as alleged. This will only apply to the generation of products as summarised in Section 6 of our Permit Variation Support Document Revision 4 (copy provided in our bundle). The generation of a product is, by definition, a waste recovery process and accordingly removes the waste stigma from the material. If TTH operated under CL:AIRE hub and cluster, materials exported would not be classified as waste and large swathes of NRW's submission would, by definition, be irrelevant (e.g. waste classifications and EWCs, waste transfer notes). This comment clearly demonstrates the regulators lack of knowledge in relation to TTH operations and clear lack of understanding on how TTH operates in practice, mainly due to the clear unwillingness to engage in a professional and acceptable manner

The introductory statement refers, once again, to the use of a 'batch style process treating consignments of contaminated soils'. This statement is incorrect. TTH has repeatedly stated that only wastes requiring treatment are treated.

There is no mention of the permit variation *stipulated as a requirement by NRW* to *'update and reflect current site operations'.* It was a stated action point which TTH fully complied with.

This was meant to address identified divergences from the historical permit and was the sensible and pragmatic way to address the matter.

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.

TTH Comment: Noted

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].**

TTH Comment: Agreed

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.

TTH Comment: This is addressed in our Summary Statement 08.12.20 and within other related documentation.

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.

TTH Comment: Noted

TTH has complied with the stipulated requirement to vary the permit accordingly. Revision 4 was accepted as duly made on the 8th December 2020.

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 wastes[2], 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.

TTH Comment: This is addressed in our Summary Statement 08.12.20 and within other related documentation.

Once again NRW are making statements which are based on false premises and without any supporting evidence or justification – it is pure supposition. The quantity of waste did NOT restrict TTH's capacity to treat wastes as no wastes were being treated at the times of the inspections. Equally TTH was able to effectively manage wastes.

The lower section of the building is beyond our permit area and thus it is unclear why NRW needed access to it. Access is available from external doors lower down the building (beyond our section). TTH has no obligation to provide access through the facility to land beyond.

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]**.

TTH Comment: This is addressed in our Summary Statement 08.12.20 and within other related documentation. The stipulated permit variation was provided as required.

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.

TTH Comment: This statement needs to be clarified as it is misleading and incorrect.

On the 29th January 2020 TTH submitted an action plan for the reduction in waste volumes in response to the requirements of the CAR dated 18th December 2019.

Following submission of the action plan, NRW responded to TTH on 6th March 2020 stating that our action plan did not satisfy the requirements stipulated within the CAR.

The action plan produced was considered by TTH to meet the requirements stipulated within the CAR. TTH had actively begun to reduce volumes within the Treatment Hub by March 2020 (NRW did not request any information relating to current volumes of waste within the Treatment Hub in March 2020). The concerns regarding the stockpiling of wastes had equally been addressed as it was stated that wastes were segregated within TTH depending on their contamination profiles / hazard codes and likely processing requirements. It is perfectly acceptable to bulk (similar) waste prior to processing. This point was discussed in depth during the December 2019 NRW site visit and accepted by one of the attending officers (Paul Gibson).

TTH responded to NRW's email of 6th March 2020 detailing the future operational requirements to reduce volumes and segregation / management of wastes on receipt.

NRW responded on the 13th March 2020 with the following:

> "Thank you for the additional information. It is positive to hear that measures are being taken to reduce the quantity of waste on site. This is a key issue that needs to be addressed, as it is evident that the amount of waste on site not only limits access to materials stored down the rear of the building, but also restricts the area available for treating waste."

This statement by NRW totally contradicts the above statement in 1.8 that 'the Appellant had also not demonstrated that measures were being taken to work towards complying with the existing permit limits and conditions'.

An additional request was made within this response, i.e.

> "For completeness, please could you provide details on the waste you continue to accept (source, waste type, EWC code and quantity) and on waste being removed (destination, waste description, EWC and quantity)."

The required information was provided by email (dated 19th March 2020)

Given that no further requests were made regarding the reduction in volume or stockpile management / segregation it was considered that the information provided was sufficient to address the requirements of the CAR report.

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.

TTH Comment: This duty of care information was fully provided. To date the paperwork has not been returned to TTH despite requests from TTH in July 2020 to return said documents.

Additionally, this does not relate to the suspension notice and is a completely separate matter. This point is acknowledged by Liane Bacon-Weekes in e-mail correspondence.

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.

TTH Comment:

This demonstrates that THH was actively reducing volumes. NRW has been fully aware of this. Volumes are currently 40% lower than at their peak (15,000 tonnes), with 60% of excess volume removed. As such TTH has been demonstrably working toward historical permit compliance. It is noted that no deadline has been set by NRW as to when the permitted volume should be achieved.

The stated and agreed volumes were / are within the permit variation volume of 12,000 tonnes. This is also referenced in our Summary Statement 08.12.20 – we also reference the volumes within the hub directly before and after the visit on the 2nd July 2020.

The filling of the reception area was a temporary measure – the soils within this area were removed subsequent to the visit and prior to issuing of the Suspension Notice as stated in our Summary Statement.

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.

TTH Comment: TTH firmly and resolutely disputes these assertions by NRW. These assertions were based on false premises and there was no evidence provided to support the assertions. See our Summary Statement 08.12.20 and other relevant comments below.

As noted above, the quantity of waste has reduced by 40% from peak levels, with excess volume reduced by 60%. Soil volumes have exceeded current levels for several years, throughout which time NRW regularly audited the site and did not deem these greater volumes to present a significant risk (*maximum CS3, see section 3 below*). Indeed, the suitable method for dealing with the non-compliance was deemed by NRW to be permit variations, confirming that such volumes could be acceptable to NRW. No evidence or justification is provided on why material import had to be stopped at this point, given TTH's track record in reducing volumes.

NRW has still has not provided any evidence on how excess volume results in pollution risk and DID NOT consider there was any pollution risk during any previous audits / visits over a period of FIVE years previously. Indeed, this chain of thought is evidently a recent development given the change in regulatory approach / personnel.

The stringency of NRW regulation has clearly increased as excess volumes have decreased, which defies common sense and logic. The increased stringency of regulation is not the result of TTH intransigence of missed deadlines, rather a result of subjective decisions made following a change from an experienced to an inexperienced officer.

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.

TTH comment: TTH has firmly and resolutely disputed the validity of this Suspension Notice for the reasons fully documented in subsequent correspondence and within our Summary Statement 08.12.20.

1.12 [SIC] 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**].

TTH Comment: Agreed.

In this respect it should be noted that TTH repeatedly requested that the Suspension Notice be withdrawn as it was based on false premises and was ipso facto invalid. These requests were denied by NRW and as a consequence TTH had no option but to formally appeal against the notice. See additional comments below on the same subject.

TTH needs, once again, to reiterate that the issuing of this Suspension Notice has severely damaged TTH's business and reputation within the industry. This could and should have been avoided. NRW should have properly engaged with TTH to fully understand how the facility was operating rather than to 'shoot from the hip' without carrying out the required due diligence. The actions of NRW were unprofessional / unacceptable and demonstrated very poor governance.

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.

TTH Comment: Noted

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.

TTH Comment: See our Summary Statement 08.12.20

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.

TTH Comment: NRW has seemingly still not acknowledged our clarification of the situation as summarised in Burges Salmon's comprehensive response dated 11th September 2020 and in our Summary Statement 08.12.20 and within related documentation.

TTH has repeatedly stated that there is no requirement to treat soils / wastes that do not require treatment – it is clearly illogical and non-sensical to carry out treatment where it is not required or deemed necessary simply because the permit references this treatment process.

It should also be noted that the addition of modified clays is not classified as solidification. This statement is incorrect.

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.

TTH Comment: See our Summary Statement 08.12.20

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.

TTH Comment: See our Summary Statement 08.12.20

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].**

TTH Comment: Noted – see our Summary Statement 08.12.20

As stated above this does not mean that we have to treat wastes that do not require treatment simply because treatment is referenced on the permit. *The inference that we*

have to treat wastes regardless is illogical and non-sensical.

2.3.2 EMS is a live document and is developed in line with the requirements of "How to 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.

TTH Comment: See our Summary Statement 08.12.20

See comments on point 2.3.1 above – these equally apply to 2.3.2

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

TTH Comment: Noted

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".*

TTH Comment: The bullet points have been duplicated.

TTH has firmly maintained from inception that the facility has been managed professionally with suitably qualified staff (who are also employees of Envirotreat Technologies Limited [ETL], a highly regarded land remediation company with over 150 land remediation projects successfully completed to date with the full support of the regulatory bodies). ETL has NOT created any pollution risks throughout the company's lifetime and was set up specifically to address pollution risks, not create them.

What logic therefore presupposes that TTH would be operated any differently? To argue otherwise simply defies logic and common sense.

These relate to environmental risks at the facility, which are not the subject of the suspension notice. Environmental risks at the facility location have not been raised through CARs and thus it's clear NRW are satisfied with this aspect.

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.

TTH Comment: See comments on point 2.3.4 above – these equally apply to 2.3.5.

TTH fervently disputes the alleged inference that TTH has not operated the facility with the appropriate control measures. This is pure supposition.

Waste soils are bulked in accordance with current guidance (i.e., with wastes exhibiting similar chemical compositions and risks). It is noted that volumes exceed the historical permit limit but have been consistently reduced and the volume of excess soil is 60% of below peak levels.

NRW also states that these activities have 'presented a risk to the environment'. This is again pure supposition – NRW has provided no evidence to support this statement. TTH fervently and resolutely rejects this unsubstantiated assertion. NRW's own guidance notes explicitly state that the breach of an environmental permit condition does not correlate with a potential environmental risk and yet they are equated here.

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.

TTH Comment: NRW are fully aware that any variance was to be addressed through a permit variation as stipulated by NRW (*and that is precisely why it was stipulated as an ACTION POINT by NRW*). See our Summary Statement 08.12.20 and additional comments below.

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."

TTH comment:

Current guidance stipulates that the reasonably foreseeable risk stemming from the permit non-compliance should be completed and included on the CAR form. This has not been presented to TTH or included on the CAR form. The guidance clearly stipulates that the assessment of reasonably foreseeable risk should be based on site-specific factors.

Given the alleged pollution risk is posed by materials being sent to receiver sites, the risk assessment should be specific to those sites. The guidance stipulates that assessment should include, amongst other factors:

- The proximity and vulnerability of the local population
- The sensitivity of the surrounding environment

The guidance goes on to state that:

'The CAR form explains how we have taken these factors into account when we arrive at a score for the reasonably foreseeable impact'.

It is clearly evident that no such assessment of reasonably foreseeable risk was undertaken.

NRW has stated that they consider the *recent* non-compliances to be a CS2, i.e., significant impact on people or the environment. This has not been justified and the assessment leading to this conclusion has not been provided*. No justification for why 9,000t of soil equates to a significant impact whilst 12-15,000t resulted in a CS3 (minor or minimal impact of effect) has been provided. This is yet another example of illogicality and arbitrary decision making. It further demonstrates that there was no justification for issuing the Suspension Notice in July 2020.*

Justification for classifying land contamination risk as category 2 is also not provided particularly as previous assessments were classified as category 3. Definition of 'significant' is not provided. Part 2A of The Environmental Protection Act does include a definition of 'significant' when applied to land contamination risk. Given that this is the nature of NRW's concern then it is deemed appropriate. Section 4.1, paragraph 4.5 states:

> *"The following health effects should always be considered to constitute significant harm to human health: death; life threatening diseases (e.g. cancers); other diseases likely to have serious impacts on health; serious injury; birth defects; and impairment of reproductive functions."*

The guidance goes on to state (paragraph 4.6):

> *"Other health effects may be deemed by local authorities to constitute significant health effects. In deciding whether or not a particular form of harm is significant harm, the local authority should consider the seriousness of the harm in question."*

Section 4.3, Table 2 covers the definition of significant with respect to ecological receptors, which are in themselves defined therein. These include:

> *"Harm which results in an irreversible change, or in some other substantial adverse change, in the functioning of the ecological system within any substantial part of that location; or*
>
> *Harm which significantly affects any species of special interest within that location and which endangers the long-term maintenance of the population of that species at that location."*

Section 4.3, Table 3 covers the definition of significant harm with respect to property receptors, which are themselves defined therein. These are not considered relevant as there are not considered to be any property receptors at question at the receiver site(s).

However, the definition includes significant reduction in crop yield of substantial loss of their value, death and disease of pets, and structural failure, substantial damage or interference with any right of occupation.

Finally, Section 4.4 covers the definition with respect to controlled waters. Section 4.38 defines significant pollution of controlled waters as follows:

- *Pollution equivalent to 'environmental damage' to surface water of groundwater as defined in The Environmental Damage (Prevention and Remediation) Regulations 009, but which cannot be dealt with under those regulations.*
- *Inputs resulting in deterioration of the quality of water abstracted, or intended to ben used in the future, for human consumption such that additional treatment would be required to enable hat use.*
- *A breach of statutory surface water Environmental Quality Standard, either directly or indirectly via a groundwater pathway.*
- *Input of a substance into groundwater resulting in a significant and sustained upward trend in concentration of contaminants (as defined in Article 2(3) of the Groundwater Daughter Directive (2006/118/EC)).*

It is TTH's position that material leaving TTH does not present risk of a significant impact as defined above. Furthermore, NRW has not presented any evidence that it does. They

have not presented any proof that they have undertaken an assessment of reasonably foreseeable risk, or geoenvironmental risk assessment to support their change to category 2.

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.

TTH Comment: Agreed

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 waste[3] 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)

TTH Comment: 'All reasonable steps' does not equate to 'all steps'.

This does not relate either to excess soil volume, the suspension notice or the postulated significant environmental harm.

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

TTH Comment: These are duty of care matters and are not relevant to the suspension notice. TTH will address these matters through the appropriate channels. Point 2.5.3 should be removed from this statement as it is inadmissible.

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 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.

TTH Comment: See above comment on point 2.5.3. Point 2.6.1 should be removed from this statement as it is inadmissible.

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.
TTH Comment: See above comment on point 2.5.3. Point 2.6.2 should be removed from this statement as it is inadmissible.

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 'mirror hazardous' ("**MH**") and 'mirror 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**.

TTH Comment on 2.7.5:

What exactly is the relevance of this emboldened statement in 2.7.5? The whole point of WM3 and related assessment procedures are to classify wastes / materials as to their nature and potential impact on the environment – that is the whole point of stipulating thresholds. If they are classified as non-hazardous by WM3 / CLP assessment they are non-hazardous by definition otherwise what is the point of thresholds and equally what is the point of WM3? The assessment is not caveated to the effect that it still contains hazardous substances – this is errant nonsense. It should also be remembered that the suspension notice related to hazardous wastes, not hazardous wastes and non-hazardous wastes that could cause pollution.

General TTH Comment on Above:

TTH is fully aware of WM3 and waste classification procedures. TTH / ETL staff are fully *au fait* with WM3 and CLP etc and commonly utilise these well-established regulatory tools in the 'day to day' business and have been doing so for several years (previously WM2 etc).

With respect, TTH does not need to be 'educated' on matters which both companies are fully *au fait* with and routinely use for all projects.

Also it should be noted that mirrored hazardous wastes can be deposited at sites and NOT present an unacceptable environmental risk. As such, NRW cannot show an unacceptable environmental risk based on mirrored EWC codes. *Waste classification and environmental risk assessment are not equivalenting and should not be conflated*. Yet this is the basis for their 'environmental risk assessment'.

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].**

TTH Comment: The guidance itself explicitly states that it does not apply to soil remediation and excludes non-hazardous wastes. Furthermore, chemical stabilisation has not, and does not need to be, undertaken on materials currently in TTH. As such, reference to this document for untreated, no-hazardous soils or even hazardous soils to be remediated without chemical stabilisation, is misplaced.

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.

TTH Comment: This is inaccurate for the above reasons. NRW has been informed of this on numerous occasions.

2.8.3 The following principles should be used when classifying and coding treated hazardous waste.

TTH Comment: Noted but irrelevant for above reasons.

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."*

TTH Comment: Noted but irrelevant for the above reasons. Furthermore, pre-mixing as defined above is not undertaken and NRW have no evidence to support such an assertion.

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.

TTH Comment: Noted.

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.

TTH Comment: Noted but TTH disagrees with the historical definitions provided – these definitions are generic and not utilised interchangeably. Chemical stabilisation is a means of reducing the mobility of contaminants. Physical stabilisation and solidification are means primarily of managing moisture content and improving materials geotechnically. TTH / ETL always makes a clear distinction between these processes.

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 BREF[4]. 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."

TTH comment: No liquid wastes are accepted at TTH and thus no phase changes occur. By the above definition, no solidification occurs.

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.*

TTH Comment: Noted but this is only relevant to hazardous wastes undergoing stabilisation and where a product is not produced as a result. HWR06 does not apply to soil remediation. It also only applies to hazardous wastes that do not undergo any further treatment.

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.

TTH Comment: See our Summary Statement 08.12.20

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.

TTH Comment: See our Summary Statement 08.12.20

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.

TTH Comment: See our Summary Statement 08.12.20

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).

TTH Comment: See our Summary Statement 08.12.20

This statement is unsustainable. Risk is, by definition, directly linked to the potential for pollution to occur otherwise what is the point of the risk assessment. The two are clearly inexorably linked. This is fully understood in the environmental industry as a whole. To state otherwise is illogical and non-sensical.

Also how do the statements below correlate? There needs be a risk of pollution by definition. How can NRW then state that there is no requirement for the regulator to establish that pollution has or will occur through such a risk?? This defies logic and common sense.

Furthermore this would implicitly give the regulator unchartered powers to suspend businesses from operation through completely unnecessary and disproportionate actions. This is clearly NOT the intention of the regulations or the legislature.

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).

The suspension notice does not include the nature of the risk of pollution. It does not include any evidence or terminology consistent with land contamination guidance.

Indeed, the first version was withdrawn once this was pointed out to NRW by TTH and replaced with the second version. However, the deficiencies clearly acknowledge by NRW, through their withdrawal and reissue, remain unaddressed.

It remains our position that NRW have not shown how excess soil volume, which is significantly reduced from the peak volume, now constitutes an environmental risk. Closure of a facility on these grounds, with the lack of evidence, is not proportionate to the risk.

TTH reiterates the point that, at no time, has NRW provided their evidence or justification for their assessment of reasonably foreseeable risk. However, this is consistent with their approach of making assertions without evidence or understanding.

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

TTH Comment:

As can be seen in the table all of the audits from 07.07.15 to the 16.12.19 reported a CCS score of C3 at worst which is defined as having 'minor or minimal impact on the environment, people and or property'. The first C2 was reported in December 2019. This clearly demonstrates that THH was not creating a pollution risk through historical activities and was clearly not producing a pollution risk as recent as December 2019 otherwise why wasn't a suspension notice issued previously.

It is worth noting that the peak soil volume of 15,000t occurred in 2014. There have been a number of audits since that time.

During the July 2015 audit (CAR ref 150707/ZP3933NJ) NRW recorded 13,000t of soil on site. They recorded this as a category 3 non-compliance. The correct action was

submission of a permit variation. C3 non-compliance relates to minor environmental effects. No mention of it presenting a significant risk of pollution was made. No request to reduce volumes was made. NRW were informed on this visit that soils with similar properties were bulked, and this is recorded on the form. No objection was made, and it did not result in a CCS. As such at this time NRW were happy with this activity.

During the June 2016 audit (CAR ref NRW0023790) *it was estimated that 9,000t of soil was present on site (i.e., comparable with the current situation). NRW scored this as a category 3 non-compliance (i.e., minor environment impact).* NRW requested a plan on how volumes would be reduced but did not set a deadline so reducing volumes to the permitted level.

During the August 2017 audit (CAR ref NRW0032158) it was estimated that 5,600t of soils were on site. NRW scored this excess volume at a category 3 non-compliance. *This proves that the excess volumes noted previously had been effectively managed and reduced to near the permitted limit. This was achieved without the need for a suspension notice.*

During the July 2018 audit (CAR ref NRW0033664), volumes were noted to have been reduced to within permitted levels.

During the October 2019 (CAR ref NRW0036053) it was estimated that there was 12,000t of soil on site. *This was recorded as a category 2 non-compliance, despite 13,000t and 9,000t having previously being coded as category 3.* NRW requested a volume reduction plan, which was provided. No explanation of why this lesser volume was deemed to be of greater environmental risk than previous audits. It is noted that this visit was the first audit undertaken by the current officer and the change was accompanied by a clear change in NRW regulatory approach.

During the July 2020 audit (CAR ref NRW0036771) it was estimated that there was ~9,000t of soil on site. *This was again concluded (without justification provided) to be a category 2 non-compliance. We reiterate, 9,000t in 2016 was deemed to be category 3. 13,000t in 2015 was also deemed to be category 3.*

Soil volumes have been decreasing over that period and volumes stored are approaching compliance. NRW previously considered the much higher soil volumes to only warrant a category 3 non-compliance. Following removal of 60% of the excess volume, NRW deem it necessary to suspend TTH activities against the background of the above regulatory approach.

The whole thrust of this document is to WRONGLY create the impression that we have been consistently posing a potential risk to the environment which is clearly unsubstantiated by this table and by other rebuttals within our comments.

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.

TTH Comment: As set out above, stored volumes are decreasing. If NRW considered the excess soil itself to present a risk of pollution, why wasn't a suspension notice issued at any previous point where the quantities were greater (and particularly after the issuing of a CAR Report in December 2019)?

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:

TTH Comment: None of these points, bar the excess volume, relate to the suspension notice. It is noteworthy that, despite the alleged 'significant permit condition breaches' noted in October 2019, a suspension notice was not deemed necessary or proportionate.

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]**.

TTH Comment: On what basis have NRW concluded that the building contains both treated and non-treated soils? NRW has not made any effort to understand what the stockpiles contain so how can they made such a categoric and unfounded statement.

The bottom section is accessible with plant and pedestrian access is not required. We presume that the bottom section of the building refers to third-party land beyond the permit boundary. Thus, access is not required to be available.

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.

TTH Comment: An appropriate outlet had been identified before this visit. TTH could not operate as a business without an outlet.

Note that soil s volumes had previously exceeded 12,000t and thus the inference that no outlet had been identified or that volumes had not reduced is incorrect.

Accurate and detailed records of wastes being removed were kept as a matter of course, NRW had not identified issues regarding the keeping of such records.

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.

TTH Comment: Both of these actions were complied with.

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]**.

TTH Comment: We agree, and volumes were being reduced. We also note that excess volume had been classed as a category 3 non-compliance (i.e., minor risk) by the

previous officer. The previous excess volume had been reduced successfully. Volumes did increase again but were actively being reduced at the time of the suspension notice. Hence, whilst volumes have exceeded permitted volumes, TTH has a record of reducing volumes without the requirement for a suspension notice.

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.

TTH Comment: This applied to wet material from Trostre. There is no need to bund soils. The points regarding storage are not related to the suspension notice, which focusses on volume. NRW would have to show that the excess volume precludes adequate storage. This was demonstrably not their view until this officer in 2019.

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.

TTH Comment: This is factually incorrect. During the visit the NRW officer made no attempt to determine the status of any of the stockpiled materials within the Treatment Hub. This statement is another example of supposition made by the NRW officer without making any attempt to establish facts or engage with TTH Management. On this basis the NRW officer would not be able to ascertain which materials were 'pre-treated' and 'post-treated' to use NRW vernacular. Simon Farr did NOT confirm that it was no longer possible to treat wastes in the manner authorised by the permit due to the volume of wastes on site. Simon Farr stated that most soils received did not require treatment to achieve required outcomes. This fact has been re-iterated to NRW on numerous occasions and yet seemingly it cannot be understood, comprehended, or accepted.

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.

TTH Comment: As set out in CAR_NRW0036053, this relates to soils awaiting treatment (i.e., soil requiring treatment). Therefore, if soils are deemed not to require treatment this

is not required. Again, this relates to NRW's failure to understand TTH's operations. It is also unrelated to the suspension notice.

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.

TTH comment: This relates to treatment of material from Trostre, which is no longer accepted at TTH. It should be noted that this has been the case during site audits dating back to 2015. NRW, including all audits by previous officers, have never raised this as an issue. It is unrelated to the suspension notice because failure to treat soils in the manner devised for Trostre material does not mean that there is an environmental risk. It also disregards soils that do not require treatment. It is also not affected by soil volumes, which are the sole cause of the suspension notice. The officer is unwilling to understand the operation at TTH. NRW had previously requested this variance be resolved through submission of a permit variation (Revision 4), which has been completed, confirmed as duly made and is pending consideration by NRW.

4.3.2 Figure 3.4 below shows the treatment operation schematically. (Derived from application document)

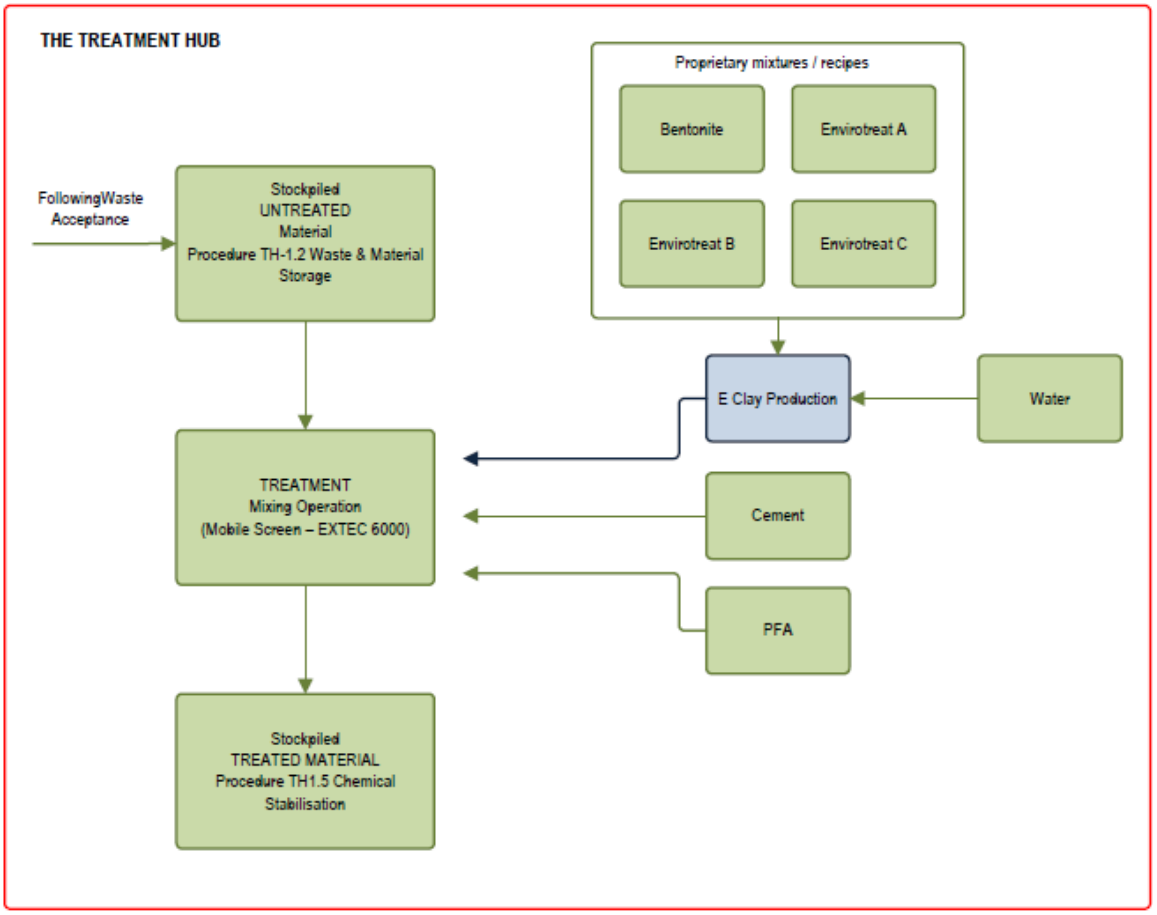

Figure 3.4 Treatment

TTH Comment: Please see above. We have applied for a permit variation, as requested by NRW. This remains unrelated to the suspension notice.

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]**.

TTH Comment: Firstly, we have not allowed the later submission of the officer's personal notebook (PNB) primarily because it was not reviewed and signed as an accurate record by Mr Farr.

Secondly, we were not aware of such a record. Notes have never been made in our presence and have never been showed to us. As such the contents cannot be viewed as an accurate record of a conversation. The contents hold no weight as evidence and could contain misunderstandings or misinterpretations.

The PNB is therefore, *ipso facto*, inadmissible.

As has been stated time after time, that most soils received (following assessment as set out in TTH EMS) do not require treatment to achieve required outcomes. The issue of processing ("treatment") of "individual separated batches" of waste was discussed during the December site visits (Simon Farr, Phil Rees, Liane Bacon-Weekes and Paul Gibson in attendance) where it was accepted that similar wastes could be bulked for processing. Mr Farr AT NO STAGE confirmed that waste "was mixed pre- and post-treatment", because this does not and would not happen - there is absolutely no logic or benefit in doing this.

The alleged confirmation is therefore a complete fabrication.

Having reviewed the ineligible Officer's PNB, we find no reference to this assertion or other assertions supposedly made by Mr Farr, which, if true, would have certainly warranted documenting (in our opinion).

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.

TTH Comment: This is incorrect. The protective controls listed are not required and to intimate that their absence leads to environmental risk is misleading. We have always been, and remain, able to assess treatment efficacy where treatment is required. This is undertaken through a both on-site and independent laboratory testing. We are not sure how NRW have come to this conclusion unless it is an assumption. Clearly this a moot point where treatment is not required.

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.

TTH Comment: Mr Farr did confirm that, "the authorised E-Clay treatment process was

no longer used to treat all waste streams", which supports the Treatment Hubs' rebuttal given for 2.1.3, 4.2.2 and 4.3.3 and in all other relevant correspondence. In respect to TPH contaminated soils the officer states in her Officer's PNB entry provided that, "Hydrocarbon (unreadable content) soil is left for naturally degrade over time". This is a natural process and not bioremediation in accordance Best Available Technology (BAT). Again, this aspect was discussed during the December site visit (Simon Farr, Phil Rees, Liane Bacon-Weekes and Paul Gibson) where it was accepted by Paul Gibson that this should be considered "natural degradation". The officer did not disagree with this conclusion and thus we have taken it as NRW's position.

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.

TTH Comment: This was done.

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.

TTH Comment: The CAR stipulates that this relates solely to excess volume, as does the suspension notice. NRW should not attempt to widen the point here and bring in their other concerns to support the narrow point upon which the suspension was issued.

Regarding the permit breach based on volumes, previous NRW officers considered 'greater' breaches (i.e., larger volumes of soil) to be minor (C3 non-compliance). This demonstrates that it is a subjective decision. It is also a decision that has never been justified. NRW has never explained why this breach is deemed more significant by the current officer than the previous officers. It has also never been justified why the significance of the breach correlated with the soil volume.

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.

TTH Comment: This is not the subject of the suspension notice. Wastes may, indeed frequently are, accepted as hazardous based on information provided by the waste producer, only to be found to non-hazardous upon arrival. This concept is expanded upon below.

Waste is typically classified on the worst-case data collected from an intrusive site investigation. The soils characterised by these samples will exhibit both intra-and inter-strata variation, as set out in WM3. This is typically poorly constrained following site investigation due to the number of samples that would be required.

During site remediation or redevelopment, soils are typically dug out and stockpiled *en masse* by third parties. Frequently this process incorporates less contaminated material. This is not a process TTH has any control over.

The waste produced and transported to TTH thus often departs form that characterised in the site investigation reports. Given that soils are mirror-entries, i.e., their classification is

based on the levels of hazardous substances present, their waste classification is often reassessed upon receipt in line with our acceptance procedures. This can comprise in-situ or independent laboratory testing, or both. This has been explained at length to NRW previously.

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".

TTH Comment: It is correct that the Treatment Hub *was* utilising other wastes to facilitate the processing of waste soils, where required. The inference above implies that the Treatment Hub was merely mixing different wastes ad hoc. The wastes used had been shown (through trials) to be appropriate and suitable (compatible) as partial or full replacement for key additives (products, e.g., cement) used in the processing of soils to achieve required outcomes under the controls set out within TTH EMS documents.

Following processing the resultant materials were fully assessed both for the contamination profile of the waste soils and wastes used in their processing. Replacing raw materials with a waste to treat other wastes is encouraged via BAT22. However, following the site visit in December 2019 and subsequent CAR, we understood that this activity was not authorised under Permit. Again, at the time NRW recommended this be addressed through submission of a permit variation.

This the activity was stopped immediately upon receipt of the CAR notice in December 2019 pending the recommended Permit Variation submission.

It should be noted that this is not related to the suspension notice and that whilst the activity was taking place, *NRW did not deem a suspension notice to be necessary or proportionate. Thus, it is not clear how a ceased, historic activity can be used to justify an increase in regulatory intervention.*

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.

TTH Comment: Wastes were being used to treat wastes in accordance with BAT22. This activity stopped pending permit variation and has not occurred since. So why is it relevant?

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"**).

TTH Comment: We again reiterate the point that this did not trigger a suspension notice at the time it was occurring and yet it is used retrospectively to support a suspension notice on an unrelated matter.

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.

TTH Comment: We are fully aware of this. However, if NRW are accusing TTH of this then it needs to be substantiated.

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.

TTH comment: We reject this assertion.

4.5 Duty of Care

TTH Comment: Any references to Duty of Care are inadmissible and should be removed. NRW has stated they are a completely separate matter so TTH is bemused as to why NRW has incorporated Duty of Care matters into this statement (apart from deliberate obfuscation).

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.

It should be noted that NRW has held this paperwork for several months and as of 7th January 2021, we have not had it back. Thus, we are unable to refute these allegations in detail. However, if a 'brief review' was undertaken prior to issue of the suspension notice in July 2020, why were they not returned? Was full review not justified given the gravity of NRW's decision? No CAR has been issued based on their review. Duty of care paperwork is not relevant to the suspension notice.

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.

TTH Comment: Noted.

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.

TTH Comment: This was done.

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.

TTH Comment: We agree and follow these requirements.

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 bunded 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.

TTH Comment: Storage of reagents is clearly not related to the suspension notice.

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.

TTH Comment: This was complied with and is irrelevant to the suspension notice.

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**].

TTH Comment: Noted.

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.

TTH Comment: This is only NRW's opinion. The plan was not reviewed cogniscant of national guidance or best practise documents. It is an opinion with which we disagree. Waste volumes have demonstrably reduced, and this has been acknowledged by Liane Bacon-Weekes in email. It is difficult to refute that waste volumes were being reduced when volumes had recently reduced from 12,000t to 9,000t.

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.

TTH Comment: A plan demonstrating how volumes were to be reduced was supplied to NRW as requested. Volumes were actively being reduced, as NRW were well aware.

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]**.

TTH Comment: Agreed. This demonstrates that volumes were being reduced prior to

issue of the suspension notice and confirms that the notice was both unnecessary and disproportionate. In her response Liane Bacon-Weekes stated:

"It is positive to hear that measures are being taken to reduce the quantity of waste on site."

As such the situation in March 2020 was that of reducing stockpile volumes viewed by NRW as 'positive'.

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

TTH Comment: Any references to Duty of Care are inadmissible and should be removed. NRW has stated, they are a completely separate matter so TTH is bemused as to why NRW has incorporated Duty of Care matters into this statement (apart from deliberate obfuscation).

Furthermore it should be noted that NRW has held this paperwork for several months and as of 7th January 2021, we have not had it back. Thus, we are unable to refute these allegations in detail. However, if a 'brief review' was undertaken prior to issue of the suspension notice in July 2020, why were they not returned? Was full review not justified given the gravity of NRW's decision? No CAR has been issued based on their review. Duty of care paperwork is not relevant to the suspension notice.

It should be noted that only 51 tonnes were accepted with an absolute hazardous waste code. Notwithstanding this point NRW has reached the conclusion that all wastes exported from site should be classified as an absolute hazardous waste.

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

TTH Comment: Any references to Duty of Care are inadmissible and should be removed. NRW has stated they are a completely separate matter so TTH is bemused as to why NRW has incorporated Duty of Care matters into this statement (apart from deliberate obfuscation).

Furthermore, it should be noted that NRW has held this paperwork for several months and as of 7th January 2021, we have not had it back. Thus, we are unable to refute these allegations in detail. However, if a 'brief review' was undertaken prior to issue of the suspension notice in July 2020, why were they not returned? Was full review not justified given the gravity of NRW's decision? No CAR has been issued based on their review. Duty of care paperwork is not relevant to the suspension notice.

It should be noted that only 123 tonnes were accepted with an absolute hazardous waste code. This represents only circa 0.1% of the total wastes imported. Notwithstanding this point NRW has reached the conclusion that all wastes exported from site should be classified as an absolute hazardous waste.

These 123 tonnes were addressed appropriately. This has been confirmed to NRW through the appropriate channels.

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.

EWC 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.

TTH Comment: Noted – the above statement forms part of TTH Environmental Management System.

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.

TTH Comment: This is incorrect. It is based on assumptions and misunderstanding. Waste soils are bulked in accordance with current guidance (i.e., with wastes exhibiting

similar chemical compositions and risks). The respective materials are added to the updated stockpile plan which is utilised to denote the location of respective designated stockpiles within TTH. A copy is displayed in TTH offices. Incoming soils are assigned (following assessment) to the appropriate stockpile as set out in TTH EMS documents.

The resulting stockpile(s) is / are validated prior to export as set out in TTH Environmental Management System and the test certificate assigned accordingly. The waste streams that are bulked into a larger stockpile are documented on the appropriate forms to ensure traceability through the process.

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]**.

TTH Comment: The requested information was submitted to NRW on 6th July 2020.

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].**

TTH Comment: Agreed.

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)

TTH Comment: No feedback was received from NRW following the submission of the requested information. If clarification was required, or if NRW considered information to be missing, then TTH would have been happy to provide this. It is assumed that the reference above should be “exported waste” not “imported waste” as stated.

This is however inadmissible as it relates to Duty of Care paperwork.

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**].

TTH Comment: We disagree with NRW’s statement on the inadequacy of validation testing. This is fundamentally flawed.

The testing requirements for materials exported from TTH is driven SOLELY by the receiver site – materials are tested in line with the required specification set by the **RECEIVER SITE**.

As has been stated on numerous occasions, the document referenced above (SOL0113ESP01) was compiled for the treatment and recovery of a SINGLE specific waste stream – i.e., industrial filter cake materials with the scope to similarly process waste soils. Whilst the industrial filter cake waste streams did not come to fruition, processing / recovery of wastes / waste soils remained within the scope of TTH’s

operations. You will note further that the listed determinands are based on WAC analysis and have relevance only for disposal at landfill. Leachate analysis is / will be carried out when there is a requirement to do so.

The testing undertaken entirely disproves HRW's conclusion that excess soil volume has resulted in hazardous soils leaving the site. Furthermore, BTEX and leachate testing is not required by WM3 to ascertain whether soils are hazardous or not. As such it is not clear why their omission is of concern cogniscant of the basis of the suspension notice.

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.

TTH Comment: TTH / ETL is fully aware of this fact and does need to be 'educated' on the subject. Any WAC testing carried out for a landfill disposal or as a 'back-up' in the event that landfill disposal may be required and does not see the relevance of this statement to the suspension notice.

Within the validation procedure there are a number of forms that should accompany the waste as it goes through the treatment and validation process.

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

TTH Comment: This is correct, and the stated documents form part of the TTH Environmental Management System. However, it should be noted that a Certificate of Conformity is provided only UPON request from the receiver site, as stated within the TTH EMS.

7.8 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.

TTH Comment: If the specific forms were required, they should have been requested at the time. It should be noted that the required forms / information were ALL submitted on 18-12-20 as per the requirements of the Reg 61(1) notice.

The term "spirit of complying…." has been made on two occasions with the intention of framing TTH as "uncooperative". This notion is categorically rejected. There also exists a "spirit of regulating" with which TTH would have expected NRW to engage and understand the processes and operations within the Hub thus demonstrating a respectful and constructive regulatory environment.

It should be noted that TTH has complied explicitly with every request made by NRW for information relating to TTH activities and operations. Given that this includes two years-worth of data on all material coming into, and leaving TTH, it is difficult to see what else could have been provided. If NRW were aware of the resources expended by TTH to comply with their Section 61 notices, then they would appreciate just how cooperative we have been.

7.9 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.

TTH Comment: This is a general comment made without any recourse to fact or understanding. It is yet more supposition NOT based on any material facts. The paperwork provided is intended to demonstrate that the exported material is suitable for the receiver site's use – i.e., FIT FOR THE PURPOSE INTENDED.

The statement that the material is "treated" YET AGAIN demonstrates the lack of understanding and the inability of NRW to accept or understand the facts presented to them. Wastes are only treated IF THERE IS A REQUIREMENT.

As we have stated *ad nauseum*, the wastes are assessed both at pre-acceptance and acceptance stages of the process. On receipt the wastes are assessed using visual, olfactory and portable instrumentation methods (PID / XRF). In general, hazardous wastes classified at pre-acceptance stage are (through assessment and quantitative analysis) found to be non-hazardous. Therefore "treatment" as per NRW's comment above is NOT REQUIRED.

As stated throughout this document, NRW allude to the "risk of pollution" but have yet to provide any quantitative evidence to support this notion. The "source – pathway – receptor" explanation presented by the NRW officer is fundamentally flawed and clearly illustrates the lack of knowledge, understanding and experience of the NRW officer.

Regarding the final sentence, it is evident that NRW have "considered" without establishing any facts from TTH. The complete absence of engagement and understanding by the NRW officer is clearly evident in this one statement. TTH has, over the period of its operation, actively sought to reduce waste volumes within the facility. Treatment is very rarely required as stated above and the "risk of pollution" is not supported (and has yet to be supported) with any factual or quantitative evidence.

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].**

TTH Comment: This is correct. However, we cannot comment on the accuracy of the NRW survey. No surveying equipment was evident or used by NRW during this visit. It is therefore unclear as to what technique was to be employed for the 'accurate calculation'. No mention was made during the visit that this was the intention, or that any aspect of the proposed audit could not be completed. NRW were fully aware of the location of the stockpile in the building so what they found was consistent with what they should have expected.

The agreed volume estimate made by NRW confirms the fact that during the period TTH had effectively reduced the volume of waste within the facility by 20-25%.

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]**.

TTH Comment: On receipt, TTH assessed every load (95 in total) using a handheld X-Ray Fluorescence (XRF) spectrophotometer, which provides instant confirmation of metal concentrations within the waste soils. At this stage it was confirmed that treatment would NOT be required and that the soils would be classified as non-hazardous waste (17 05 04).

Following the XRF screening, representative samples were collected and submitted for independent laboratory assessment. The laboratory testing confirmed the initial assessment that the material did not require treatment. The material was exported from TTH prior to the issue of the CAR report.

Had the NRW officers present engaged in dialogue with TTH Management at the time, this could have been discussed and the process explained. However, consistent with the officer's *modus operandi* throughout, no engagement was attempted, and no questions asked of TTH to further her understanding of operations.

8.3 Whilst on site the attending NRW officers witnessed the delivery of a sludge waste which was deposited onto stockpile marked "treated".

TTH Comment: Whilst the above statement is factually correct, it should be emphasised that had the NRW officers present at the time engaged in dialogue with TTH management this event could have been discussed and resolved. The NRW officers present only asked to see the Duty of Care paperwork relating to the waste, which was shown and later emailed. The NRW officers did not raise any concerns with TTH at the time. This matter has been subsequently documented between NRW and TTH, namely within the document "WORK_37865831_1_Annex to Burges Salmon letter 11.09.20.PDF", section 13.

The waste under discussion is received weekly and that days' delivery was added to previous deliveries which would have been clear had the question been asked at the time. The "treated" reference merely referenced the fact that cement had been added to the waste to adjust the moisture content and assist in its storage (as the material is very sticky). Therefore, the material was added to an existing stockpile of the same waste stream, albeit one that had been dried to a degree to assist storage. The October / December CAR had prevented its use until the Permit Variation had been issued.

NRW has presented this observation in a way that suggests there is no management or rationale behind operations and that heavily contaminated materials are received into TTH and dumped ad hoc onto disparate, treated wastes. This is not, and has never been, the case. All wastes are accepted, assessed and processed under the controls set out in TTH Environmental Management System. Again, this could have been clarified at the time, save for the officer's continued reluctance to engage with TTH management and lack of interest in understanding operations.

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]**.

TTH Comment: Once again this was not discussed with representatives from TTH at the time of the visit. Had it been it could have been easily resolved. For avoidance of doubt, the lower section of the building relates part of the building which TTH does not lease – the lease area (permitted area) is clearly set out in the TTH Permit application documents referred to by NRW throughout this statement. Neither the "bags of cement type waste"

or the “damaged IBC containing an unknown substance”, relate to activities undertaken within TTH.

It may be considered courteous to advise the appropriate lease holder or landlord of any intention to access other areas of the Alcoa facility as these are outside of TTH control and may have different Health and Safety requirements and controls.

We would presume that the “bags of cement type waste” are in fact used Garnet Sand (ex-Timet) that was used by Environ / Alcoa to backfill redundant machine pits in that part of the building (from a Health and Safety perspective). We recall several bags were left in that part of the building to top up any areas which sank over time. As such this comment is irrelevant and seemingly raised to besmirch TTH’s reputation.

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.

TTH Comment: All parts of the Treatment Hub can be (safely) accessed by appropriate plant, sometimes access is not always safe on foot due to ongoing operations. Pedestrian access to all parts of TTH is not a permit requirement. Waste is processed in ways that best meet the requirements of the receiver site at that time. Furthermore, the inference of this comment in unclear. We are not aware why the scenario set out above would be a compliance issue or how it relates to the suspension notice.

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.

TTH Comment: Once again NRW refers to treatment as though it a mandatory requirement. We have explained this point ad nauseam both within this document, our Summary Statement 08.12.20 and in all previous correspondence.

It is worth reiterating that the suspension notice is limited to the risk of hazardous waste removal resulting from the presence of excess waste. The ‘extent and severity’ of this permit breach has reduced over time. At the time of the suspension notice, the ‘extent and severity’ of this permit breach was less than that in December 2019, when it was considered to warrant a category 2 score on a CAR, but not a suspension notice. Further action, in the form of a deadline to achieve permit volume, has not been raised. We disagree that the excess volume presented a risk of pollution. NRW assertion is based on assumptions and widespread misunderstanding of TTH operations (e.g., applying HWR06 to soil remediation and non-hazardous soils, repeated reference to the need to treat all soils).

In order to support NRW’s claim that the suspension notice was necessary and proportionate, they have muddied the waters through reference to numerous other alleged permit non-conformances. These are not referenced on, and thus not relevant to, the suspension notice.

We reject a large number of these alleged non-conformances, instead concluding that they result from a lack of experience and knowledge of TTH operations following change in the officer. NRW regulatory approach has changed from permit variation to accommodate soil volumes to suspension notice because the soil volumes present a risk. This is a against a background of reducing soil volumes (and thus 'risk', in NRW's terminology).

Many of the observations made by the NRW officers were not discussed with the Treatment Hub at the time, had they have been, perfectly acceptable clarifications could have been offered. It is the Treatment Hubs' opinion, with hindsight, the NRW officers did not want to enter into dialogue during their visit as shown by testimony (based on their written confirmation that they did not require our presence AND previously documented accounts of their unwillingness to enter dialogue at the time), on the basis they already decided on their course action with no regard of fact or evidence. The have tried to justify how the suspension notice, based on the reduced excess volume, is necessary and proportionate by raising other alleged permit breaches. If NRW were concerned about these, they should have raised in the suspension notice. It is also noted that the suspension notice has not stipulated that any of the other alleged non-conformances be addressed. These alleged non-conformances have not been included on a CAR, despite NRW stating that they would. This speaks to their true view of the severity.

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.	31st 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.

TTH Comment: See our Summary Statement 08.12.20 and our comments contained within this document.

TTH has fervently disputed this Suspension Notice as it is based on false premises and misrepresentations / misunderstandings which could have been avoided by engaging appropriately with TTH representatives and establishing the facts in a professional and acceptable manner.

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.

TTH Comment: See our Summary Statement 08.12.20 and above comments in relation to permit breaches / duty of care paperwork and validation testing. As stated above, the volume of excess storage has significantly reduced from levels previously identified.

Breach of an environmental permit condition does NOT equate to environmental risk as clearly stated in RGN11 3.36 and should NOT be a factor to be considered in the decision-making process regarding a Suspension Notice. These are the stated guidelines of NRW.

What logic presupposes that a permit breach naturally correlates to a pollution risk? It is equally true that a pollution risk could occur even when there are no permit breaches which is exactly the rationale underpinning RGN11 3.36. This is pure common sense.

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 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.

TTH Comment: See our Summary Statement 08.12.20.

We fundamentally reject these assertions which are factually incorrect and are based on pure supposition and not material facts. This has repeatedly been refuted and communicated to NRW on several occasions previously.

NRW has presented no evidence of waste mixing. We reiterate that bulking of soils is permissible and NRW has NOT shown that materials have not been bulked, i.e., through a review of site data and stockpile management plans. Thus, NRW has not shown soils are

pre-mixed as alleged.

It seems that this conclusion is based on the clear misunderstanding of TTH operations and the wrongful application of HWR06 to soil remediation and non-hazardous wastes.

Given that no evidence has been supplied to show wastes are pre-mixed and given that no evidence has been provided to show that hazardous and non-hazardous waste have been mixed, the conclusion that the entire content of the facility be classified as an absolute hazardous waste is fundamentally wrong.

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.

TTH Comment: Again, NRW assume all soils have to be treated, which is fundamentally incorrect. *This has been communicated to NRW on numerous occasions and even now, there is no realisation or acknowledgement of this fact.* The use of natural attenuation was discussed with NRW in December 2019 (see response to Section 4.3.5) and was accepted by NRW as 'natural degradation', and not biodegradation in accordance with BAT. It is not clear why this is no longer acceptable to NRW or how natural degradation is to be stopped – it is, by definition, a natural process.

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.

TTH Comment: This comment is incorrect and confused. The main stockpile referred to is located in the rear part of the facility, with no permitted space behind it. As such it is demonstrably not the case that it is blocking access to anything behind it. It is also not clear how this would affect a natural degradation process. It is notable that NRW have just made this as a general, unsubstantiated assertion and has not explained or evidenced it.

It should also be noted that the main stockpile referred to by NRW solely comprises non-hazardous soils and thus is not relevant to the suspension notice, which relates to the export of hazardous waste.

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 pollutants[6] 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.

TTH Comment: *TTH implements the appropriate and required validation processes for the designated receiver sites (which are stipulated by the receiver sites).* As is the case throughout this document and in previous correspondence, NRW makes statements as though they are material facts without any evidence to substantiate these allegations – how can NRW justify stating in this case 'the appellant has failed to follow this procedure'… there is no evidence to support this allegation. It was incumbent on NRW to fully establish

the facts.

NRW has been provided with all validation data. No information regarding investigation at receiving sites has been included or evidence presented to TTH. Referencing these investigations without presenting any findings (assuming there are any) should not be considered because they have not demonstrated any pollution risks.

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.

TTH Comment: As previously stated the Duty of Care matters are not relevant to the Suspension Notice as previously confirmed by NRW. Point 10.6 should therefore be removed from this statement.

For information TTH previously exported material under a mirrored soil code (17 05 04, non-hazardous soils and stones). NRW stopped this and told us to use a 19-code. TTH needs to reiterate that EWCs are not related to the suspension notice and do not equate to environmental risk.

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.

TTH Comment: This point seems to be trying to say that ANY waste can result in a deterioration of environments if deposition of those waste results in the addition of new contaminants to site. This is a theoretical point with which we agree. However, it does not show that TTH has presented a pollution risk. It also does not relate to the suspension notice, which is specific to hazardous wastes.

It is a theoretical point and not a realistic point and completely ignores the whole basis for assessing / managing environmental risk through the well-established regulatory tools. By the same argument inert wastes can also pose a risk to the environment. Are NRW saying that no wastes should be deposited anywhere using this logic?

NRW state that non-hazardous soils can contain levels of hazardous substances (i.e., present but at levels below the hazardous thresholds) that could result in environmental deterioration. It should be noted that the inverse is also true. Hazardous soils can contain concentrations of hazardous substances that do not present a risk to the environment or present a risk of environmental deterioration. It is noted that environmental deterioration would only comply with the definition of significant environmental risk (as asserted by NRW through their CARs) if it meets the definition presented in our response to point 2.4.2.

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.

TTH Comment: This statement is based, yet again, on false premises. If the soils / wastes

do not require treatment for the intended receptor sites what is the relevance of this statement?

As stated previously there is no requirement to treat soils that do not require treatment. The lack of detail and evidence in this claim makes it difficult to understand. There is no requirement for TTH (or any other soil treatment facility in the UK) to remove levels of hazardous substances to zero. Thus, this statement could be applied to any soils anywhere. It is also not the subject of the suspension notice, which relates to hazardous waste. At no point have NRW stated that all hazardous substances should be removed from soils and thus it is not clear how this point would ever be complied with. It is also not a point that has been made to TTH previously.

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 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).

TTH Comment: Demonstration of environmental risk is a well-established technical discipline controlled by national guidance[1].

NRW has been provided with all of the information required to ascertain whether there is an unacceptable environmental risk posed by materials leaving TTH. Soil validation data for material leaving TTH was provided to NRW in March 2020. NRW has not referenced this in their submission. They have not shown how those data support their conclusions on environmental risk. This leads us to conclude that they either have not properly assessed the risk in accordance with national guidance, or that they have assessed it and found no unacceptable risk. It is always been our position that the latter is the case. TTH staff have worked in the field of environmental land contamination for 20 years and are experts in assessing environmental risk and in land remediation / waste management. It is inconceivable that operations would proceed in a manner that would present an environmental risk. It would undermine both TTH and ETL as competent businesses.

The choice of example highlights the lack of understanding over TTH operations. Filter cake was accepted into TTH until December 2019 because of its potential as a treatment agent under BAT 22 (i.e., using a waste to treat a waste in place of virgin materials). This was stopped following the CAR from that visit. This pollution point was not raised during the period filter cake was being accepted but it has been raised now that it is no longer accepted – yet another example of the current regulatory approach. It is also noteworthy that NRW has not used any of the soil validation data provided by TTH in their assessment, despite their assertion that it is excess soil volume that has resulted in an environmental risk and that hazardous waste is being exported form the site.

The supposed risk assessment provided is completely inadequate and does not comply with the requirements of LCRM or the relevant British Standards[2]. We accept that nickel

[1] https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks
[2] BS0175:2011+A2:2017. Investigation of potentially contaminated sites. Code of practise. British Standards Institute.

hydroxide can present a risk to aquatic life. However, NRW are referring to hazardous properties from waste legislation. They have not used the available information to show a land contamination risk.

If present at sufficient concentrations, nickel can present a risk to human health receptors, surface water and groundwater receptors (*the key word being 'sufficient' which is the whole point of WM3 and related risk assessment regulatory tools which have clearly defined threshold values for such purpose*). NRW has not shown that any of these receptors are present at receiver site, which is the first step in the land contamination risk assessment process as set out in LCRM. Explicit guidance on this process is provided in BS10175. Without demonstrating the presence of a contaminant source, a receptor for that contamination and an exposure pathway that links the two, NRW have not demonstrated a relevant contaminant linkage. The presence of a chemical in itself is not enough to conclude it presents an environmental risk. *This is the fundamental principle that underpins the land contamination industry. NRW has not followed the guidance and has not justified their departure from it.*

Nickel is a naturally occurring element. It is derived from the weathering of bedrock and widely aerially deposited[3]. It does not naturally exist in elemental form, but as a series of complexes. Indeed, when deriving risk-based screening values for human health receptors, the Environment Agency published background intake values that reflect the ongoing uptake of nickel by humans through food and water ingestion and air inhalation[4].

As such the risk posed by nickel is based on its concentration, rather than presence/ absence. NRW reference a reported maximum Ni $(OH)_2$ concentration of 1% in the filter cake. This equates to a maximum nickel concentration of 6,300mg/kg. It is clear that the waste producer provided a generic range rather than specific figures – our summary analyses are provided below and contained within our technical rationale document – *this document has been provided to NRW but cannot be included as it is 'new information' and by definition inadmissible at this stage in the appeal process. As can be seen the nickel concentrations are considerably lower than the maximum stated by NRW and the cake material has been predominantly classified as non-hazardous by TTH throughout 2018 and 2019 by WM3 assessment.*

Summary analyses provided by the waste producer:

'The waste producer has furnished / furnishes the TH with extensive laboratory testing data on the filter cake material. The information provided is summarised below. The filter cake contains elevated levels of copper, nickel and zinc which were assessed by WM3.

It must be assumed that the metals are present in the hydroxide form (as is typically the case with filter cakes produced from an effluent treatment plant). It should also be noted that the cakes have a relatively / very high moisture content.

- 2017 to 2018 (circa 50 samples):

Average copper, nickel and zinc concentrations of 376 mg/kg as Cu^{+}, 627 mg/kg as Ni^{2+} and 635 mg/kg as Zn^{2+} respectively – all average concentrations were below the HP thresholds. The filter cake was therefore deemed to be *non-hazardous* by WM3

[3] Nathanail, C.P., et al 2015. The LQM/CIEH S4Uls for Human Health Risk Assessment. Land Quality press.
[4] Environment Agency, 2009. Contaminants in soil: updated collation of toxicological data and intake values for humans: Nickel. Environment Agency.

assessment. The WM3 assessment is appended.

- 2018 to 2019 (circa 50 samples):

Average copper, nickel and zinc concentrations of 141 mg/kg as Cu^{+}, 1,244 mg/kg as Ni^{2+} and 499 mg/kg as Zn^{2+} respectively – all average concentrations were below the HP thresholds. The filter cake was therefore deemed to be *non-hazardous* by WM3 assessment. The WM3 assessment is appended.

- 2019 to 2020 (circa 10 samples over two-month period)

Average copper, nickel and zinc concentrations of 301 mg/kg as Cu^{+}, 1,338 mg/kg as Ni^{2+} and 890 mg/kg as Zn^{2+} respectively. The concentration of $Cu(OH)_2$ was below the HP thresholds. The concentrations of $Ni(OH)_2$ and $Zn(OH)_2$ were above the HP14 thresholds. The filter cake was therefore deemed to be *hazardous* by WM3 assessment. The WM3 assessment is appended.'

Nickel only presents a risk to human health when present at shallow depths because exposure is driven by the ingestion of soil[4]. As such, if this pathway is not active, for example if soils are covered by a clean surficial layer (e.g., topsoil or subsoil), hardstanding (e.g., crushed stone or concrete) or situated at depth (typically taken to be 300mm below finish level), then the nickel does not present a risk. NRW has not considered this fundamental principle of risk assessment. The published risk-based assessment criterion for a land-use similar to that at the primary receiver site (Pembrey motor racing circuit) is 3,400mg/kg[4] (which significantly exceeds the identified nickel concentrations within filter cake received at the hub) and this would apply only to soils that are subject to active exposure pathways.

Nickel can present a risk to controlled waters receptors if they are present at a site. NRW has not shown that any controlled waters receptors are present at the site.

There is a drinking water standard for nickel of 20ug/l at the consumers tap. NRW has not shown that this would be exceeded. The primary receiver site is not situated on a potable aquifer, and there are no licensed potable groundwater abstractions within 1km of the site. As such this receptor does not exist and thus this cannot represent a relevant pollutant linkage at the site.

Finally, there is an EQS (Environmental Quality Standard) for nickel. It is based on the bioavailable fraction of nickel in the surface water which in turn is related to surface water chemistry. However, NRW have only referenced nickel hydroxide content in soils. They have not discussed or shown how this would result in soil pore water concentrations, groundwater concentrations or surface water concentrations. Placement of material at the primary receiver site would have to leach from the solid phase into soil pore water, migrate through the unsaturated zone into groundwater, migrate laterally through the aquifer into the nearest hydraulically downgradient surface water feature and finally migrate into the surface water feature. None of these steps have been considered. To determine that a maximum soil concentration equates to environmental risk in the absence of any assessment of these processes is invalid. Significant attenuation will occur along these flow paths and these have not been considered. No evidence of elevated nickel concentrations in surface waters at the receiver site has been provided to support their claim. Furthermore, NRW has not considered that the primary receiver site is a brownfield site with a long history of development. As such the underlying ground conditions would not be expected to be pristine and that a level of pre-existing

contamination would be expected.

In summary, if the supposed risk posed by their statements in Section 10.9 represents the sum total of their risk assessment, then NRW cannot claim to have assessed the risks in accordance with standard industry procedures and methodologies.

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.

TTH Comment: There is demonstrably no need to treat nickel hydroxide unless it is present at unacceptable levels.

This, once again, demonstrates a clear lack of knowledge and understanding which must be a concern.

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.

TTH comment: This demonstrates a complete lack of skill and knowledge of land contamination assessment, which is a prerequisite to comply with national guidance (LCRM Stage 1). It is noted that Burges Salmon had requested confirmation that suitably qualified colleagues had been consulted but NRW has not responded to this confirmatory request.

The source-pathway-receptor model is the correct mechanism through which to begin the assessment of land contamination risks (see above). However, it is just the framework. Furthermore, the s-p-r model presented by NRW is completely inadequate and flawed and does not come close to complying with national guidance. This is just not our view – Rebecca Bomers of Somerton Environmental who reviewed the initial correspondence was equally bemused and exasperated by this flawed interpretation of s-p-r modelling.

Source: NRW use ‘hazardous’ and ‘contaminated’ interchangeable. They also refer to hazardous substances. The language is vague. It is worth reiterating that the suspension notice relates to hazardous wastes only (‘mixing of hazardous wastes’, ‘store, treat and manage hazardous wastes’, ‘risk of pollution from these wastes’, ‘these sites are not permitted to receive hazardous wastes’) and not wastes containing hazardous substances. *This distinction is clearly not understood by NRW.*

Hazardous wastes and contaminated soils are not equivalenting. Again, NRW refer to

wastes containing hazardous substances. This language is confused, as all soils, including natural soils, can contain hazardous substances. The presence of hazardous substances does not equate to hazardous waste or environmental risk. No control measures have been stipulated for soil containing hazardous substances. It is not clear if NRW mean levels of hazardous substances above hazardous thresholds, i.e., hazardous wastes, or not. The suspension notice relates purely to hazardous wastes.

Pathway: Movement of soils between sites is not an acceptable pathway in accordance with national guidance. In order for there to be an environmental risk the material must already be at a site where they could cause environmental risk. Potential pathways are discussed for the previous point. The complete lack of discussion over exposure and migration pathways shows that NRW have not assessed the risk, have not consulted suitably qualified colleagues in assessing the risk (against their own guidance) and thus have not demonstrated environmental risk.

Receptor: NRW have not specified any receptors in accordance with national guidance. They have not considered the use of the receiver site or its environmental setting and thus have not ascertained which receptors may be present. Stating that the receptor is 'the environment' is vague, not in accordance with national guidance and thus cannot be used as the basis of an environmental risk assessment.

It is clear from this statement that the NRW agents involved do not understand environmental risk, how it is assessed or the legislation that underpins this. Without understanding environmental risk, how can it be concluded that that the material presents such a risk?. Without understanding environmental risk and without demonstrating it, how can NRW claim that the suspension notice is either necessary or proportionate?

The judgement on necessity and proportionality requires an understanding of both sides of the judgement, i.e., the detrimental effects it has on the business should have been viewed against the environmental benefit of the actions. This is simply not possible without understanding the risk they are trying to mitigate.

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.

TTH comment: This statement is errant nonsense and unsubstantiated by the documentation provided by NRW. There has been no 'careful consideration' which is borne out by the numerous unsubstantiated statements, allegations and misrepresentations. Careful consideration SHOULD have implicitly involved engaging with TTH representatives to gain a better and ideally full understanding of the hub's modus operandi, from CRADLE TO GRAVE.

NRW failed to professionally engage and effectively 'shot from the hip'. As stated previously this is extremely poor governance and is not how a regulator should operate. This has resulted in a responsible business being effectively wrecked (the most appropriate word to use under the circumstances) with no basis for doing so.

It is also our position that the notice was not necessary given ongoing soil volume reduction.

It is also our position that the notice was not proportionate given the lack of evidence of environmental risk. It is clear that the agent does not understand this and did not seek advice from colleagues. As such the judgement on proportionality is flawed.

The statement that volumes have not reduced since October 2019 is not true. NRW have been informed of volume reduction via email and welcomed the news (see response to point 1.8 above).

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

NRW had a duty of care and procedural requirement to assimilate and assess all relevant information prior to issuing a Suspension Notice. This is a fundamental requirement of good governance and is rightly reflected in NRW's own Regulatory Guidance Notes [RGN11].

Any 'new' information is inadmissible at this stage of the appeal process so this section is effectively irrelevant (notwithstanding the fact that the TTH has provided the necessary evidential information through a Section 61 response).

It is inadmissible because it should have been requested at the appropriate time and not after the event. TTH brought this matter, once again, to the attention of NRW in the cited e-mail of the 22nd October 2020 in which NRW representatives state the following:

> *"Our request for further information relates to statements provided to NRW via Burges Salmon in September. The information requested will enable us to better understand activities undertaken at The Treatment Hub and therefore the risks associated prior to the Suspension Notice being issued".*

The inference in this statement is self-evident and fully endorses our stated position on this matter. It is worth noting that NRW was reluctant to upload this e-mail to the portal as referenced in our Summary Statement 08.12.20.

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.

TTH Comment: Whilst this was obviously one of the reasons the prime reason was to formally respond to the points made by NRW in their letter of the 27th August 2020.

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.

TTH Comment: TTH can only reiterate the points made previously. These are matters that should have been discussed in a professional and responsible manner prior to any notice being issued. It is, of course, TTH's firm contention that such discussions would have resulted in a sensible and pragmatic way forward negating any requirement for the issuing of a Suspension Notice.

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.

TTH Comment: This is not an industrial dispute or something of a similar nature. Our business has been severely damaged as a result both financially and in terms of damaged reputation. Can NRW explain how it has impacted on their organisation in a similar way? TTH has had no option but to go through the appeal process for a number of perfectly justifiable reasons, not least the fact that NRW refused to rescind the Suspension Notice at any point.

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

TTH Comment: NRW has not engaged with the TTH either before the issuing of the Suspension Notice or at any point during the six-month period since issuing.

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 14th 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 61information notice	Q14
16/11/20	Email confirming extension to the EPR reg 61 notice	Q15

TTH Comment: Noted

Can NRW explain why they seemingly contacted an important client of TTH without discussing the matter with us in advance (as a matter of courtesy at the very least)? The implications are self-evident.

13.0 Relevant legislation

13.1 Environmental Permitting (England and Wales) Regulation 2016

Full document available here: https://www.legislation.gov.uk/uksi/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**]

TTH comment: Noted.

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.

TTH Comment: NRW is reportedly reviewing this document. It is still the extant document at this point as Burges Salmon has reiterated in our Summary Statement 08.12.20. It is therefore the relevant 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.

TTH Comment: This is fundamentally refuted. As Burges Salmon rightly pointed out the same underlying principles must apply regardless.

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.

TTH Comment: This is a ridiculous assertion. There has to be some justified and demonstrable reason not just supposition otherwise NRW could in theory shut down every business in Wales without any justification. This is not what the legislature intended for what surely must be self-evident reasons.

TTH has not stated that there has to be 'actual pollution' as inferred in the previous paragraph. This is nonsense. TTH has stated that the potential risk of pollution has to be fully demonstrated and this is surely acknowledged by NRW by their provision of, an albeit, totally flawed, source-pathway-receptor risk model as referenced in Section 10 above.

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.

TTH Comment: Yet again an unsubstantiated statement. NRW has not demonstrated a risk of pollution so how can this unsubstantiated risk be worsening. Also see all our above comments.

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.

TTH Comment: TTH has already commented on all of these points above and within our formal responses to NRW and within the Summary Statement 08.12.20.
As stated in our comments above and on numerous occasions previously TTH has not caused a pollution risk throughout its lifetime of operation and on no previous occasion, including directly following the issuing of the Car Report in December 2019, has NRW felt there was any requirement to issue a Suspension Notice (even when volumes were greater than they were in July 2020).

The correct and sensible approach was to require the TTH to address such matters by the submission of a permit variation which the company duly did. The issuing of a Suspension Notice in July was completely unwarranted and unjustified.

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.

TTH Comment:

This is fundamentally refuted. As Burges Salmon rightly pointed out the same underlying principles must apply. There has to be some demonstrable risk to justify the issuing of a Suspension Notice. It is not sufficient to shut a company down based on pure supposition which is clearly the case in this instance. See our responses above and our Summary Statement 08.12.20 / other relevant documentation.

NRW has not demonstrated there is a risk of pollution. It is pure supposition.

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.

TTH Comment: TTH has already explained why the company cannot consider removing wastes from the facility based on the false premises promulgated by NRW – see letter from Burges Salmon to Jane Chapman dated 11th September 2020.

This is reiterated below

> *"We note the suggestion that it is within our client's gift to simply comply with the terms of the Notice. That somewhat misses the point. Our client's case is that the material that is ready to leave site is non-hazardous and can be deployed at one of the receiving sites. It is NRW's case that the material is all "absolute hazardous waste" and needs to be sent to a hazardous waste landfill. Until that fundamental point of dispute is resolved, the waste cannot leave site."*

This pure common sense. We cannot even consider removing soils on this basis as the company will be financially ruined.

There is also an underlying point which makes NRW's position unsustainable. Why exactly does NRW consider it appropriate to lift the Suspension Notice when the volume is reduced to 5,250 tonnes? This is in complete contraction to RGN11 Guidance Note 3.36. Once again NRW is not following its own guidelines and procedures. The reality is that the Suspension Notice should not have been issued in the first place.

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

TTH Overall Comment: It is interesting to note that NRW firstly state that the RGN 11 Guidance Notes do not apply in our case [WRONGLY] but then comment on them accordingly.

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.

TTH Comment: See above comments

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.

TTH Comment: The definition of environmental risk and the appropriate protocols / methodologies for assessing same are well understood within the environmental industry / contaminated land remediation industry. This is how risk should be defined and assessed NOT on the basis of a Collins Dictionary definition.

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

TTH Comment: As previously stated it is incumbent on NRW to demonstrate that there is a clearly defined and demonstrable risk for what surely must be obvious reasons. To shut a company down on pure supposition is clearly not what the legislature was designed for. To suggest otherwise is fallacious.

15 Response to the grounds of appeal

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****.*

TTH Comment: This is correct – also see above comments:

NRW has yet to provide any evidence regarding the "pollution risk". NRW has also failed to provide any evidence to support their assumptions and assertations regarding their perceived operations within the Hub.

NRW has taken liberal interpretations of their own regulations and guidelines to justify what is flimsy and speculative evidence at best. The NRW officer (by her own admission) is inexperienced in this field, has made no attempt to engage or understand the processes or rationale for operations at the Hub and subsequently made ill thought-out assumptions and assertions regarding the integrity and professionalism of TTH business overall.

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.

TTH Comment: As has been stated in previous sections of this response, TTH has quantifiably reduced volumes within the facility (see relevant section above). And as also been previously stated, the “conditions of the permit” and “environmental legislation” have been in place since the inception of TTH facility, the obvious change in regulatory stance coincided with the replacement of the NRW officer to one with no experience, knowledge of understanding of TTH operations. At no stage, as has been stated throughout this document, did the NRW officer attempt to engage with TTH management to confirm understanding or rationale for the processes carried out. The lack of respect and flagrant arrogance shown by the NRW officer toward TTH is symptomatic of the dismissive and ignorant stance adopted by NRW since this officer’s appointment.

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

.

TTH Comment: For avoidance of doubt, all wastes accepted into and exported from the Treatment Hub are controlled as per the Environmental Management System required as a condition of the Permit. All wastes are assessed at pre-acceptance stage for contamination profile, concentrations and compatibility. On receipt the wastes are assessed visually to ensure the material is as described other assessment may include headspace analysis using a PID or heavy metals assessment using a portable XRF. Samples will (if required) be collected at this stage and submitted to a MCERTS laboratory for analysis. Routinely, this assessment confirms that wastes classified as “hazardous” by the producer are non-hazardous on receipt. Once the assessment is complete the soils may be bulked with soils of similar contamination profiles / hazard properties for subsequent processing. A live stockpile plan is displayed in TTH offices which details the location and constituents of each stockpile in the facility. All materials exported from TTH are assessed prior to shipping. It should also be noted that hazardous waste classification and hazardous properties does not automatically translate to environmental risk (perceived or otherwise).

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.

TTH Comment: As stated above and throughout this document, all exported materials shipped from the TTH are tested prior to dispatch. The testing requirements are driven by the requirements of the receiver site – in other words (for clarity and avoidance of doubt) to ENSURE THEY ARE FIT FOR THE PURPOSE INTENDED.

All analysis and supporting information for materials exported from TTH has been provided to NRW as per their Reg 61 (1) request. Following submission of this information no feedback has been received from NRW that would indicate any dissatisfaction nor have any additional requests been made to TTH by NRW. This is another example of the dismissive approach adopted by the NRW officer involved.

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.

TTH Comment: An email from the NRW officer (12/8/2020) states:

"With regards to this creating an unfair playing field, the DoC review has no bearing on the issuing of the Reg 37 Notice. It has highlighted some discrepancies including the miscoding of waste and incorrect completion of transfer notes, but these are mostly DoC offences and separate to the suspension notice."

The DOC (referenced above) is not relevant to the Suspension Notice and therefore is inadmissible. The continued "muddying of the waters" throughout this statement exemplifies the NRW officer's attempts to justify the flimsy and speculative evidence provided to date to justify the issue of the Suspension Notice.

Again, waste classification and environmental risk are separate entities and should not be confused or conflated.

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.

TTH Comment: The above serves only to justify NRW's flimsy evidence and uninformed assertions provided to date regarding operations at TTH facility. As NRW should be fully aware, "opinion" is subjective and without substantiative factual evidence it remains speculative. The serving of the suspension notice should have been based on quantitative, factual evidence NOT the NRW officer's "opinion" or supposition which serves only to bolster the arrogant and egotistical regulatory approach adopted by the officer.

TTH has stated throughout this document that wastes imported to and exported from the facility are subject to the controls set out in the Environmental Management System as required by the permit conditions.

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.

TTH Comment; The argument is not about semantics, the issue is very simple. For soil remediation projects validation and verification is carried out to provide lines of evidence to confirm that there is no risk to the environment following remediation. To put it into simple terms, quantitative evidence is provided by the contractor to demonstrate this through conceptual models, risk assessments, analysis and photographs.

NRW has yet to provide any evidence to support their ill-informed notion that TTH has created a risk at the receiver sites. The alleged risks identified by NRW to the receiver sites should be demonstrable and based on quantitative evidence – and to date (and as

stated in 15.5 above) has been based only on “opinion” formed by an inexperienced officer who has made no effort to understand the regulations, the industry or TTH operations. The officer’s explanation of “source-pathway-receptor” (email ref) is symptomatic of this inexperience and ignorance. Given the officer’s demonstrated competence and aptitude to date it provides little comfort that the industry is understood, and the regulations are able to be applied in a proportionate and pragmatic manner.

As is stated throughout this response wastes imported into and exported out of the facility are controlled by the EMS in place and managed by experienced, knowledgeable personnel.

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.***

TTH Comment: This is not “alleged” it is a statement of fact.

All wastes accepted into and out of the facility are assessed via quantitative analysis carried out by a MCERTS accredited laboratory. Materials exported from the hub are tested in accordance with the receiver site’s requirements to ensure their fitness for the purpose intended.

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

TTH Comment: As has been previously stated wastes are assessed prior to receipt (analysis) and upon receipt. Following assessment, the wastes will be bulked with wastes of similar contamination profiles and hazardous properties (if confirmed as hazardous). These discrete and disparate stockpiles are not mixed as there would be little practical or commercial benefit. The locations of the stockpiles are recorded on the stockpile plan displayed within the TTH offices. The officer has made assumptions again without establishing the facts as is consistent with the regulatory approach adopted since 2019.

Wastes from “industrial sources” have not been exported from the facility as they are to be utilised as full / partial replacements for raw materials in any future treatment requirements. The details of this are set out in the respective Technical Rationale documents and Permit Variation Supporting Document (v4) submitted and now duly made.

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.

TTH Comment: Noted. HWR06 does not apply to soil remediation as it states on page 3

(three) of the document.

However as stated throughout this document wastes are bulked in accordance with their contamination profile and HP codes following a full assessment both before and upon receipt. No absolute hazardous wastes are accepted at TTH.

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.

TTH Comment: Noted but this is only relevant to hazardous wastes undergoing stabilisation and where a product is not produced as a result. HWR06 does not apply to soil remediation. It also only applies to hazardous wastes that do not undergo any further treatment

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**].

TTH Comment: TTH disagrees with the NRW assertions above.

The testing requirements for materials exported from TTH is driven SOLELY by the receiver site – materials are tested in line with the required specification set by the **RECEIVER SITE**.

As has been stated on numerous occasions, the document referenced above (SOL0113ESP01) was compiled for the treatment and recovery of a SINGLE specific waste stream – i.e., industrial filter cake materials with the scope to similarly process waste soils. Whilst the industrial filter cake waste streams did not come to fruition, processing / recovery of wastes / waste soils remained within the scope of TTH's operations. You will note further that the listed determinands are based on WAC analysis and have relevance only for disposal at landfill. Leachate analysis is / will be carried out when there is a requirement to do so.

The testing undertaken entirely disproves HRW's conclusion that excess soil volume has resulted in hazardous soils leaving the site. Furthermore, BTEX and leachate testing is not required by WM3 to ascertain whether soils are hazardous or not. As such it is not clear why their omission is of concern cognisant of the basis of the suspension notice.

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

TTH Comment: TTH is fully aware of this fact and it is unclear as to the relevance to the suspension notice.

TTH has historically carried out WAC testing on exported materials that potentially may have been disposed of at landfill. This has always been supported with appropriate characterisation (analysis) to confirm contamination concentrations.

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.

TTH Comment: This requested information (as per the requirements of the Reg 61(1) notice) has been provided as of 18-12-20.

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.***

TTH Comment:

TTH reaffirms this statement. The issue of a suspension notice without any substantive evidence is considered disproportionate and invalid.

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.

TTH Comment: This is not about semantics; the issue is very simple. For soil remediation projects validation and verification is carried to provide lines of evidence that there is no risk to the environment following remediation. To put it into simple terms, quantitative evidence is provided to demonstrate this. NRW has yet to provide any evidence to support their ill-informed notion that TTH has created a risk at the receiver sites. The risks identified by NRW to the receiver sites should be demonstrable and based on evidence – and to date (and as stated in 15.5 above) is based only on "opinion" which has been formed by an inexperienced officer who has made no effort to understand the regulations, the industry or TTH operations. The officer's explanation of "source-pathway-receptor" is symptomatic of this inexperience and provides little comfort that Industry Regulation is fully understood or able to be translated to day to day operations.

TTH would further add that NRW has not "gone beyond what is required" rather it has yet to provide any evidence to support their issuing of the suspension notice,

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.

TTH Comment: To date, TTH has not received any communication from NRW that supports their claim of a "commitment to review the issue of the Notice" To date the NRW officer has adopted the standard dismissive and arrogant stance that we have come to expect.

There has yet to be any evidence provided by NRW to support their claims of a risk of pollution. To date we have been presented with supposition, assumptions, and "opinion" none of which amount to substantiative evidence. TTH has provided voluminous information at the request of NRW that clearly demonstrates wastes imported into and exported from the facility are assessed and managed throughout their lifecycle. Exported materials are assessed in accordance with the receiver site's requirements. It is our contention that this is the "technical and evidential documentation" required.

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

TTH Comment: See above comments

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.

TTH Comment: As stated above and throughout this document, no evidence to support this notion has been provided by NRW. To state "clearly identified" is folly as the notion of a pollution risk is based on supposition and "opinion" and not factual evidence or an understanding of the Treatment Hub operations, the Industry Regulations or the Industry itself.

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.

TTH Comment: As stated above and throughout this document, no evidence to support this notion has been provided by NRW. To state "clearly identified" is folly as the notion of a pollution risk is based on supposition and "opinion" and not factual evidence or an understanding of the Treatment Hub operations, the Industry Regulations or the Industry itself.
The reference to "other serious contraventions" has been made to again support the flimsy and uninformed case made by NRW, is not relevant to the suspension notice and is therefore inadmissible. It is also designed to obfuscate.

TTH has actively reduced the volume of waste on site as is detailed in previous sections of this document. The segregation, processing and testing / validation has been explained in detail throughout this document all of which are controlled by the EMS in place. So called "older waste" will be assessed as and when there is a requirement to do so.

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.

TTH Comment: This is a disingenuous comment and serves only to belittle the responses made by TTH since the issue of the notice. The suspension notice was issued which restricted the TTH operation to processing and export only. The export of wastes from the facility was caveated as set out below:

> "*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.* "

The second paragraph above is symptomatic of the arrogant stance adopted by NRW given the inability of the NRW officer to engage, understand or comprehend industry regulations or operations within the facility itself. This requirement is disproportionate (as indeed is the notice itself) and TTH can only assume that this approach has been utilised at other facilities thus creating a legal precedent?

Given the dismissive and arrogant regulatory stance adopted to date by NRW, what logic dictates that there would be any sort of agreement as to the classification of wastes prior to removal?

As stated above and throughout this document TTH has actively reduced waste volumes on site.

16. Summary

TTH refutes all of the summary points for all the reasons stated above and within our Summary Notice 08.12.20 and other relevant documentation.

TTH also takes significant exception to the scandalous statement in 16.9 that no effort has been made to comply with the notice whatsoever. The exact opposite is true – TTH has 100% complied with the suspension notice and this completely untrue assertion needs to be formally withdrawn.

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

09/12/20