



# Cyfoeth Naturiol Cymru Natural Resources Wales

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

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

**NRW Response to the Appellant's Final Comments dated 19<sup>th</sup> January 2021**

## **NRW Response to TTH Final Comments dated 19<sup>th</sup> January 2021**

In response to the final comment document submitted by the Appellant on 19<sup>th</sup> January 2021, NRW would like to submit the following remarks and observations in response to that document.

The Appellant raised several concerns with NRW's Statement including:

- The inclusion of the duty of care (DoC) review,
- The requirement to reduce the tonnage to 5,250 tonnes,
- The Appellants perception that NRW's acknowledgement that not all waste require treatment is confirmation that the basis for serving of the Notice was flawed.
- NRW's assessment of previous breaches of storage limits,
- The provision of NRW's reviews and checks prior to issuing the notice.

### **Inclusion of the duty of care review**

Whilst the suspension notice has been issued as a result of quantity of waste stored on site, the composition of the waste is a fundamental aspect of the risk posed by the operation. If NRW had identified 9,000 tonnes of sand or other inert waste stored within the building, it would not have considered the service of a suspension notice. The quantity of waste on site prevents accepted hazardous waste from being stored and treated in a manner that enables the Appellant to comply with their permit. The risk of pollution has been clearly explained in both the notice and the statement of case.

The review of the DoC paperwork had no bearing on the issuing of the notice, but the type of waste accepted at the facility did. By including the findings from the review, it provides evidence of the types of wastes accepted on site and discredits the constant claim by the Appellant that only soils are accepted on site.

It must also be noted, that within the Appellant's response to NRW's Statement of Case (section 6.0), they repeat the same comment for the hazardous waste quarterly returns. A distinction must be made between the two as hazardous waste returns are not duty of care. The hazardous waste returns are submitted to NRW by the Appellant to notify us of the hazardous waste they have accepted in that quarter. This is a legal requirement under the Hazardous Waste Regulations 2005. The DoC review did not encompass the Appellant's consignee returns and is not referred to in the email to the Appellant's consultant Rebecca Bomers.

The review of the DoC, hazardous waste quarterly returns, and EPR waste returns highlight significant discrepancies in waste volumes reportedly received at the site. However, there is consistency with the waste codes documented, these including several other than soils.

NRW objects to the Appellant's request for PINs to disregard the evidence in relation to waste accepted at the site in the form of DoC and consignee returns. This evidence is relevant and integral to NRW's Statement of Case. The omission of comments relating to non-soils waste by the Appellant is disingenuous and misleading and fundamental to the concerns NRW has about risk arising from the site in the manner it was being operated.

### **The requirement to reduce the tonnage to 5,250 tonnes**

The 5,250 tonnes limit is the quantity submitted by the Appellant, in the application for their permit. Until the recent variation application, the Appellant has not sought to increase the permitted tonnages. The original permit application was assessed and determined on the measures listed in the application at that time. To increase the tonnage a permit variation is required where an appropriate assessment and determination will be carried out on the suitability of the increase. Exceeding the limit prior to this is a breach of their permits conditions and the Appellant is not authorised to do it.

This provides a further example of the Appellants lack of knowledge of their own permit.

### **The Appellants perception that NRW's acknowledgement that "not all waste requires treatment" is confirmation the basis for serving of the Notice was flawed.**

Within the Appellant's comment it states:

*"This statement by Liane Bacon-Weekes also confirms the flawed basis for serving the notice. TTH does not treat wastes that do not require treatment as fully documented in the Statement of Case – this point has now been acknowledged by NRW SIX MONTHS after serving the notice".*

NRW does not agree that acknowledging the point "that all soil waste may not require treatment" confirms that the basis for serving the notice was flawed. As highlighted in point 15 of NRW comments document, the Appellant is required to comply with the conditions of their permit and continues to solely refer to soils rather than the other waste types that they receive. Please refer to NRW's response to point 15.

### **NRW's assessment of previous breaches of storage limits,**

It is important to recognise that the volumes listed in each of the CARs is an estimated volume provided by the Appellant, to the NRW officers, at the time of the inspection. It is not practical for officers to measure the volume on site and the onus is on the Appellant to know and comply with their limits. If managed correctly, an operator of a waste facility, should be able to provide accurate tonnages at any point in time.

NRW also wishes it to be recognised that the Appellant, when acknowledging repeated breaches of permit limits over many years, highlights their complete disregard for the conditions of their permit, directly applicable legislation and of NRW as a regulator.

In relation to these breaches, NRW would like to highlight the following observations.

**CAR 150707/ZP3933NJ - 7<sup>th</sup> July 2015 – Annex F of NRW's Statement of Case**

During this inspection, the regulatory officers note:

*“During the visit the Appellant estimated that there was 13,000 tonnes of material on site. At present the waste soils currently stored on site are from 2 main sources. These 2 main sources have been kept separate on site, however some small loads have been added to the material received from Droitwich due to the similar properties and contaminants of the wastes”.*

The officer's comment would indicate they deem there to be less risk associated with this as the waste comes from two sources and the Appellant complied with the requirement to keep the waste separate. There is also no reference to the waste being hazardous, which is later confirmed by the Appellant, they did not start to accept until 2017.

**CAR CAR\_NRW0023790 – 19<sup>th</sup> July 2016 – Annex F**

From the officer's comments within this report, during the site meeting on 19 July 2016, the Appellant estimated that there was approximately between 8800 and 9200 tonnes of material on site; 3500 tonnes had been treated with the remaining material being untreated.



As can be seen from the photos taken by the officer at the time (included in the CAR form), there is a significant difference between the volume of waste, compared to what was observed and photographed being stored within the building during the July 2020 visit (Annex M) despite the volumes being estimated to be near the same. The volumes shown in these photos from 2016 again show that there is space to allow for segregation and treatment of wastes. It was confirmed by the Appellant that hazardous waste had not been accepted.

It is also noted in the CAR that:

*“For each of the loads that are accepted a specific formulation of raw materials will be added to the waste to achieve the target remediation levels. The remediation levels are based on the contaminants included in the waste and the intended use for the material”.*

At this time the Appellant deemed it necessary to treat accepted waste even though contaminants were below the hazardous threshold.

**CAR\_NRW0032158 – 18<sup>th</sup> August 2017 – Annex F**

During this inspection the regulatory officers identified that hazardous waste had been accepted from 2 sources and at this time it was estimated there was 5,600 tonnes of material on site. From the photographs (taken from the CAR form) it is clear there is sufficient space to allow for waste to be stored and treated separately as required by the permit.



**CAR\_NRW0033664 – 18<sup>th</sup> July 2018 – Annex F**

During this inspection, the officer noted that the Appellant was compliant with tonnages (based on figures provided by the Appellant at that time) and it can be seen again that there is sufficient space to allow for waste to be stored and treated separately as required by the permit.



**CAR\_NRW0036053 – 29<sup>th</sup> October 2019 – Annex F**

During the inspection the Appellant estimated there to be 12,000 tonnes of waste on site and through a brief review of the duty of care paperwork (in situ) it was clear that hazardous waste was regularly accepted. Much of the building had been filled with waste and Mr. Simon Farr noted that the lower section of the building could not be accessed. It is evident in the photographs that different waste types are no longer being kept separate and the space available for waste treatment was compromised.



Despite the tonnages and the concerns NRW had at this time, NRW attempted to work with the Appellant and requested they submit a plan on how they proposed to address the identified issues. This also allowed them time to reduce the volume of waste on site.

As indicated in section 4.7 the Statement of Case, the Appellant submitted a plan, but it did not provide details on how the Appellant intended to reduce the quantity of waste on site to permitted limits but focussed on the variation to increase tonnage.

**CAR\_NRW0036771 - 2<sup>nd</sup> July 2020 – Annex F**

During the officers visit on the 2<sup>nd</sup> July 2020 the Appellant estimated there to be between 9,000 and 9,500 tonnes on site. However, as evident in the photographs (Annex M) there was no visual decrease in the volume of waste on site and the space within the reception area seemed further restricted. It was decided that 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.



### **The provision of NRW's reviews and checks prior to issuing the notice**

The documents are in existence and were not provided due to a genuine oversight as a result of the pressure of the appeal, and the volume of material submitted by Burges Salmon on behalf of the Appellant. NRW were anxious to narrow the issues as they committed to do so.