

**IN THE MATTER OF:** **PCAC/PEDW ref CAS-02313-Z1D6V4**  
**THE ENVIRONMENTAL PERMITTING REGULATIONS 2016, REGULATION 31**  
**AND SCHEDULE 6 AND**  
**AN APPEAL AGAINST THE DEEMED REFUSAL OF A PERMIT**  
**B E T W E E N:**

**PLATTS AGRICULTURE LIMITED**

**Appellant**

**- and -**

**NATURAL RESOURCES WALES**

**Respondent**

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**APPELLANT’S RESPONSE TO NRW’s STATEMENT OF CASE**

**(14 July 2023)**

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***References***

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| A/[x]    | <i>References A/... are references to individual documents within SoC Annex A</i>                       |
| Addendum | ECL Ref: PLAT.01.02/EoW (Addendum) Version: Issue 1, June 2023 (see para.3 below)                       |
| EA       | The Environment Agency  |
| ECL      | Environmental Compliance Limited (the consultants who have prepared the Appellant’s permit application) |
| EPR 2016 | The Environmental Permitting Regulations 2016   |
| LoW      | List of Waste waste classification codes  |
| NRW      | Natural Resources Wales (the Respondent)  |
| NTS      | Non-Technical Summary of the application documentation  |
| SoC      | NRW’s Statement of Case   |
| SoC/[x]  | <i>References SoC/... are references to paragraph numbers within the SoC</i>                            |
| Platts   | Platts Agriculture Limited (or ‘Platts’)  |
| WFD      | the Waste Framework Directive   |
| [...]    | <i>[...] is used to indicate the timing of an email</i>   |

## Introduction

1. In this response, the Appellant (“Platts”) shall identify and deal with the main issues raised by NRW’s SoC. There is a degree of repetition in the SoC, and a considerable number of matters are of peripheral relevance. Platts does not wish to overload this document, and will meet every point as may be necessary at the appeal. Absence of a comment in response to a point raised by NRW does not represent agreement. Detailed points of law and authorities intended to support this response will be presented in legal submissions. Further, the contents of §2 of the *Addendum* make a useful contribution to this Response in respect of key points advanced by NRW, but points of law in this document and then at the hearing of the appeal take precedence.
2. Platts supplies the following documents with this Response, replacing earlier versions of the same documents which were previously submitted for NRW’s consideration:
  - 2.1. ECL Ref: PLAT.01.02/NTS (Non-Technical Summary) Version: Issue 2, June 2023;
  - 2.2. ECL Ref: PLAT.02.01/EPTR (Environmental Permitting Technical Requirements) Version: Issue 2, June 2023;
  - 2.3. ECL Ref: PLAT.01.02/SCR (Site Condition Report) Version: Issue 2, June 2023;
  - 2.4. ECL Ref: PLAT.01.02/FPP (Fire Prevention Plan) Version: Issue 2, June 2023;
  - 2.5. ECL Ref: PLAT.01.02/DMP (Dust Management Plan) Version: Issue 3, June 2023;
  - 2.6. ECL Ref: PLAT.01.02/NMP (Noise Management Plan) Version: Issue 3, June 2023.

Amendments (in terms of additions to the documents) are clear from the documents provided (by way of tracked changes). As to item 2.4, see paras.118-120 below. As to item 2.6 see paras.126 and 133 below.
3. Platts also supplies an *Addendum* to Platts’ original *End of Waste Justification* (which was submitted in response to NRW’s first Schedule 5 Notice dated 19 July 2022), together with reports from the independent experts as set out below:
  - 3.1. ECL Ref: PLAT.01.02/EoW (Addendum) Version: Issue 1, June 2023;
  - 3.2. The report of Dr O Atkinson MRCVS, RCVS Recognised Specialist in Cattle Health and Production;
  - 3.3. The report of Dr Ivan Vince CEng FICChemE CSci CChem MRSC;
  - 3.4. The report of Dr George Fisher PhD.

These reports form part of the evidence-base for Platts' revised end-of-waste justification, as further explained below. In addition, the experts' reports contain material in support of other aspects of Platts' response to NRW's SoC and its objection to the grant of a permit.

### Background

4. Platts is run by Caroline Platt, the daughter of parents whose family were farmers and who found that fresh sawdust was too coarse and too moist for use with rubber mattresses as a common means for housing dairy cattle. The conditioner product which is at the centre of this application was developed by the early 1990s and it has not substantially changed since then. Platts has had numerous accolades from satisfied farmers and since 1 April 2018 it has held the Royal Warrant.
5. Platts is a Welsh success story, in terms of animal health, the environment and the economy, and it has won numerous business awards from both the Welsh Government itself and the UK Government. Competition is fierce and Platts' main rivals are not subject to the same regulatory pressure from the Environment Agency in England. They have not been required to obtain bespoke permits.
6. Animal health is the key driver for the business, Platts being able to charge a premium on its conditioner products by reason of the significant benefits for dairy cows, and it has no reason whatsoever to jeopardise its position by producing and selling a product which is other than harmless. On the contrary, Platts' products promote the well-being and welfare of animals. Their manufacture promotes the waste hierarchy and the circular economy, which is consistent with Welsh Government principles of well-being and sustainability.
7. Straight after a visit by NRW to Platts' site on 5 March 2020, when NRW deemed that Platts was not compliant with regulatory processes, Platts, which had previously considered that the main material which it processes was a by-product of its suppliers' manufacturing processes, instructed ECL (Oliver Matthews) to ensure that it was a regulatory compliant position. By 3 April 2020, Mr Matthews had started to put together an application package on behalf of Platts and requested an opportunity to discuss the best way forward with NRW officers.
8. Whilst Platts' permit application is straightforward, at the same time, this is a ground-breaking application, since, to date, UK regulators have not actively enforced waste

legislation in the context of the manufacture of cubicle conditioner (animal bedding) from non-hazardous wood waste (code 03 01 05). The application is very likely to set an important precedent for the industry throughout the UK.

9. On 21 May 2021, Platts' first permit application was submitted. On 28 January 2022, the instant application was submitted. NRW's website states that the approximate determination of a waste permit is 4 months<sup>1</sup>, but nine months had already elapsed when the notice of deemed refusal was served on 17 October 2022 (A/151).
10. Since Platts' application was always going to be refused, Platts was forced to commence this appeal in order to challenge NRW's underlying 'regulatory position' before an independent tribunal holding all the powers of the regulator. Platts would not get an environmental permit at all without an inspector directing NRW to grant a permit in accordance with his/her determination.

Under paragraphs 1 and 2 of the SoC

11. NRW's suggestion is that the only reason why it failed to determine the permit application by 11 October 2022 (being the date of the long-stop deadline allowed by Parliament) is because "the Appellant had not provided adequate evidence". The fact is that NRW would never have granted the application for the reason set out in SoC/3, namely because "**NRW's regulatory position is that treated waste wood may not be used for animal bedding**". Platts had no practical option but to serve a notice of deemed refusal. NRW's unsupported 'regulatory position' i.e. that treated waste wood, may never be used in animal bedding, has resulted in the frustration of Platts' permit application, rather than its encouragement and progression. NRW's position is unreasonable, and the costly regulatory burdens it has imposed on Platts, in particular by its ever-more detailed requests for information about the application, have been unnecessary and disproportionate.
12. Not only is Platts' application relatively straightforward, as is the application of Art.6(1), WFD, but Platts' processes are themselves far from complex. They are carried out safely and harmlessly (as they have been for many years), both when material is

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<sup>1</sup><https://cdn.cyfoethnaturiol.cymru/media/681698/eng-nrw-consents-table.pdf?mode=pad&rnd=131909171450000000>

collected from suppliers, and then at its site on an industrial estate where the nearest resident is more than 500 metres distant.

13. Matters which have been raised by NRW connected with the determination process, for instance, with the length of time available (which is prescribed by statute and which should have been sufficient) and with the question whether Platts provided enough detail to NRW, are, strictly speaking, irrelevant from the point of view of the inspector, who will have to reach a decision as to whether the application should be granted as of the date of the appeal and in the light of the material available. Platts' position, in any event, is that NRW has made unwarranted and unreasonable demands for information throughout the process, especially since Platts was originally invited to make the application in order 'to come into compliance'. At the same time, Platts has been able to reconsider and refine aspects of its application, especially those connected with its end of waste position.
14. Platts will ask the inspector to quash the (deemed) refusal and to direct NRW to give effect to the inspector's determination that a permit should be granted in respect of Platts' waste management operations, leading up to the recovery of the wood waste in accordance with Art.6, WFD (the end of waste test).

Under paragraph 3-4

15. Platts agrees that the perceived distinction between "treated" and "untreated" wood under non-hazardous LoW code 03 01 05 is important, indeed all-important, but **only** because this appears to be the main reason why NRW is determined not to grant Platts a permit. NRW's belief is that there is some clearly defined distinction between "treated" and "untreated" wood. This belief in turn informs its 'regulatory position' that "treated" wood cannot possibly be used in any form of animal bedding. This is particularly important in the context of its opposition to the end of waste justification which Platts submitted with its application, since NRW is determined that a wide range of unparticularised harms will befall animals, the environment and even human health from the effects of the "treated" wood which Platts uses. NRW's 'regulatory position' is based on entirely unassessed and potential threats from what it classes as "treated" wood.
16. Not only does NRW have no scientific support for its regulatory position, but there is no widely recognised or workable definition as to what may constitute "treated" wood.

Platts, on the other hand, has compiled a ‘library’ of over 1,900 chemical analyses obtained from various sampling exercises, which reliably show that the products which it manufactures at its site are in every context harmless<sup>2</sup>. See additionally §2.1 of the *Addendum*, which also demonstrates that there is no common or clear understanding as to what constitutes “treated” and “untreated” wood, and points out that some “untreated” wood contains contaminants in excess of those found in some “treated” wood wastes (see also para.90 below).

17. As to the lack of a scientific basis for its regulatory position, NRW has previously acknowledged that “no scientific research has been carried out by or commissioned by NRW to support the distinction [between “treated” and “untreated” wood] (letter dated 10 February 2023).
18. As to this distinction, it is not contained in LoW code 03 01 05. Code 03 01 05 expressly includes both particle board and veneer, being types of wood which Platts buys in from its suppliers, as it does other types of wood, such as woodchip. Non-legislative standards are themselves imprecise and inconsistent. Some non-legislative standards, but not others, only describe manufactured particle board or veneer as “treated” if it has been coated to enhance its use, for instance with paint, varnish, preservatives or flame retardants, as “treated”. There is also the question as to whether the heat treatment of virgin wood is to be classed as a “treated” material: is kiln-dried wood, for instance, a “treated” wood? This example serves to show that there is no legal definition of “treated” wood and therefore no certainty as to what is meant by “treated” wood.
19. Knowing that NRW uses the descriptor “treated” to describe particle board and veneer, Platts has certainly not sought to hide the fact that, just like its numerous competitors in the UK, it uses material such as particle board, veneer and woodchip products, material which is typically obtained from furniture manufacturers, and which in its original non-waste form, is used for the manufacture of furniture which is widely distributed for safe use in homes throughout the United Kingdom. The insistence on a distinction between “treated” and “untreated” wood and its inflexible and unsupported ‘regulatory position’ has closed the eyes of NRW to the fact that Platts is able to recover

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<sup>2</sup> The figure is in excess of 1,900 as of the time of writing, but it is a figure which continues to grow.

non-hazardous waste wood (code 03 01 05) in a way which is harmless and which results in products which meet the end of waste conditions.

20. If NRW were correct that, as a matter of principle, non-hazardous “treated” wood waste can never be used as animal bedding (including as cubicle conditioner), then such waste would have to be discarded or used as a fuel. Such a policy is also contrary to the practical application of the waste hierarchy, principles of sustainability and the circular economy. If NRW were correct, then dairy farmers would run into a serious shortage of supply of the products that are currently relied on by a substantial section of the market. Farmers could not buy the Platts’ (or presumably other suppliers’) conditioners, the risk then being that dairy cows would be subject to the use of other materials as bedding which would be less comfortable, more likely to result in mastitis and worse for the wider environment.
21. The correct question for NRW (and now the inspector) in respect of its regulatory responsibilities when considering Platts’ permit application, is whether the management of the particular material which Platts processes from non-hazardous waste wood (code 03 01 05) satisfies the tests set out in Article 6(1) of WFD. Successfully to answer that question, it is necessary to embark on a true scientific assessment of the material itself, and a scientific assessment of both the potential harms and the likelihood of such harms occurring. Such an assessment cannot be carried out with sufficient rigour if it is tied to a pre-determined dichotomy of “treated” and “untreated” wood.
22. It follows that the correct approach to the question for the inspector should be based on a truly evidence-based approach to determining risk, which is the approach satisfied by Platts. The inspector should note that Platts’ application has now been varied from that which was originally presented to NRW so that it will only accept waste falling within LoW code 03 01 05. Therefore, the specified waste operation for the purpose of the permit application has been amended to read:

**“storage of non-hazardous waste wood (classification 03 01 05) with subsequent treatment involving magnetic separation, screening, pulverising and baling to produce animal bedding material (including cubicle conditioner) for use within the agricultural livestock sector”.**
23. Platts will demonstrate at the appeal that both its waste management operations and the products which have achieved end-of-waste are harmless, and it will do so by reference to its suite of detailed chemical analyses, the final product meeting an acceptable

conformity standard which reasonably allows for the risk of variation. It is the reliability of this conformity standard which should be central to the permit application. Platts also has appropriate systems in place to check the quality of the material it receives and, if necessary, to reject non-conforming material.

Under paragraph 5

24. NRW raises an issue as to terminology. NRW takes the point that cubicle conditioner and animal bedding are to be classed in the same way, i.e. as a form of animal bedding (SoC, first sentence of para.5).
25. Platts is prepared to agree with NRW that, as a form of overall classification, there is no distinction to be drawn between these two categories of product, so that Platts is content to adopt the same reference to its conditioner products as that suggested by NRW, namely “cubicle conditioner [animal bedding]”. For the sake of brevity, “conditioner” will generally be used in this document. At the same time, the point must not be lost that during the manufacturing process dust is extracted from the shavings (which are subsequently sold as a form of deep bedding) and that dust can only be used in the conditioner. Dust can never be sold or used as deep bedding.

Under paragraphs 6-11

26. NRW has identified the following issues in its Introduction, which Platts will therefore take as the key issues which NRW consider need addressing by the inspector. Platts will prepare its evidential case to address these five issues. If that interpretation is wrong, then NRW should promptly contact Platts’ representatives. These five issues are as follows:

Issue 1

- 26.1. Would the requirements of Articles 4 and 13, WFD be met if a permit were granted (see reg.35 EPR and para.3(1)(a)(i), (b), Schedule 9) (SoC/6)?

Issue 2

- 26.2. Is Platts entitled to present an end-of-waste justification as part of its appeal, and if it is, then can Platts satisfy the inspector that its products meet an end-of-waste standard given the requirements of Art.6, WFD (SoC/7, 8)?

Issue 3



- 26.3. Are the requirements of the FPMP acceptable in order acceptably to control the fire risks caused by materials at the site (SoC/9)?

Issue 4

- 26.4. Are the following ancillary issues satisfied: EMS, noise impact assessment and management plan (SoC/10)?

Issue 5

- 26.5. Is Platts unable to satisfy relevant operator competence issues by reason of its failure to meet appropriate standards in respect of its EMS, waste types and acceptance procedures, its FPMP and NRW FPMP guidance?

Paragraph 14

27. NRW states that it would agree to grant a permit to authorise the storage and treatment of the full intended capacity of the site (60,000 tonnes per annum) to produce animal bedding from “clean, untreated wood”. Platts’ application extends to the production of bedding other than conditioner from exactly this material, so that Platts takes it that NRW does not have any objection to the grant of a permit covering this material.

## **THE REGULATORY REGIME AND CONTEXT**

### **Environmental permitting**

Under paragraphs 15-38

28. Platts does not disagree with the summary as to relevant legislative provisions which NRW has set out. The detailed provisions will be placed before the inspector.
29. In addition to the Core Guidance, NRW has retained, and is required to act, in accordance with a series of Regulatory Guidance Notes which, as of the time of writing, are still available on the NRW website<sup>3</sup>.
30. See RGN 54 (*Setting standards for environmental protection*) and the following:
- 30.1. RGN 4’s requirement that NRW, when determining a permit application, should ensure that the measures proposed by the operator will not cause an unacceptable impact on people and the environment, that any impacts identified

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<sup>3</sup><https://naturalresources.wales/permits-and-permissions/environmental-permits/regulatory-guidance-notes-rgns/?lang=en>

will be mitigated in accordance with a consideration of the relevant costs and benefits 9 (§2.3);

- 30.2. RGN 4 and its “key measures” provisions, allowing for key measures to be prescribed across a sector, in this case the end of waste conformity standard which should be applied in respect of all operators, including those regulated by the Environment Agency (§2.3);
- 30.3. RGN 4’s recognition of the statutory principles of good regulation to be applied under s.21, Legislative and Regulatory Reform Act, 2006 (§4). NRW applies its own set of Regulatory Principles<sup>4</sup>, Annex 2 of which includes having overarching regard to the Regulators’ Code and its various requirements including avoiding the imposition of unnecessary regulatory burdens by consideration of proportionate approaches to those they regulate (§1.1), taking an evidence-based approach to determining risk (§3.1), and recognising the compliance record of regulated persons and considering evidence of relevant external verification (§3.4)<sup>5</sup>.
31. Other relevant RGNs are RGN 3 (*Deciding applications are duly made and requests for further information*), RGN 5 (*Operator competence*) and RGN 11 (*Enforcement powers*).
32. NRW’s Regulatory Principles, in concert with the duty imposed upon NRW by the Well-being of Future Generations (Wales) Act 2015 (see below), make clear that any exercise of regulatory power can only be lawful following multifactorial analysis. Regulators must, as best they are able, encourage the lawful and innovative operations of businesses. Interference with the operation of a business can only be justified in a situation where there is an appreciable and tangible risk that must be addressed: regulators should not regulate for the sake of regulating but in response to evidence-based concerns.

Under paragraphs 39-49 (*End of waste status and Art.6, WFD*)

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<sup>4</sup><https://naturalresources.wales/about-us/what-we-do/what-we-regulate/regulatory-principles/?lang=en>

<sup>5</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/913510/14-705-regulators-code.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913510/14-705-regulators-code.pdf)

33. Paragraphs 39-49 represent a broad overview as to the classification of waste in accordance with WM3 and LoW and they contain a recitation of the wording of Art.6, WFD. Platts agrees with these, subject to the following comments.
34. As to para.39, Platts claims end of waste status in respect of its bedding product as well as its conditioner products (see para.25 above).
35. As to paras.42 and 43:
- 35.1. caution is needed in respect of the reference to the “harmonised end of waste” test. Paragraph (1A)(a) of Art.6 (as it now applies in Wales) seeks to preserve any specific criteria which were made by the EU in order to ensure harmonisation of end-of-waste across Member States. None are relevant to waste wood 03 01 05.
- 35.2. It would be a misnomer to suggest that the guidance to which reference is made under para.(1A)(b) represents a “harmonised” end of waste test. It does not. It is specifically guidance relevant to Wales, and there are none.
- 35.3. DEFRA *Guidance on the legal definition of waste and its application* (August 2012) was withdrawn on 30 March 2023<sup>6</sup>. (See para.50 below.)
- 35.4. Platts notes that para.42, commences “**Generally**, once a substance or object becomes waste unless acceptable recovery has been achieved” (emphasis added). This is consistent with the (withdrawn) 2012 Guidance which states at G3.120:

“Once a substance or object becomes waste, something **usually** needs to be done to it in order for it to cease to be waste. Depending on the circumstances, this can vary from something relatively minor to quite extensive processing. The processing will often comprise one or more recovery operations.”

NRW recognises that one consequence of the fact that it is a very fact-specific question whether or not end of waste has been achieved for a particular product, is, that, in some circumstances, recovery may not be needed at all, and that it may be achieved following relatively minor processing. See also §2.5 of the *Addendum*.

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<sup>6</sup> <https://www.gov.uk/government/publications/legal-definition-of-waste-guidance>

36. As to paras. 44, 46 and 49, Platts' understanding is that the current form of Art.6, WFD is as set out in para.12(7), Schedule 1A, EPR 2016. Prior to the appeal the parties should agree a file containing the agreed legal sources.
37. As to para.48, a precautionary principle is applicable where a preliminary objective scientific evaluation indicates that there are reasonable grounds for concern that potentially dangerous effects are inconsistent with a high level of protection. See *Verlezza and Others* (C-487/17), in which the ECJ stated that the "correct application" of the precautionary principle "presupposes, first, identification of the potentially negative consequences for the environment of the waste concerned, and, secondly, a comprehensive assessment of the risk to the environment based on the most reliable scientific data available and the most recent results of international research" (para.57). Moreover, Art.6(4) requires a balance between, on the one hand, the precautionary principle and, on the other, technical feasibility and economic viability and the overall environmental, human health, economic and social impacts. In sum, there is a requirement for scientific rigour rather than risk aversion.
38. In the context of Platts' permit application, not only has NRW admittedly failed to carry out any scientific research whatsoever to justify its 'regulatory position', but the scientific evidence which will be submitted at the appeal will support the end of waste justification in showing that the product is harmless.

Under paragraphs 50 and 51 (*End of waste status, cont.*)

39. NRW's position is misconceived and wrong.
40. It is conventional in an application for a permit in respect of waste management operations for the applicant to submit an end of waste justification where the applicant maintains that the waste it manages will be manufactured into a product. Permit conditions will only cover the applicant's waste management processes, so that the regulator will need to understand and agree the stage at which end of waste is achieved.
41. Platts submitted its end of waste position in its original *Environmental Permitting Technical Requirements* document as part of its permit application. NRW acknowledged this when it issued its first notice submitted under the powers available to it under Schedule 5, Environmental Permitting Regulations 2016 dated 19 July 2022. By its notice NRW expressly asked Platts to "provide **further information** to demonstrate that the processed wood waste meets "end of waste" (emphasis added).

Correctly, NRW did not suggest at this stage that it simply had no power at all to make a determination, as part of the permit application, as to whether or not Platts' non-hazardous wood 03 01 05 inputs met end of waste status. Moreover, in March 2023, Tim Price of Waste Policy, NRW, provided a critique of Platts' submission in the form of an *Analysis of 'EoW Justification Annex V'* (A/154).

42. Accordingly, as part of the permit appeal and exercising the same powers as those available to NRW, the inspector will have to form a judgment as to whether end of waste status is justified in respect of Platts' bedding and conditioner products.

Under paragraphs 52-55 (*End of waste status – the authorities to which NRW refers*)

43. In these paragraphs, NRW refers to a selective number of mainly old, but well-known, cases. The general and specific application of these cases are challenged. End of waste cases are extremely fact-sensitive. The cases cited have little relevance (if any) to the factual circumstances of Platts' permit application. Moreover, Platts is bound to observe that the NRW webpage *Meeting the end of waste test* only cites *OSS* as an example of "relevant case law in England and Wales" being worthy of general application. Platts agrees that *OSS* is important, but Carnwath LJ was not establishing a simplified three-point test for end of waste (contrary to para.52, SoC and the website). Carnwath LJ's judgment is important because he reiterated the need to look to the specific factual context of each case and he rejected the possibility of establishing a definitive test (para.67). Instead, the following general principles are set out:
- 43.1. the importance of "a practical and common sense approach" to the issue of determination of end-of-waste status (para.63);
  - 43.2. the promotion of the "objective of encouraging recovery of waste materials for uses which replace raw materials" (para.63);
  - 43.3. the answer to the question of end of waste "must" be found within the WFD itself (para.66);
  - 43.4. the requirement on the part of national authorities to use their "expertise and experience" to provide practical guidance (para.68).
44. To the extent that *OSS* is of application to this case, then, it is primarily relevant in providing touchstones for the decision-maker who should consider wider objectives, from a standpoint of pragmatism, with close focus upon the aims of the WFD (see also

Sir Duncan Ouseley in *Safety-Kleen v. EA* [2020] EWHC 3147 (Admin) at para.76). Carnwath LJ's judgment in *OSS* can be applied in respect of this case and the application of Art.6(1) as follows:

- 44.1. Platts, by various processes, converts non-hazardous waste wood (classification 03 01 05) into distinct and marketable products.
- 44.2. Those products can be used in the same way as other products intended to keep cows dry and comfortable and indeed they provide better results in various ways, in particular in terms of the absorbency of animal waste, resulting in increased comfort and the reduced risk of the growth of mastitis-causing pathogens.
- 44.3. The conditioner products produced by Platts have no worse environmental effects than any comparable products (indeed their effects are better).
- 45. In many of the points which he made in his judgment, Carnwath LJ was presaging the wider aims and emphases set out in more recent case law, which endorse a pragmatic approach to the issue of waste. In *Porr Bau* (C-238/21), it was stated that the setting of end of waste criteria (such as limit values) must not be done in such a way as to undermine the achievement of the objectives of the WFD, namely encouragement of the application of the waste hierarchy provided for in Art.4, the recovery of waste, and the use of recovered materials to conserve natural resources and to enable the development of a circular economy (para.74, drawing on recitals 6, 8 and 29). To this end, the Court made clear that a waste recovery operation (for the purposes of reaching end of waste status) could comprise a simple process with minimal interference in the character of the product, such as the checking of waste to verify that it fulfils the end of waste criteria.
- 46. The importance of the sustainable management of natural resources is set out in ss.1-5, Environment (Wales) Act 2016. The Welsh Government has produced various policy documents on this topic, including *Beyond Recycling A strategy to make the circular economy in Wales a reality*.<sup>7</sup> A key thematic focus is the encouragement of the innovative use of materials. Within *Beyond Recycling*, it is said the movement towards a circular economy will be achieved by, amongst other things, efforts “to achieve the

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<sup>7</sup><https://www.gov.wales/sites/default/files/publications/2021-03/beyond-recycling-strategy-document.pdf>

highest rates of recycling in the world” and to “reduce the amount of waste that [Wales] produce[s] and effectively manage what [Wales] create[s]”. By 2025, Wales seeks to send zero waste to landfill and to further reduce the amount of waste produced by 26%.

47. This approach is consistent with the objectives of the Well-being of Future Generations (Wales) Act 2015, referred to as the well-being goals (set out in s.4). In particular, “a prosperous Wales” is described as comprising an innovative, productive, and low carbon society that uses resources efficiently and proportionately, develops a skilled population in an economy which generates wealth and provides employment opportunities. There is a duty imposed on public bodies, including NRW, to maximise its contribution to achieving each of the well-being goals, and taking all reasonable steps (in exercising its functions) to meet those objectives. In the exercise of its public duty, NRW “must act in a manner which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs” in so balancing short-term needs against long term needs (s.5).
48. NRW has produced its own well-being statement<sup>8</sup>, which was produced in consideration of the Future Generations Report by the Future Generations Commissioner for Wales.<sup>9</sup> The Commissioner recommended that the Welsh Government should “lead the way on recycling, and implement its ambition to become a zerowaste, net-zero carbon country” whilst ensuring natural resources are used efficiently.<sup>10</sup> Demonstrably, there is clear political appetite to encourage innovation in the use of materials and a duty placed on public bodies to reduce the amount of waste that is disposed and increase the reuse and recycling of potential waste.
49. Statute, in the same way as domestic policy and contemporary case law, requires a premium to be placed specifically on the waste hierarchy set out in Art.4 in respect of the application of the end-of-waste test when it is relevant to the grant of an environmental permit.

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<sup>8</sup><https://naturalresources.wales/about-us/what-we-do/strategies-and-plans/well-being-statement/?lang=en>

<sup>9</sup><https://futuregenerations2020.wales/>

<sup>10</sup><https://futuregenerations2020.wales/english?category=prosperous>

50. It follows that in deciding the appeal, the inspector will be required to exercise his/her powers consistently with the same overall objectives as those placed upon NRW as interpreted by reference to the preceding paragraphs.
51. Put in concrete terms, the inspector should give effect not only to Platts' demonstrable case that the use of the conditioner by farmers in Wales has positive environmental and wider benefits (as supported by the independent experts on which it relies), but also the broader objectives, such as the way in which waste is treated in Wales, the need to foster innovative technologies (particularly those that involve recycling as opposed to disposal) and the development of Welsh companies capable of providing employment opportunities.

Under paragraphs 56-59 (DEFRA *Guidance on the legal definition of waste (2012)*)

52. NRW relies on DEFRA *Guidance on the legal definition of waste and its application* stating that this has only been withdrawn for England (see SoC/footnote 22). The link which NRW has provided includes no reservation for Wales. See para 35.3 above. Little if any reliance should be placed on this withdrawn document, but should it be deemed to have relevance, then Platts makes the points set out below.
53. The intention behind the Guidance is explained in internal pages 6-7. As para.5 explains, the Guidance does not change the legal definition of waste and it does not take precedence over case law from either the EU or domestic courts. It was an attempt on the part of regulators in 2012 to explain their view of the case law as they understood it as of the date of publication. The Guidance is not the equivalent of statutory Guidance and it does not provide any standards or requirements in addition to Art.6 WFD as interpreted by the Courts.
54. With the aforesaid comments in mind:
- 54.1. As to NRW's reliance on para.G3.131, this is misconceived (SoC, para.57). The editors of the document drew specifically on *Arco-Chemie*, *Castle Cement* and *Scottish Power* (see paras.G3.129-130) and made it clear that their interpretation expressly relates to **fuel** (emphasis added). Indeed, G3.131 says this in terms. Moreover, G3.131 has been taken out of context, G3.128ff. expressly making reference to "**some examples** of recovery operations which have not resulted in waste ceasing to be waste" (emphasis added).



- 54.2. NRW's reliance on paras.G3.57-58 is also misconceived (SoC, para.58). As the editors point out in para.G3.57, *Arco-Chemie* was a specific case in which the ECJ decided that a particular type of (hazardous) waste wood did not lose its classification as waste when it was turned into fuel chips so that it could be burned. The real recovery process took place on ignition. See in particular paras.86-88 of the judgment, para.88 expressly stating that "Substances which undergo one of the treatments referred to in Annex IIB **may** indeed continue to constitute waste" (emphasis added). Platts' products are not waste since they satisfy the Art.6(1) requirements, Platts will not be processing any hazardous wood waste. Platts does not disagree with the general proposition suggested by the editors at para. G3.58.
- 54.3. Platts does not disagree with the general interpretation of pre-2012 case law cited from para.G3.75 of the *Guidance* (SoC, para.58).
55. As to para.59, NRW's apparent argument is misconceived to the extent that NRW appears to rely on the aforesaid extracts from the *Guidance* document, made in respect of specific factual circumstances (connected with the use of hazardous and toxic fuel materials), to create general principles of law.
56. Platts respectfully reminds the inspector of the judgment of Sir Duncan Ouseley in *Safety-Kleen v. EA* [2020] EWHC 3147 (Admin) (para.76), when drawing on the judgment of Carnwath LJ in *R (OSS) v. EA* [2007] EWCA Civ 611, who said that:
- "... Searching for logical consistency in the application of the broad term "waste" to the many and varied situations which call for decision as to its application, risks a fool's errand. This is not because of any failings in the jurisprudence of the CJEU, but because the very exercise itself is misconceived. The situations are too varied for the Framework language to provide for all. ... More valuable is a purposive judgment upon the facts relevant to the characterisation of the intentions and actions of the actual holder in relation to the substances at issue".
- Both Carnwath LJ and Sir Duncan Ouseley emphasised the importance of an overall value judgment.
57. In respect of points (i) through to (iv) in SoC/59:
- 57.1. As to (i), the non-hazardous waste wood (classification 03 01 05) is a 'residue' from furniture manufacturers who have sawn, planed, etc. materials such as wood chip and melamine. These manufacturers have sold on furniture made of

exactly the same substances to consumers for their daily use who will have direct contact with it. The waste wood which is carefully extracted to Platts' trailers is already a harmless material. It is treated at Platts' site to remove occasional pieces of metal which might otherwise cause harm to cattle. It is then screened to ensure the right particle size for the different products. Some material is pulverised to ensure that it is sufficiently absorbent, since the waste material when it is received at Platts' site will not all be sufficiently absorbent to keep the rubber mats clean of mastitis pathogens<sup>11</sup>. It is then baled, since if it were not baled, it would be at risk of causing dust pollution if picked up by the air. By this stage, the non-hazardous waste wood (classification 03 01 05) has been sufficiently recovered to meet the end of waste tests set out in Art.6(1)(a)-(d). Nothing further needs to be done to make sure that it satisfies the specific demands of its farming clients. This is not "pre-treatment" but a recycling operation, albeit a straightforward one.

57.2. As to (ii), for the reasons set out above, the properties of the non-hazardous waste wood (classification 03 01 05) do not need to be altered, whether by chemical or biological treatments or otherwise. The material is safe. Pulverising is particularly important, since it is only because the finer particles are created that the conditioner becomes absorbent and can be used to make sure that rubber mats are fit for cows to lie on. Pulverising also allows smaller quantities of the conditioner to be used. NRW have questioned why no chemical or biological treatments are applied or addition of other substances. These would all increase the substance concentrations of the material making it less suitable for use. The concentrations of substances as they are, mean there is no requirement to reduce them further. It is highly unlikely in any event that such chemical or biological treatments exist that would result in any significant improvement. What chemical or biological treatments does NRW say should be used and what is the scientific basis for that suggestion?

57.3. As to (iii), Platts carries out a rigorous sampling and testing process of the non-hazardous waste wood it receives (classification 03 01 05) and it can compare and assess the chemical constituents of the material it receives with the 'library'

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<sup>11</sup> The degree of pulverising will depend on the grade of conditioner.

of results it holds of more than 1,900 samples to date<sup>12</sup>. Mixing is on a de minimis basis as trailers are processed one at a time. Platts does not need to be concerned with “*potentially* harmful substances” because it has analysed and knows what those substances are. These analyses confirm that the concentrations are so low that they are harmless. Further, the material making up the non-hazardous waste wood (classification 03 01 05) which Platts processes is consistent. Furniture manufacturers do not suddenly change or alter the materials which they process, and Platts knows its clients.

57.4. (iv) is not fully understood. The recovery of non-hazardous waste wood (classification 03 01 05) has been achieved after the treatment operations have been achieved to which reference is made above. At that point the conditions of Art.6(1)(a) to (d) have been satisfied.

58. Platts relies on *The Queen (New Earth Solutions) v. EA* [2022] EWHC 1883 (Admin) [2023] Env. LR 7, citing paras.38 and 41 of *Provincia di Bari v. Edilizio Mastrodonato Srl* (C-147/15):

58.1. “38 The essential characteristic of a waste recovery operation is that its principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose, thereby enabling natural resources to be preserved (judgment of 27 February 2002 in *ASA* (C-6/00) ...).”.

58.2. “41. In a situation where, having regard solely to the terms of the operations in question, a waste treatment operation cannot be brought within one of the operations or categories of operations referred to in Annexes I and II to the directive, such operations must be classified on a case-by-case basis in the light of the objectives and definitions set out in the directive ...”.

Under paras.60-63 (waste exemptions and standard rules permits)

59. Platts does not immediately see the relevance of references to permit exemptions. None, for instance, contain an unambiguous statutory definition of “treated”.

Under paras.64-67 (appeal)

60. Platts agrees that reg.31 and Schedule 6, EPR 2016 are concerned with appeals. On the appeal the inspector must decide whether or not to quash or to affirm the deemed refusal

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<sup>12</sup>See paragraph 16 above.

by NRW. On determining the appeal, the inspector has the same powers as the regulator and may go on to direct the regulator to give effect to his/her determination. See para.7 above.

### **Classifying waste wood**

#### Under para.68

61. Platts agrees with that when wood becomes waste it should be correctly classified and coded in accordance with relevant duty of care requirements. This requirement has not been routinely enforced by UK regulators.

#### Under paras.71, 72

62. NRW refers to, and has disclosed, three documents to support its 'regulatory position'. These are WSG-RD-46.6 (*Regulatory Decision RD46*) (SoC, para.71), the minutes of a Waste Technical Group ("WTG") Meeting held on 11 January 2018 (also described as paper WTG26 O2 (SoC, para.72) and a *WTG Communique* bearing the date 20/01/2018 (bottom left) (SoC,para.72).
63. Chronologically, the first document appears to be *Regulatory Decision RD46*, internal page 3 of the minutes of the WTG meeting stating that RD46 was submitted alongside the paper discussed at the meeting on 11 January 2018.
64. It may be that the minutes and the paper WTG26 O2 are one and the same thing, but that is by no means clear from the document, and Platts would be grateful for confirmation from NRW if this is the case. If there was a separate paper, then Platts requests that in keeping with its duty of candour, this is supplied to it.
65. *RD 46* refers to a *Wood Waste Classification Project* which began in September 2017. Internal page 3 of the minutes suggests that the Environment Agency and / or the Wood Recycling Agency were partners in this *Project*, in keeping with NRW's duty of candour, NRW should identify the parties to the *Project* and also the aims of the project (including any key documentation).
66. It would seem that the *Project* was concerned with the circulation of "*potentially hazardous waste wood items*" (emphasis added). A *Regulatory Decision* document has the same effect as a *Regulatory Position Statement* ("RPS") from the EA, promising those affected that they will not be subject to enforcement action so long as they comply with the terms of the *Regulatory Decision* in question.

67. *RD 46* is apparently concerned with six classes of specific waste wood items, all of which would appear to be items specifically *coated* with material, not with waste wood which might be described as having been manufactured with chemical compounds. The paper is also concerned specifically with “mixed waste wood”, understood to be wood waste from household waste recycling centres and from construction and demolition sites. The waste codes with which *RD 46* is concerned have no relevance to Platts’ application since Platts does not propose to accept such material.
68. *RD 46* goes on specifically to state that “mixed waste wood” is not suitable for animal bedding or horse menages. *RD 46* itself draws no distinction between “treated” or “untreated” waste wood. Given the waste codes with which the document is concerned, Platts agrees.
69. NRW’s distinction between “treated” and “untreated” waste wood appears to have been drawn for the first time at the WTG meeting. The minutes of the WTG meeting (for instance internal pages 1 and 10) show that the WTG was being asked immediately to approve the use of these terms and to avoid reference to the classifications in PAS 111, pending the start a process for the commencement of an “OGN” (Operational Guidance Note?) “which will provide regulatory clarity to officers on types of wood, flows of wood and options for waste wood”.
70. The Communique states that the WTG “supported the need for an OGN for waste wood to be developed”, the commissioning of which was apparently endorsed by an RBB. A small working party was to consider the permitting implications. It was agreed “to forward *RD 46* to RBB for ratification”.
71. None of these three documents were publicly posted on an NRW website or made available to companies such as Platts. Indeed as of the time of writing, *RD 46* does not appear to be publicly available at all, although inquiries show that it has been made privately available to members of the Wood Recycling Association who have access to the WRA website.
72. These comments are important because, in the absence of any further documentation from NRW, they show that:
- 72.1. Apart from approval by NRW’s WTG, the ‘regulatory position’ on which NRW relies, has never been formally adopted by NRW by any legislative or other

process, casting real doubt on its status as anything other than a preliminary view of members of the WTG;

- 72.2. Despite having been commissioned by an NRW “RBB”, no OGN (or Guidance Note) has ever been developed, one which might have been expected to have plugged the scientific or evidential black hole behind its ‘regulatory position’.
73. The further consequence is that the inspector should reject NRW’s approach based on its ‘regulatory position’. Platts, on the contrary, will show, with the support of independent experts, that its permit application including its end of waste justification is scientifically sound and meets the Art.6 WFD tests. Platts products are harmless for all purposes and its permit should be granted.
74. The contents of *RD 46* itself have no relevance to the instant appeal.
75. Platts also notes that despite the requirement that PAS 111 should no longer be referenced by NRW (see para.69 above), being a stipulation made on 11 January 2018, NRW has continued to rely on PAS 111 (see NRW’s letter dated 17 April 2020 from Louise Peel and the first Schedule 5 notice as well as the SoC itself).

Under paras.76-96

76. The expression “aligns with” is meaningless (para.76. SoC). If it is intended to mean “consistent with”, then this is wrong. The 2013 Environment Agency document, for instance, is based on the classification of wood waste set out in PAS 111, which NRW expressly disavowed in the documents on which its ‘regulatory position’ is supposedly based. See para.69 above. Moreover, despite the fact that PAS 111 is an industry standard (para.78, SoC), Platts were expressly invited by NRW to comply with its terms (see NRW’s letter dated 17 April 2020).
77. Much more importantly, Platts advances a carefully reasoned, evidence-based, permit application and end of waste classification which meets the Art.6(1) WFD test (as well as any relevant further test which may be required by Art.6). If the inspector is satisfied as to that, then the appropriate legislative measure will have been satisfied and the permit should be granted.
78. Whether there are other classifications, specifications, industry guidance documents, permit exemptions, standard permits, agricultural assurance schemes or other such

documents available, the critical test is whether or not the Platts' products meet the requirements of Art.6(1), WFD.

79. Further, any belief that “treated” wood waste, as a matter of principle, can never have any further use other than incineration or particle board manufacture, only appears to have been perpetuated by general statements from national regulators. It is more likely than not that this is also the source of the contents of those industry standards where the approach has been reproduced without qualification. Such an approach, apparently stemming from NRW's entirely unreasoned regulatory position, contradicts the objectives of the Waste Framework Directive, since it prevents working towards the legal requirements of a circular economy. For NRW, moreover, it contradicts the aims and requirements of the measures to which reference is made in paras.46-48 above. Such an approach was at the heart of *Porr Bau* (para.45 above): measures which have the effect of prohibiting recovery operations, the preservation of natural resources and the advancement of the circular economy are unlawful because they undermine the attainment of the objectives of the WFD. The same holds true under the law of England and Wales.

#### Under paragraphs 97-103

80. Platts agrees with the broad statements of principles in these paragraphs of the SoC.
81. An end of waste assessment is fact-specific, so that general statements about the degree of recycling or recovery which is necessary, and whether or not a comparator product is necessary or even available, are unhelpful.
82. Platts agrees that no regulator has developed an end-of-waste regulation governing waste wood suitable for animal bedding and that there is no Quality Protocol available. The consequence is, that there must be an individual case assessment of Platt's justification for its claim to end-of-waste. This is necessary as part of the ordinary permitting process, since it is necessary to make a determination as to end-of-waste in order to ascertain the limits of the permit conditions necessary to regulate Platts' waste management (rather than product) operations.

### **THE APPELLANT'S PERMIT APPLICATION**

#### Under paragraphs 104-123

83. Paragraphs 104-123 refer to various matters which might at best be described as “background” information which are not strictly germane to the appeal. The question is whether or not the inspector, exercising the powers available to him/her on the appeal, is prepared to quash the notice of deemed refusal and to grant a permit, directing the regulator to give effect to his/her determination.
84. SoC/108 is broadly correct as a summary of site of Platts’ facility.
85. As to paragraph SoC/110, Platts has revised its summary of the proposed activities so that, in summary, the specified waste operation is:

**storage of non-hazardous waste wood (classification 03 01 05) with subsequent treatment involving magnetic separation, screening, pulverising and baling to produce animal bedding material (including cubicle conditioner) for use within the agricultural livestock sector.**

86. This aforesaid formulation covers both the bedding and the cubicle conditioner (animal bedding).

#### **Determination stage of the permit application**

##### Under paragraph 129 (“Burden of proof”)

87. Whilst Platts agrees that the evidence which an applicant places before a regulator must satisfy the regulator that the necessary regulatory requirements have been met, it would be wrong to suggest that the regulator has an entirely passive role or that this is a question of “burden of proof”.
88. As a public body and the regulatory body responsible for environmental matters in Wales, NRW is subject to a series of drivers, such as the Regulators Code, its published Regulatory Principles and the part it is expected to play under the Welsh Government’s *Beyond Recycling: A strategy to make the circular economy in Wales a reality*, the effect of all of which, is to require NRW to engage with undertakings such as Platts to make sure that NRW can determine a permit application fairly and in accordance with its regulatory objectives.

##### Under paragraph 135

89. As to the suggestion that “clean”, “untreated” wood merits “confidence in its nature”, with the inference that it is necessarily “safer” and less likely to give rise to a greater risk of harm than “treated” wood, this is fundamentally flawed and false.



90. Platts notes that no scientific support is provided for the assertion. Trees grow over many years and during this time will absorb contaminants, particularly heavy metals, from the ground in which their roots grow. The leaves of trees, and to an extent the bark, will absorb pollutant substances from the atmosphere. These substances become embedded within the tree through the cell structure and resins (lignin). Therefore, a tree that grew in contaminated land (for instance) is highly likely to exhibit higher levels of contaminant substances than a tree that grew in uncontaminated land/soil. Scientific analysis would be the only way to determine the difference between them. As evidenced through Platts' end-of-waste submission, some clean, untreated wood waste analysis results display higher heavy metals concentrations than treated wood waste results. This clearly demonstrates the need for assessment of **03 01 05** wood waste as the only appropriate legal classification of wood types. See additionally §2.1.4 of the *Addendum*.

Under paragraphs 137-154

91. It follows from the above that a regulator will continue to engage with an applicant once an application has been submitted, asking questions both informally and formally (by way of Schedule 5, EPR 2016), in order to understand the basis of the application. Indeed, NRW, correctly, has engaged with Platts' response to its first Schedule 5 notice, and it has continued to engage with Platts by serving a second Schedule 5 notice three days after the date on which NRW received Platts' notice of deemed refusal. Further, NRW, appropriately, has agreed with Platts to maintain communication outside the appeal process. (See SoC/151-154.)

Under paragraph 156

92. The only LoW code to be processed to produce either bedding or cubicle conditioner is non-hazardous wood waste code 03 01 05.

Under paragraph 157 (and 166)

93. In these paragraphs, NRW refers to Welsh Government and DEFRA joint guidance *Decide if a material is waste ...* Updated 31 August 2021. Paragraph 157 states that (as of the date of the SoC, 3 April 2023) it “**is** the guidance **used** in England and Wales” (emphasis added). In fact, this Guidance is described on the Gov.uk website as being

“out of date” and “withdrawn on 30 March 2023”<sup>13</sup>. There is no reservation for Wales, the reader being re-directed to two Environment Agency webpages.

Under paragraphs 158-164

94. NRW suggests that the permit application and response to the first Schedule 5 notice do not seek to claim an end-of-waste status for the material which is recovered to become bedding (rather than cubicle conditioner).
95. NRW is wrong and its assertion is not understood.
96. See for instance para.1.1.1 of NRW’s first Schedule 5 notice which states: “Your application is for a bespoke waste facility for the storage and treatment of wood waste to produce animal bedding and cubicle conditioner for use within the agricultural livestock sector”, to which Platts responded (at para.1.1.3): “It is proposed that animal bedding will be produced from clean, uncoated, and untreated”. Both sides know full well that end of waste is claimed for both bedding and conditioner.
97. By reference to its own internal categorisation of “untreated” and “untreated” wood, NRW recognises that the bedding product is made from what it classes as “untreated” wood. In SoC/14 (first sentence), NRW expressly states that it would not refuse to authorise the recovery of “untreated” wood to make animal bedding, with the result that Platts does not see this aspect of the application as controversial (see para.27 above).
98. The “clean”, “untreated”, wood used to make bedding is received mainly in shavings form and passes through the white shavings screener to remove the dust prior to being baled as animal bedding. The dust collected from this activity goes on to be used in the cubicle conditioner. The bedding is a distinct product and the cubicle conditioner (animal bedding) serves a different purpose, despite NRW wanting to describe and treat them as the same.
99. As to SoC/160, NRW was wrong, indeed irrational, to have concluded that because it was wood waste from a *manufacturing* process which was subject to Platts’ end-of-waste assessment, therefore this necessarily did not extend to “clean”, “treated” wood. The 03 Chapter heading in the List of Wastes covers all types of wood received from wood manufacturing sources, and these can include sites that process “clean” wood,

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<sup>13</sup> <https://www.gov.uk/government/publications/legal-definition-of-waste-guidance/decide-if-a-material-is-waste-or-not>

indeed exclusively such wood. The 03 01 05 code makes no distinction for “clean” or “treated” wood, it being the regulator that has made such an assumption.

100. As to para.164, it is by no means clear that the Environment Agency’s enforcement position dated 2013 is current. It does not appear on the Gov.UK website. If it is current, then the passage cited runs contrary to NRW’s own regulatory position in relation to bedding.

### **Article 6(1) of the revised Waste Framework Directive (‘WFD’)**

#### Under paragraphs 167-168

101. The approach as set out on NRW’s website (*Meeting the end of waste test*<sup>14</sup>) is applicable to this case as well as being instructive:

#### “Case by case assessment

In most cases, the decision about whether something is or is not waste is straightforward and businesses and other organisations taking the decision do not need guidance to help them make it.”

102. Platts repeats that this is a very straightforward case. The fact that Platts has been manufacturing its products since 1973 (and its conditioner since about 1990) not only without any problems, but with many plaudits from farmers (as well as the grant of the Queen’s and King’s patent) is telling.
103. Art.6(1) is the only true basis for an assessment of the end of waste test in this case. When applications are determined on a case-by-case basis (as they normally are), Art.6(4) states that decisions are primarily to be made on the basis of the conditions laid down in Art.6(1) and that the requirements of Art.6(2) only need to be *reflected* “where necessary”. Platts’ position is that an assessment by reference to 6(2) is not required, even though it goes on to show that it meets the further requirements of Art.6(2) in any event: see §2.7 of the Addendum. In order to provide confidence that Platt’s cubicle conditioner (animal bedding) is harmless, Platts has devised a statement of conformity (ordinarily required by Art.6(2)(e)) WFD, which is at the heart of its end-of-waste submission and which shows that the conditions of Art.6(1) are met.
104. In its first Schedule 5 notice dated 19 July 2022 NRW requested further information from Platts to demonstrate that the products it sold met the end-of-waste test. After

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<sup>14</sup><https://naturalresources.wales/guidance-and-advice/environmental-topics/waste-management/meeting-the-end-of-waste-test/?lang=en>

NRW made it clear that it did not accept the detail provided by Platts' consultants ECL (by way of its *Schedule 5 Notice Response: End of Waste Justification* September 2022), Platts obtained further evidence from the following:

104.1. Dr O Atkinson MRCVS, RCVS Recognised Specialist in Cattle Health and Production;

104.2. Dr Ivan Vince CEng FICHEME CSci CChem MRSC;

104.3. Dr George Fisher PhD.

105. The supplementary end-of-waste justification supplied with this Response has drawn on their observations and their reports, containing all of the evidence which NRW has requested at SoC/168, should be considered as part of that justification. The reports commissioned from these experts are provided with this Response and contain all the detailed evidence which NRW may require (as per SoC/168). It is intended to tender the experts for questioning (if necessary) at the appeal hearing, but NRW should not hesitate to forward any further interim requests for information or clarification to ECL on behalf of Platts.

Under paragraphs 169-179: Article 6(1)(a) and 6(1)(b)

106. MDF, fibreboard, chipboard and plywood products are currently the most prevalent bedding material type used on dairy farms throughout the United Kingdom. Currently, about 30-50% of dairy cows, when housed, are likely to be kept on rubber mats / mattresses with an additional sawdust substrate, the majority of which is sawdust which is not from pure softwood or virgin sources. That amounts to about 450,000-750,000 animals on about 2,500-4,000 dairy farm holdings. For many years there has been a plethora of suppliers of the same product, the larger suppliers who are competitors to Platts being based in England. Platts have been supplying its conditioner products as additional bedding substrate within this market since 1973.
107. It is worth reflecting at this point on the absurdity of NRW's objection to the grant of a waste permit on the basis that an end-of-waste justification cannot be made out because of a 'regulatory position' that "treated" wood cannot be used with dairy cows. On the contrary, this is an ideal opportunity for a permit to be granted, as NRW first intended, the terms of which can be replicated as a harmonised standard throughout the United Kingdom for the rest of the animal bedding industry and the benefit of farmers and their dairy cattle.

108. Whilst farmers make their own choices in respect of bedding material, sawdust is preferred because of its cost, absorbency properties when dry (providing good hygiene with benefits for udder health and milk quality), availability, compatibility with slurry systems and ease of use (since a bedding substrate such as sawdust governs the ease by which beds can be brushed clean).
109. National baseline standards exist in the form of the Red Tractor Farm Assurance Standards. In summary, these are that dairy cows' bedding should be non-injurious, non-toxic and absorptive. It should provide for good comfort (to ensure adequate lying times and cleanliness of the animals). These standards are met by the Platts' conditioners.

Under paragraphs 180-209: Article 6(1)(c)

110. As to para.180-183:
- 110.1. Platts agrees with NRW that there are no specific technical requirements in place for animal bedding.
- 110.2. Platts' products meet existing legislation, which is that which exists in Wales to protect dairy cows.
- 110.3. When Art.6(1)(c) refers to the requirement on the part of a product that it "meets the existing legislation and standards applicable to products", "standards applicable to products" is to be interpreted ejusdem generis with "existing legislation". The question is whether or not there are any legislative measures which specify the standards which particular products must meet. There are none.
- 110.4. In any event, it is not the role of NRW to preserve confidence in private assurance schemes, such as the Red Tractor Standards, although the Platts conditioner does meet those standards. It also meets other dairy farm assurance standards schemes such as the RSPCA Welfare Standards for Dairy Cattle, 2021 (which expressly excludes Recycled Manure Solids as a bedding material).
111. As to para.184, for the avoidance of doubt, Platts intends only to accept waste wood which has been sawn, shaved, etc. by furniture and other manufacturers of wood products, not material which has also been treated by paints or wood preservatives,

although it is accepted that some may be received on Site with minimal amounts of paint particles or adhesives. After sampling and analysis, such material is rejected from the process should it fail a second test. In any event, and more importantly, the basis of the application is the confidence the inspector should have that Platts will produce products which will comply with the standard of conformity which Platts can demonstrate is harmless to the environment and to human health (the Art.6(1)(d) considerations). The end-of-waste justification, including the evidence of the independent experts, shows that the conformity standard represents a safe standard of use.

112. As to para.190 ff., Platts' position on the appeal is that the various terms which have been used in the wood industry from time-to-time, such as "treated", "untreated", "pre-consumer" and "post-consumer" are, strictly speaking, irrelevant to the question whether an end-of-waste justification is made out.
113. In the first *Schedule 5 Response*, Platts provided NRW with a detailed set of chemical samples which were analysed on its behalf. This 'library of results', which has been growing in size ever since sampling and analysis began in about May 2021, informed Platts as to the statement of conformity which it proposed its products should have to meet.
114. The key questions, therefore, are whether Platts can satisfy the inspector that the contents of the statement of conformity will be met by Platts and whether that statement of conformity demonstrates that the manufacture of Platts' product and the products themselves are harmless (which are considerations for the purposes of Art.6(1)(c), with which these paras. from the SoC are concerned).
115. Accordingly, for the purposes of the final assessment by the inspector, the terms to which NRW has variously referred in these paras. of the SOC are irrelevant, as are related matters raised by NRW which stem from the use of these various terms.
116. Various paragraphs in this part of the SoC are concerned with matters relevant to the question of potential harm rather than with issues arising under Art.6(1)(c), which this part of the SoC is intended to address. (See for instance paras.195-197, 205 and 209.) The reply to such matters is supplied elsewhere in this Response.

Under paragraphs 210-222: Article 6(1)(d)

117. Platts prefaces this section with the observation that Art.6(1)(d) is not concerned with the question of harm to animals. NRW is not an animal health regulator.
118. Platts end-of-waste justification, now supplemented by the *Addendum* and the reports of the various experts instructed on behalf of Platts, show emphatically that the use of Platts' products do not lead to overall adverse environmental or human health impacts.
119. Dr Vince has examined the spreadsheets which constitute the 'library' of results of chemical analysis of wood waste received at the Site. His conclusions have been informed by the evidence from Dr Atkinson as to the quantity of conditioner spread on a rubber mats used as cow bedding.
120. With the assistance of Dr Vince and Dr Fisher (whose evidence concerns the chemical content of other substances spread on to land), ECL's addendum shows that when compared with other materials which might have an effect on the environment and the food chain, Platts' products will be harmless after use.
121. The *Addendum* goes further than is strictly required by Art.6(1) and establishes that whilst there is no true comparator for use with cubicle conditioner (animal bedding), the conformity standard certificate to be issued with the product guarantees a safe standard and, in particular, that the Platts products are of no greater risk than straw (which appears to be recommended by NRW as an appropriate comparator, despite the inadequacies in connection with its recommendation<sup>15</sup>). Platts' end-of-waste reflects the Art.6(2) requirements (see para.103 above).

Under paragraphs 276-285 (Fire Prevention and Mitigation)

122. As to paragraphs 276-280, Platts' consultants ECL are well aware of the historic problems which regulators have experienced at badly run waste sites, and they are also very familiar with the use and application the Guidance which the regulators' adopted (to which NRW refers in para.281). Platts recognises the risks from fire and intends to do its utmost to ensure that its 50-year record of avoiding fire incidents continues.
123. Once the waste wood has been processed into products, then, strictly speaking, it is not subject to the regulators' formal Guidance. However, on considering the issues raised in the second Schedule 5 notice, Platts recognised the good sense of applying (or adapting) the Guidance in respect of its products. In consequence it has re-drafted its

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<sup>15</sup> See SoC/251 at the top of p.41.

Fire Prevention Plan which is served herewith (ECL Ref PLAT.01.02/FPP, Issue 2, June 2023). This has been prepared so that amendments to Version 1 are apparent.

124. Should NRW have any further comments or queries, then it should contact ECL. Platts now looks forward to resolving the FPMP issue prior to the hearing of the appeal.

Under paragraphs 359-407 (noise)

125. It is convenient to respond in one place to NRW's continued objections on the basis of the supposed impact of noise (introduced first by NRW in connection with its second Schedule 5 notice at SoC 286-358, and, secondly, in response to Platts' detailed February 2023 NIA at SoC/381-407. (SoC/288-354 do not exist)).
126. Platts' nearest sensitive receptors are more than 500 metres away from the Site. Platts does not operate non-stop 24 hours every day for every day of the week, and its noisier processing and ancillary equipment operate only intermittently as and when necessary when a trailer arrives (meaning the hammer mills and extraction systems). Moreover, the processing equipment is housed within a structure.
127. Whilst it would have been acceptable practice in these circumstances for there not to have been an NIA at all, at the request of NRW, an NIA was carried out at three noise sensitive locations.
128. Noise monitoring was performed during daytime and night-time periods whilst on-site activities were taking place, as well as when on-site activities had ceased. Monitoring was undertaken in accordance with BS 4142, the requisite standard. The NIA concluded that noise generating activities were unlikely to have any adverse impact on the nearest sensitive receptor locations. It concluded that the contribution from noise generating activities was below background levels at the receptor sites and would not affect ambient noise levels at the sensitive receptor locations. The predominant noise source whether or not the Site was operating was traffic from the B5102 Llay Road.
129. Notwithstanding the outcome of the NIA, and in order to demonstrate Platts' commitment to robust environmental management, an NMP was prepared, also as requested by NRW. Therefore, an NIA (A/096) and an NMP (A/097), both dated January 2022, were submitted with the application for a permit.
130. In an email dated 11 April 2022, Kate Thomas of NRW asked for a revised NIA to be submitted (A/116). Promptly, on 13 April 2022 a further version of the NIA (A/114)



was submitted together with a revised NMP (A/116), Platts' consultants having responded to the specific points of clarification identified by Ms Thomas. The permit application was deemed duly made that day.

131. On 9 November 2022 Kate Thomas of NRW went on to request further information in the second Schedule 5 notice, citing two objections to ECL's overarching conclusion that the operations at Platts gave rise to "no likely significant impact" from noise (see section 2). NRW gave two principal reasons for its continued objections: (i) "not all operational times have been considered" and (ii) "the impact of uncertainty has not been suitably minimised". Eleven requests for information were identified by NRW in order for its objections to be satisfied, reproduced by NRW in paras.361-374, SoC.
132. In an email dated 22 December 2022, Mr Matthews of ECL expressed his reservations about the additional requests for information (A/140). In a nine-page addendum, Mr Matthews answered all of the points raised in the second Schedule 5 notice (A/144B).
133. Notwithstanding Mr Matthews' reservations, Platts instructed ECL to prepare a further NIA (at substantial additional cost). NRW's request for information had required assessments to be undertaken in a different manner from those previously undertaken by ECL, but the outcome was unlikely to affect ECL's overall conclusion (which is that the dominant source of noise at the receptor sites was road traffic).
134. By reason of the request for information, an updated NIA dated January 2023 was prepared and forwarded to NRW. This was supplemented by an NIA dated February 2023 NIA (A/149, within which the January 2023 report is to be found at Annex III).
135. At this point, NRW was in possession of additional noise monitoring at four receptor locations around the site over the weekend in respect of day-time and night-time periods. as well at one receptor location over weekday periods. A full noise impact assessment was set out in section 7, recommendations were made at section 8 (notwithstanding the conclusion that detrimental noise impacts at the receptor locations were likely to be the result of locally occurring noise events in the vicinity of the receptors). Section 9 recorded eleven factors which could give rise to levels of uncertainty associated with the measurement of sound levels. Section 9 concluded that the impact of sound generating activities from the Site at receptor locations would be insignificant. The overall conclusion was that the sound-generating activities at the Site were unlikely to have any adverse impact on the noise-sensitive locations (section 10).

136. Platts' position is that the February 2023 NIA (with its Annexes) was more than adequate for the purpose of the permit application and it rejects the further criticisms made by NRW. Characteristically, NRW's approach has not been to make an informed expert judgment as to the conclusions reached by Platts' experts; rather, it is claimed that "insufficient" evidence has been supplied (SOC, paras.389 and 407). This is wrong.
137. A small number of amendments has recently been made to the NMP, which is submitted herewith (ECL Ref PLAT.01.02/NMP, Issue 3, June 2023). The scope of the NMP has not changed, addressing, as it does: the activities which could cause noise nuisance, identification of NSR, process controls and procedures, monitoring regime, emergency scenarios, potential corrective actions, complaints procedure (including investigation, corrective and preventative measures) and record keeping.
138. As to the points which are still pursued by NRW in the SoC which derive from the eleven points contained in the second Schedule 5 Notice, two merit further comment:

138.1. Under paras.361, 362 and 391:

NRW expresses its discontent at the acoustic information provided by Platts in the absence of detailed knowledge as to the times of use of noise-generating items at night and at weekend. ECL has provided its reports on a 'worst-case' scenario, i.e. on the basis of constant use. The NIA dated February 2023 (A/149) records the normal hours of work at the Site (§2.2.2), acknowledging that there will be times outside normal hours when the 'noisy' machinery will be required for use. Even such granular detail was compiled and made available, it would be of no additional assistance or benefit.

138.2. Under para.365:

See para.3.1.4 of the NIA dated February 2023 and note (b) of Table 1 in the NIA dated January 2023. The position of NSR1 was moved because it was thought that the new location would be less influenced by road traffic noise, ECL wishing to apply a 'worst case' approach. NSR 3 had to be moved for health and safety reasons. In fact, this monitoring location was moved closer to the Site. When it was further from the residential farm property and associated farm buildings, the location was unlikely to be influenced by sounds from the property itself. BS4142 permits such deviations.

139. A/047 includes a four-page document “noise pro forma – local authority information” and also item A/048, a single page headed “Platts Statutory Nuisance”, the provenance of both of which is uncertain, although it may be that A/048 contained details from A/047.
140. No “informal or formal action” has ever been taken against Platts, including any planning enforcement or environmental health notices (such as any statutory abatement notice). The response at A/047 does not ask that any specific points need to be addressed in any permit (for instance by way of conditions) (see page 3 of 4).
141. Platts does not accept the attributions suggested within A/048. One matter is recorded in 2019, two in 2020 and one at the end of 2021. As to the two items relating to July 2020 (during Covid), the only record of noise reported in the Daily Post (and in other publications) for that month, appears to have been a very widespread “mystery humming noise” affecting “scores of residents across Wrexham and Flintshire”, one resident from Cefn-y-Bedd stating that “the only way I can describe the noise is like a humming – it reminds me of the sound of a car radio” (article, 26 July 2020). This was not Platts, whose only noisy activities are intermittent.
142. Wrexham County Borough Council already has planning conditions in place which deal with noise levels (Annex A, items NRW 050).
143. The sole issue for the inspector as to noise, will be whether the detailed February NIA and the third (June) version of the NMP show that there is an acceptable risk of noise in the area, in particular to sensitive receptors, the answer to which is “yes”.
144. By reason of NRW’s approach, Platts will be instructing an independent acoustician to comment at the inquiry on the work done by Platts’ environmental consultants.

Under paragraph 377-380 (second Schedule 5 notice)

145. NRW refers to its second Schedule 5 notice at SoC/286-358.
146. As to para.380, the outstanding FPMP, DMP and EPTR are provided together with this Response.

Under paragraphs 408-414

147. In these seven paragraphs, NRW produce a raft of putative objections, without any scientific or evidential starting-point which could conceivably suggest that Platts

products could be anything other than harmless. For the reasons already provided and according to any metric, the cubicle conditioner and animal bedding is entirely safe.

148. It is unclear whether or not, for the purpose of the paragraphs, NRW is treating the processed material as products or as waste.
149. Platts repeats that its end of waste justification is concerned with the specified treatment of wood of LoW category 03 01 05. The description “treated” is inappropriate by reason of the uncertainty and ambiguity which surrounds it (see above).
150. In the first place, under para.408, it would appear that NRW objects that “the proposed activity” may endanger human health, harm the environment, pose a risk to water, air, soil, plants or animals. By this Platts understands NRW’s complaint to be about the actual processing on site.
151. The end-of-waste justification which has been submitted, as supplemented by ECL, together with the expert evidence in support, show that the chemical composition of the conditioner material received and processed at the site is harmless. Human beings have minimal contact with the material and it is baled on site (minimising physical contact). It does not come into contact with water, there is no support for any proposition that during the momentary occasions when it is in contact with air it may cause any harm, there is no contact with either soil or plants and there are no cows on site. The same is true of the bedding material.
152. Secondly, under paras. 409-412, NRW raises the possibility (without a scintilla of scientific justification), that there may end uses which may cause harm (also without positing what that harm might be, i.e. whether to human health, the environment, water, air, soil, plants or animals).
153. After processing, the material becomes products. When these are sold on to end-users, the risk in the material passes to that end user. However, and in any event, Platts’ end-of-waste justification and expert evidence in support shows that the products will be harmless downstream when the end users finally dispose of them.
154. The end route for bedding substrates is into slurry, subsequently being spread on to farmland (arable and pasture). In some housing systems, bedding material may be removed and stored with farmyard manure. In general terms, slurry is beneficial when spread by reason of its nitrogen content, since the mix of sawdust with faeces is a good source of nitrogen. All slurry will eventually be applied to land.

155. The two main measures which govern the disposal of slurry are Codes of Good Agricultural Practice and Nitrate Vulnerable Zone regulations.
156. Dr Fisher will show the percentage increases in heavy metals when used bedding material is introduced into slurry, on a 'maximum application' basis. His analysis is examined in the context of legislation regarding heavy metal contents in soil and in comparison with other commonly used materials applied to land (sewage waste and manufactured nitrogen fertilisers).
157. It is understood that Dr Fisher's conclusion is that the likely annual applications of heavy metals from cattle slurry with additions from Platts woodchip bedding fall well within the UK limits for application rates (except Chromium). It is also understood that he concludes that there is no basis for permitting the application of sewage sludge to agricultural land, but not cattle slurry containing used animal bedding conditioner, some 75-80% of sewage plant waste being applied to agricultural land in the UK per annum.
158. As to soil health, it is further understood that Dr Fisher concludes that the addition of Platts' used bedding material to slurry is likely, on balance, to have a tendency to improve soil health compared to slurry from systems without woodchip or sawdust as a bedding material. The fact that the woodchip adds to the carbon (organic matter) content of the slurry, even minimally, is likely to have a small positive impact on soil biological, physical and therefore chemical health.
159. In para.412, SoC, NRW also appears to suggest (without any prima facie evidence in support) that cubicle conditioner may endanger livestock during use. Cattle are commonly bedded on waste wood products, the most common cubicle system in the UK being rubber mats / mattresses with a substrate such as that of Platts' conditioner.
160. Dr Atkinson will give evidence to the inspector, his conclusions being that the use of Platts' conditioner keeps cows dry and comfortable and provides the equivalent or better results in terms of cow health than other forms of bedding, in particular in respect of the absorbency of animal waste, which results in increased comfort and the reduced risk of the growth of mastitis-causing pathogens. This is consistent with Platts' experience and reports from farmers and vets over the years. (See above *passim*.)

### **Operator competence**

#### Under paragraphs 415-420

161. It is admitted that NRW is required to assess operator competence as part of a permit application. The precise terms governing operator competence will need to be identified by NRW, since no reference is currently provided within Annex A, but Platts agrees they are likely to be consistent with the extracts relied on by NRW.

Under paragraph 423

162. NRW's first objection (para.423) appears to be that the current EMS does not accommodate the wood waste which has been processed, NRW's reasoning being that it remains waste since the end-of-waste justification will not succeed.
163. Assuming that the inspector determines that end-of-waste has been met, then this objection will fall away.
164. In any event, a full EMS is not produced to the regulator with the application papers, a full EMS not being required at the application stage.

Under paragraph 424-5

165. NRW's second objection also appears to be based on the premise that the wood waste, once processed, remains waste. This objection too should fall away if the inspector determines that end-of-waste test has been met.
166. In any event, the revised material before the inspector shows that the FPMP satisfactorily makes provision for the manufactured products.

**CONCLUSION**

167. For all the reasons set out above, the inspector should grant the appeal, quashing the (deemed) refusal and directing NRW to give effect to his determination that a permit should be granted for Platts' specified waste operation. The exact form of the determination will depend on the inspector's decision.

GORDON WIGNALL

14 July 2023