



## Appeal Decision

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by A L McCooley BA MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 21-11-2024

Appeal reference: CAS-02313-Z1D6V4

Site address: Miners Park, Miners Road, Llay Industrial Estate, Llay, Wrexham, LL12 0PJ

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- The appeal is made under section 31(1)(a) and Schedule 6 of the Environmental Permitting (England and Wales) Regulations 2016 [the EPR 2016].
  - The appeal is made by Platts Agriculture Limited against the non-determination (deemed refusal) by Natural Resources Wales (NRW) of application Ref. PAN-016818 dated 28 January 2022, for a bespoke environmental permit authorising a waste operation
  - The application was accepted as duly made on 13 April 2022. The application was deemed to be refused by notice served on 17 October 2022.
  - The permit is for the storage of non-hazardous waste wood (code 03 01 05) with subsequent treatment involving magnetic separation, screening, pulverising and bailing to produce animal bedding material for use within the agricultural livestock sector.
  - An Inquiry was held on 24 – 28 June and 10 & 11 July 2024
  - A site visit was made by the Inspector on 22 July 2024.
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**Summary of Decision: The appeal is dismissed and the application for an environmental permit is refused.**

### Preliminary Matters

1. On 28 January 2022, the Appellant submitted an application to NRW for a bespoke environmental permit authorising a waste operation at the site. A previous permit application was submitted in May 2021. Further information was requested by NRW and as it was not supplied then the application was returned in September of that year. A Waste Wood Review was submitted with this permit application, which is referred to in evidence. The application is for storage and mechanical treatment of waste wood.
2. The application was accepted as 'duly made' on 13 April 2022 following the submission of further information by the appellant. NRW has issued two Schedule 5 Notices under the EPR 2016. The first on 19 July 2022, requiring (inter alia) further information to demonstrate that the processed wood waste met the 'end of waste' test and a revised Fire Prevention and Mitigation Plan (FPMP). The application was not determined within the time limits for determination specified under paragraph 15 of Schedule 5 and by notice served on the regulator which refers to this paragraph the application was deemed to have been refused on 17 October 2022. The second Schedule 5 Notice was issued after the notice of deemed refusal and is dated 9 November 2022. It requested further revisions to the FPMP (33 action points), information to support noise impact assessment (11 action points), revisions to the dust management plan (3 action points) and revision of the draft Environmental Permitting Technical Requirements (EPTR) document (4 action points).

3. A pre-Inquiry meeting was held on 27 February 2024 when the matters to be considered at the Inquiry and the need to finalise the Statement of Common Ground (SOCG) dated 30 November 2023 was discussed. Despite this a final signed SOCG was only submitted during the Inquiry.
4. The application was amended some months before the Inquiry at the request of NRW. The application relates to the storage of non-hazardous waste wood (code 03 01 05) with subsequent treatment involving magnetic separation, screening, pulverising and bailing to produce animal bedding material for use within the agricultural livestock sector. Appropriate re-consultation was undertaken by NRW prior to the Inquiry and I am satisfied that there was no prejudice to any party.

### **Application for costs**

5. An application for costs was made by Platts Agriculture Limited against NRW. This application is the subject of a separate Decision.

### **Background**

6. The site is located within a large industrial/commercial estate in Llay. It is one of three sites on the estate owned by the company. The other sites are used for offices and garages. The factory was established on the site in 2001. The company sells a range of wood based bedding products to farmers and other agricultural clients. Of particular interest to this appeal are the cubicle conditioner products called fine bed and powder bed which are made from treated wood. The waste wood product is collected from the supplier in sealed trailers. Fine bed is produced from chipboard or particle board waste. Hammer mills are used to reduce the particle size to 3mm maximum. Powder bed comprises MDF dust (particles up to 1mm). Both products are passed over magnets to remove any metal that may have fallen into the waste, for example during the suppliers' manufacturing process. The product is then baled or occasionally supplied in bulk to customers. Separate lines to those used for products made from untreated wood are used to produce these products.
7. Whilst the appellant uses the term cubicle conditioner for these products and not bedding, it has since accepted that there is broadly no distinction between cubicle conditioner and animal bedding. The only remaining point being that during the manufacturing process dust is extracted from the shavings. Dust can only be used in the cubicle conditioner and cannot be used as deep bedding.
8. I note the legislative framework and relevant caselaw as set out in the cases of the parties and the list of authorities supplied after the Inquiry. Of principal relevance is the EU Waste Framework Directive [WFD], (which has been retained by Act of Parliament) and the EPR 2016. The Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use (Article 1). Article 13 requires amongst other things that waste management is carried out without endangering human health, without harming the environment and, in particular without risk to water, air, soil, plants or animals. This is reflected in Schedule 9 of the EPR 2016 at paragraph 3, which refers to implementing Article 13 and the waste hierarchy and options that deliver the best overall environmental outcome. Article 4 states that a waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy. The hierarchy order is prevention; preparing for re-use; recycling; other recovery, e.g. energy recovery; and disposal. Article 6 sets out the conditions for end of waste status. These are that the substance is to be used for specific purposes and that a market or demand exists for it. The substance must meet technical requirements, existing legislation and standards

applicable to products. Its use must not lead to overall adverse environmental or human health impacts. Article 6 also refers to the requirement for a statement of conformity which may apply in Member States.

9. The principal aim of the environmental permitting regime for waste is to ensure that waste management facilities operate without endangering human or animal health or harming the environment. The Environmental Permitting Core Guidance [Core Document (CD) 5.2] at paragraph 2.1 sets out the aim of the regime, which includes protection of the environment and delivering compliance with permits effectively and efficiently.
10. The appellant makes it clear in closing submissions that reliance is placed on Platt's response to NRW's statement of case [CD 3.5 dated 14 July 2023]. It is claimed that this is a ground breaking application for a waste permit and that UK regulators have not enforced waste legislation in respect of the widespread manufacture of animal bedding from non-hazardous wood waste (code 03 01 05). Therefore a decision is likely to set an important precedent for the industry throughout the UK, the appellant argues. I make no comment on this proposition and shall deal with this appeal on its own merits in the evidential context before me.
11. Waste must be correctly classified and coded in accordance with Guidance on the Classification and Assessment of Waste – Technical Guidance WM3 (hereafter referred to as WM3). When classifying waste and determining the correct List of Waste code, there is an absolute legal requirement to assess it as either hazardous or non-hazardous, which will include a determination of the chemical composition of the waste. Without this assessment, the waste defaults to hazardous and the appropriate hazardous waste List of Waste code must be used. As noted above, the permit application relates to non-hazardous waste wood code 03 01 05. The mirror code if it contains hazardous substances is 03 01 04. I note that an important element in this assessment is the Safety Data Sheets (SDS) now called Material Safety Data Sheets (MSDS), supplied by producers or manufacturers.
12. PAS 111:2012 (PAS 111) is a specification for the requirements and test methods for processing waste wood produced by the British Standards Institute and Waste and Resources Action Programme in 2012. It is relied upon by the appellant to some extent but NRW argues that it is no longer relevant.
13. There were several technical matters that remained in dispute between the parties up to and during the Inquiry, as set out in the Schedule 5 Notices. The noise issues were resolved on 20 June 2024 before the start of the Inquiry and the witnesses were not called upon to give evidence. Wrexham County Borough Council confirmed that its concerns had been fully addressed. The FPMP was revised during the Inquiry and was found to be acceptable by NRW.

## Main Issues

14. The main issues are:

- Whether the waste operation can be carried out without endangering human or animal health and without harming the environment (Article 13 of the WFD).
- Whether an end-of-waste justification case can be made as part of an Environmental Permit appeal and if so whether the Appellant has demonstrated that the criteria for end-of-waste status under Article 6 of the WFD have been satisfied.
- Operator competence in terms of whether the appellant would operate the proposed facility in accordance with the conditions that would be appropriately applied to any permit.

## Reasons

### *Risk to Human/ Animal Health and the Environment*

15. The appellant referred to alleged ambiguities in the grading system for waste wood used in various guidance documents produced by the waste industry and farm welfare schemes. The appellant attempted to argue that these ambiguities supported a contention that treated wood could be classed as Grade A rather than just untreated wood as argued by NRW. I am not persuaded by the appellant's evidence that this is the case. PAS 111 states that only Grade A wood should be used as an input for animal bedding and it should be tested. My conclusion is that the majority of the waste wood processed at the site would be classed at a lower Grade of B or C.
16. NRW has adopted a regulatory position to the effect that treated wood cannot be used as animal bedding or for similar products. The appellant argues that the word 'treated' is not defined. NRW argued that there is assistance from a statutory definition in the EPR 2016 at Schedule 3 Exempt Facilities and Waste Operations. The schedule refers to 03 01 05 untreated waste wood as exempt at U1 – Use of waste in construction, U4 Waste as a fuel and U8 use for specified purposes. In exemption U8 use as animal bedding specifies that only untreated wood waste should be used. I consider that 'treated' is readily capable of interpretation by the normal usage of the word.
17. NRW states that even though it had adopted its regulatory position, it did not close its mind to the application. It invited the appellant to produce (or adduce) evidence to support its proposition that the material was safe and in compliance with Art. 13 and the EPR 2016.
18. Mr Matthews is the appellant's agent presenting much of the technical evidence in support of its case. His company (ECL) were instructed to prepare the permit application in April 2020. He describes in his evidence the process to devise a system to demonstrate that material would be safe to use as animal bedding. He undertook 12 WM3 assessments of waste wood generated from sites on behalf of other clients (only some of whom were suppliers to the appellant). The assessment process allows information from SDS to be used when the waste is a manufactured product whose composition does not change and where the waste is from well understood industrial processes. He reviewed some of these data sheets and held discussions internally with colleagues in ECL, bearing in mind some of the wood manufacturers were also clients of theirs. Discussions were held with laboratories, informed by his company's internal knowledge of the likely chemical composition of waste wood, as to what testing would be appropriate. He argues that the laboratories are specialists and it is correct to rely on their expert knowledge in deciding on the suite of chemicals for analysis. The 12 WM3 assessments showed that the treated waste wood assessed was not hazardous.

19. Testing for other substances was included in the process (beyond what was required for the WM3 assessments). Table 1 in PAS 111 identifies the main contaminants in treated wood. When the waste was tested for these chemical contaminants, the results were all under the specified limits.
20. The appellant relies heavily on a Statement of Conformity. The genesis of this was rooted in the end of waste issue. Mr Matthews states that the only guidance he could find was in the Guidance for the end of waste request which is a service provided by the Environment Agency. He decided that a reliable Statement of Conformity had to be developed. The main contaminants in treated wood (from PAS 111) was the starting point for the Statement of Conformity. It is claimed that Statement of Conformity applies stringent limits for 9 contaminants applying the range of regulatory and guidance data sets applicable to the potential impact that the processed waste wood materials may pose for animal health, the food chain, and the environment.
21. All this work then led to the appellant's decision to sample and test for 149 substances, which commenced in May 2021 and has continued to date.
22. However, there are no details of how the composition of the waste wood accepted by Platts has been studied. There is no dataset of additives, coatings or treatments applied to the wood by the producers, which is surprising as this information should be readily available in MSDS and WM3 assessments, which the producer is legally obliged to provide. I consider that this information should have been gathered and presented to the regulator for verification. In its absence the basis for the testing regime is unclear.
23. There is a duty of care on waste producers to identify the nature and characteristics of the waste leaving the site/premises. The factory material approval procedure AGR PO17 refers to a WM3 assessment and a Materials Safety Data Sheet being obtained from the supplier (if available). The appellant has supplied the Environmental Permit Technical Requirements (EPTR) document as part of the permit application. This states that a WM3 assessment must be provided by the supplier prior to acceptance by Platts. An earlier version also stated that Safety Data Sheets should also be provided, if available. Little evidence that these procedures are being followed was supplied. No WM3 assessments were provided (despite being raised by NRW) and no SDS or MSDS were supplied until near the end of the Inquiry. Mr Matthews states that the requirement for WM3 assessments is not being enforced by the regulator. The appellant could and should request them. He then continues 'the waste stream is understood by now as an industry standard. In essence, the sampling done by Platts amounts to a WM3 sampling exercise'.
24. NRW state that in fact Mr Matthews told the inquiry in general terms that waste producers who transfer waste to the Appellant are not completing waste classification assessments and so its composition is unknown. This was confirmed by the appellant in closing submissions as was the fact that Platts do not undertake WM3 assessments. They are considered unnecessary because NRW agreed in the SOCG (dated 24May 2024) that the waste wood all falls within code 03 01 05. However, NRW resiled from this agreement at the end of the Inquiry for reasons set out below. I accept that this late change was purely as a result of an oversight on NRW's part.
25. No issue has been raised with the test results for the compounds in the Statement of Conformity or the suggested alert levels. I note the claim that any exceedances would not have consequences other than in the short-term because they would be corrected prior to any lasting effect occurring, and so would not be significant. This would be achieved by excluding any contaminated supplies detected after testing from the feedstock going forward.

26. Whilst NRW did not identify specific substances of concern earlier in the application and appeal process, concerns had consistently been raised about understanding the composition of the waste wood inputs. Reference was made (by NRW) to the unknown constituents of the treated waste wood that may cause harm to animals and the environment over and above those identified in PAS 111 and other industry documents.
27. This concern was supported by the Animal and Plant Health Agency (APHA) witness (Dr Hepple) who refers to typical substances found in manufactured board products. NRW contends that there may be hazardous elements therein that are above the relevant thresholds and may be classified as carcinogenic. I note that Dr Hepple did not engage with the appellant's results of testing but she did have knowledge of substances that may be present in waste wood and had visited the factory.
28. Dr Vince (the appellant's Chemist expert witness) has indicated that some of the substances identified by Dr Hepple are part of the testing suite. For those tested the results show very low levels and the other substances referred to are not of concern. However, evidence indicates that there may be additional substances of concern in waste wood. The permit would relate to waste wood as described in the application and there would be no mechanism to limit this to pre-consumer waste wood, which is a term consistently used by the appellant that is without basis in the regulatory context.
29. The appellant's waste acceptance procedure relates to visual inspection and testing for substances identified by the appellant, including those in the Statement of Conformity. Information about the suppliers of wood products and the uses of those products was unclear from the evidence provided. Instead as noted above, the appellant argued that the composition of the waste wood that it relies on as a feedstock is generally known. The appellant's process of identifying the composition of the waste products and then deciding what to test for has not been clearly set out in evidence. The question reverts to what other substances may be present in the treated timber products. I would expect to see evidence of precisely how the substances present in the waste wood were investigated so that the potential hazards or concerns can be identified. This would quite simply be the basic precursor to inform any testing regime. Instead we are told that this was verified in a rigorous manner some years ago. The actual information that was considered or its relevance to the waste streams used by the appellant has not been set out fully.
30. The appellant has supplied results of testing undertaken in the form of a spreadsheet. In all this evidence only one set of results caused concern – there were 20 entries for tests for Formaldehyde, 16 of which showed levels above the relevant limit that would therefore be classified as hazardous. The remainder of the Formaldehyde column results showed very low levels. Platts Quality, Health, Safety and Environment Manager (QHSEM) explained that there were only 20 results and the further low results (around 1900 entries) were pasted into that column in error. The reason for ending the Formaldehyde test after 20 results was not explained.
31. There is a curious chain of events in terms of the issue of Formaldehyde content of the waste wood used by the appellant. Formaldehyde was not a substance included in the original testing regime for 149 determinands, which began in May 2021. There is no information as to whether it was considered at this stage. Dr Hepple referred to Formaldehyde being present in waste wood in her consultation response (on behalf of APHA) in May 2023. It appears that sometime thereafter Mr Matthews requested the QHSEM to arrange testing for Formaldehyde. This was undertaken for 20 or 21 samples in July 2023. The results it later transpired were of concern however, the QHSEM did not communicate them to anyone and Mr Matthews stated that he forgot about these tests and did not ask about the results. This raises questions over operator competence.

32. The presence of Formaldehyde or any testing for it was not raised in the appellant's proofs or other evidence. NRW had been requesting information on the correct interpretation of the spreadsheet of test results supplied by the appellant including the correct units of measurement. When this information was finally supplied the results revealed that the levels of Formaldehyde were of concern. In fact these levels would indicate that the material was hazardous (03 01 04) and so NRW raised the matter in evidence before the Inquiry.
33. The appellant initially dismissed the Formaldehyde concern by claiming that the results related to polymers of formaldehyde. However, NRW pointed out that the instructions to the laboratory were to test for free Formaldehyde. The appellant also drew attention to MSDS from a number of board manufacturers which indicate that free formaldehyde levels in their products are below the hazardous threshold. On this latter point NRW states WM3 advises that testing is one of the ways for ascertaining the composition of a waste substance. Where testing has been undertaken it should prevail over any assessment based on general knowledge of industrial processes or information derived from SDS (MSDS). Furthermore, the reliability of SDS is adversely impacted by subjecting the material to any process which impacts its physical form. Some of the waste material accepted by the Appellant has had its physical form changed. WM3 provides that where there is uncertainty as to the composition of waste and/or concentration levels and thus uncertainty as to whether it is hazardous or non-hazardous, then it should be assumed to be hazardous.
34. The appellant then explained that testing for free Formaldehyde was very difficult and problematic. Information had been obtained from another laboratory run by a friend of the appellant's chemist witness. The response explained how difficulties with testing could mean that the results grossly over-estimate formaldehyde levels. The appellant then requested that this laboratory test 16 samples of different waste wood products from Platts. These results found no substantially elevated level of formaldehyde in any of the samples - levels were below 100ppm (0.01%). The highly elevated levels reported in the previous results were not found. This was considered to be a more accurate result. However, the Inquiry was provided with results from the laboratory used for all Platt's testing and then when these results were of concern another laboratory tested different waste wood some year or so later. There was no information as to whether they are comparable in terms of the source or type of waste wood.
35. The situation is that the Formaldehyde issue was not flagged up until just before the inquiry whereas it should have been known and properly investigated some considerable time earlier. This is to say the least unfortunate. As NRW have pointed out had the issue been flagged up then, the validity of the original test results could have been properly investigated by further testing, in consultation with NRW, to include testing treated and untreated wood, unprocessed and processed waste product (as consistently requested by NRW). I place little weight on the appellant's assertion that NRW should have known about the Formaldehyde testing from the spreadsheet of results sent in November 2023 and from references in Dr Vince's proof. However, no fails were recorded on the spreadsheet and most of the results were very low, which as explained by the QHSEM was the result of a data entry error.
36. The appellant argues that waste woods sourced by Platts will not pose any significant risk of harm for cattle if ingested, or to the food chain. The appellant claims results of testing show that the highest substance concentrations of metals within the clean samples are significantly higher than those in treated samples.

37. The appellant's evidence is that there is not a significant risk from ingestion by cattle. Free formaldehyde is a gas. The customary layout of farm buildings allows for good air circulation which would disperse any release of formaldehyde gas. However, Formaldehyde is classified as carcinogenic in the Health and Safety Executive Mandatory Classification and Labelling List. Products containing Formaldehyde above 100 mg/kg are classed as hazardous under a WM3 assessment.
38. We do not know the basis for the selection of substances to be tested and critically what was excluded and on what basis. There is reference to SDS/MSDS being considered but no indication of which manufacturer or timber products or the type of boards that was involved.
39. The appellant claims in closing that no testing can be done for Formaldehyde and yet has attempted on two occasions so to do. Mr Matthews states in his conclusions to the first Formaldehyde rebuttal that the appellant will continue to work with laboratories to find a more reliable method.
40. To conclude on this issue, the evidence in relation to Formaldehyde supports the concerns of NRW. It is an example of the appellant deciding on a testing exercise without properly considering what the waste material may contain. The information on content of the waste and its treatments that should be readily available has not been sought by the appellant, despite its procedures indicating that they should be. The basis of the choice of substances to test is not explained in a clear manner. There is also a lack of transparency and scientific rigour in the process of deriving the Statement of Conformity and choice of determinands. Having considered all the available evidence, I conclude that there is a risk that the products in question would endanger human health, harm the environment and their use could pose a risk to water, soil and animals. This would be contrary to Article 13 of the WFD and the provisions of the EPR 2016. The permit should be refused for these reasons.

#### *End of Waste*

41. The appellant contends that it is conventional to submit an end of waste justification and maintains that the waste will be manufactured into a product. The appellant comments on legal cases relied on by NRW, which in summary set out the importance of considering end of waste status in the specific circumstances of each case individually.
42. The appellant's evidence has been considered above and in summary it is that the material is non-hazardous waste wood from furniture manufacturers who have sold furniture made of exactly the same substances to consumers. The waste wood collected is already a harmless material. It is passed through or under magnets to remove occasional pieces of metal which might otherwise cause harm to animals. It is then screened to ensure the right particle size for the different products. Sometimes material is pulverised to ensure that it is sufficiently absorbent. It is then baled to prevent dust pollution. At this stage, the appellant considered that it has met the end of waste tests set out in Article 6.
43. This goes for the nub of the argument – whatever the various classifications, industry guidance documents, permit exemptions, standard permits, agricultural assurance schemes or any other such documents; – the critical test is whether or not the products meet the requirements of article 6 paragraph 1. In particular criterion (d) that the use of the substance or object will not lead to overall adverse environmental or human health impacts.
44. I have concluded that the permit should be refused due to failure to comply with Article 13 and the associated provisions of the EPR 2016. This means that the waste product cannot be considered suitable under Article 6 (1) (d).



45. However, NRW's closing submissions state:

*As stated throughout, NRW is content that a permit should be granted in respect of untreated wood waste. If granted such a permit, it would be open to the Appellant to present a permit variation application for treatment of treated wood wastes, if so advised and if supported by all necessary evidence lacking in this appeal.*

As NRW have so indicated then in these circumstances the appellant could provide further evidence to substantiate a case for a permit variation and so this issue may be re-visited.

46. NRW argue that the regulator's duty is to determine the permit for a waste activity. There is no right to apply to NRW for an end of waste decision as part of a permit application. NRW suggest that the paid service that is open to those in England and Wales provided by the Environment Agency should be used. However, the Appellant has chosen not to avail itself of that service. NRW maintains that I should not go beyond that which is required in this appeal, namely, to determine the permit application. It claimed that the Appellant should either self-certify or avail itself of the Environment Agency's service.
47. The appellant argued that the appeal process can address this matter and at the very least that I should consider giving an indication on the end of waste issue if the appeal had been successful. The appeal has not been successful. My view is that whilst end of waste is necessary background to a permit application, it is a separate matter and it would not be appropriate for me to consider this issue any further.

#### *Operator Competence*

48. Operator competence must be taken into account when considering a permit application (Schedule 5, paragraph 13 of the EPR 2016). The regulator must refuse an application if it considers that the applicant will not operate the regulated facility in accordance with the environmental permit.
49. The appellant points out that the only operator competence issues raised in NRW's statement of case related to the FPMP and noise with vague references to management systems and waste acceptance. However, several other matters emerged from the detailed evidence – some of more importance than others. These matters having been raised and brought to my attention must now be addressed. Several matters raised by NRW relate to its main argument regarding the composition of the waste, which is addressed above.
50. The appellant draws attention to paragraph 275 of NRW's statement of case, where it is stated that "Applicants must submit a summary of their Environmental Management System (EMS) with their bespoke permit application". However, this is not what NRW guidance in 'How to comply with your environmental permit' (CD 6.5) says. It refers to the need for an EMS, the standard condition to be applied, and that the EMS must be in place once the site is operational. This argument does not get the appellant anywhere because the site is operational and has been for some time so the EMS should already be in place.
51. The appellant then builds upon this false assumption in stating that because Platts have gone beyond the minimum of submitting an outline in submitting a full EMS, this has been used against them by NRW. Whilst there is an element of forensic examination of all the procedural documents by NRW in an apparent attempt to find fault, nonetheless it must be recognised that the premises is operational. Both Mr Matthews and the QHSEM for Platts agreed when asked in cross examination that the procedures in the EMS should be followed now and not just when the permit is granted.

52. Evidence was presented to show that the operator is not complying with some of its own procedures. The pre-acceptance checks procedure is not being followed, as discussed above. Very importantly the Formaldehyde issue displays a worrying failure. The appellant's explanation is basically that the high levels of Formaldehyde in the test results did not mean anything to the QHSEM. Therefore the results were not communicated to Mr Matthews, who had requested the testing in the first place. As a result no action was taken and effectively the results were ignored by the appellant until raised at the Inquiry. This is a significant failure which betrays a lack of operator competence.
53. There was evidence that the frequency of sampling procedure was not being followed by the QHSEM (the author of the procedure). This despite it having been recently changed by her. As I say some of the other examples were minor but the evidence demonstrates that the appellant does not follow its EMS. Whilst there have been revisions to the technical requirements and procedures, the appellant's claim that it will follow the EMS once the permit is granted is not therefore supported by the evidence of its performance to date. The permit is also refused on this ground.

### **Other Matters**

54. With regard to Article 4, the objective of encouraging recovery of waste materials for uses which replaced raw materials is of great importance. This is reflected in Welsh Government advice in Beyond Recycling where the general approach is consistent with the objectives of the Well-Being of Future Generations Act and the well-being goals. The appellant also argues that its products utilise waste wood that would otherwise go to landfill or for use as a fuel. NRW contend that the waste cannot go to landfill in Wales. There are markets for this material to be used in particle board and for biomass energy generation. I have taken the points raised in relation to the Well-Being of Future Generations Act, the waste hierarchy, principles of sustainability and the circular economy into account. However, pursuit of these aims cannot justify unacceptable risks to human and animal health and the environment i.e. the concerns under Articles 6 and 13 of the WFD as outlined above, which have persuaded me that a permit should not be granted.
55. The issue of animal welfare in terms of principally dairy cattle was the subject of considerable debate at the Inquiry. Dr Atkinson on behalf of the appellant opined that Platts' products were better for cattle, required less application and were more cost effective than other forms of bedding. There were also reduced cases of mastitis when Platts products were used. They were popular with farmers and he argued that this type of product had been widely used for 20 years, in his extensive experience of dairy herds. He argues that refusal of the permit will have a detrimental effect on the welfare of cows and increase costs for farmers. Testimonials from farmers were also supplied.
56. Dr Atkinson admits that he is not an expert on wood recycling or wood dust and so his opinion that similar products have been in use for many years is based on visual appearance only. His claims regarding mastitis and the suitability of reduced depth of bedding due to use of Platts' products are not supported by the findings of peer-reviewed studies cited by Dr Hepple (principally the EFSA meta study at CD 4.8.13). These studies have found that shallow bedding and use of mattresses is detrimental to the welfare of cows. Dr Atkinson's criticism of the EFSA study was not persuasive as NRW established that he had not read the study. He also opined that deep sand based bedding systems were the optimum but are more expensive and sand extraction can be environmentally contentious.

57. Dr Hepple's representation that use of the appellant's 'novel' bedding material may require a Home Office licence relates to matters beyond the EPR 2016 regime. I do not consider the submissions on the precautionary principle or approach to risk to be particularly relevant in the light of my findings above on the Formaldehyde issue and the actual risks identified in evidence.
58. There was evidence that other firms are supplying similar products to farmers. This may be the case but I must deal with this permit appeal on its own merits. Enforcement of the EPR 2016 is a matter for NRW. Contrary to the appellant's claim, the evidence provided assures me that the regulators in the other nations of the UK adopt a similar position on the use of treated wood as animal bedding to NRW. The Environment Agency's response to Platt's refers to its guidance that treated waste wood should not be used for animal bedding.
59. Further to their comments above, NRW produced two draft permits for the Inquiry. The first was on the basis that the facility only processed untreated wood waste (i.e. the appeal failed) and the other for treated and untreated wood waste. As the appellant indicated that Platts were not interested in the former I consider this no further. NRW may decide to issue this permit to the appellant if they see fit.
60. The Finance Director for the appellant gave evidence of the increased costs and poorer quality of producing similar products from untreated wood. His conclusion was that farmers would not buy these products due to the increased costs and would buy from their competitors instead. However, he also stated that he was constantly exploring other using untreated wood in the event that the permit was refused and that ceasing trading was not envisaged. So the appellant's evidence as to the consequences of refusal of the permit was mixed but seems to indicate a possibility that the company would cease trading. I note the economic and sustainability consequences of this loss of employment. However these detrimental effects cannot mean that an activity that is contrary to the provisions of the WFD and the EPR 2016 should be permitted. This would be contrary to the environmental permitting regime for the reasons that have been outlined above.
61. I recognise that the dismissal of the appeal would be likely to have a significant effect on the appellant company. However, this must be weighed against the wider public interest. For the above reasons, I conclude that the waste operation to produce animal bedding material on the site has the real potential to have a significant adverse impact on human and animal health and the environment. The need to protect human and animal health and the environment can only be adequately safeguarded by the refusal of the permit application. As such, dismissal of this appeal would not have a disproportionate effect on the appellant company.

### **Formal Decision**

62. Having taken all relevant matters into consideration, I conclude that the appeal should be dismissed for the reasons given above and the application for a bespoke environmental permit is refused.

*A L McCooey*

**INSPECTOR**

## List of Documents

### NRW

- CD 3.31 Inquiry Note 2 – Clarification on paragraph 50 of the proof of evidence of Ross Briscoe with 3 Appendices
- CD:3.36 NRW Position Statement on Formaldehyde dated 4/7/2024
- CD 3.37A Statement of Common Ground, version 3 redacted para 3.37 (submitted 11/7/2024)
- CD 3.40 Draft Permit 1, version 2 (9 July 2024)
- CD 3.40 Draft Permit 2, version 2 (9 July 2024)
- CD 3.40 NRW Permitting Officer's comments on EPTR version 4
- Closing Submissions
- Response to Appellant's Costs Application

### Appellant

- CD 3.32 FOI request email of Caroline Platt to Environment Agency (re Appendix CP/12)
- CD 3.33 Dr Owen Atkinson: OA 12 Photographs
- CD 3.34 Dr Owen Atkinson: OA 13 Email re Expert Points of Agreement/Disagreement
- CD 3.35 Fire Prevention Plan (version 4) 27/6/2024
- CD 3.38 Chiralabs 'Chromatographic Analysis – Formaldehyde in Wood Samples' dated 8/7/2024
- CD 3.39 Draft Permit 2 – Oliver Matthews comments 11/7/24
- CD 3.39 Email between Oliver Matthews and Tim Reeve (ELAB) May and July 2024
- Appellant's Costs Claim
- Appellant's comments on NRW Costs Response 22 July 2024
- Closing Submissions
- Appellant's Authorities (agreed with NRW) – correct legislation and caselaw relied upon in the appeal (24 July 2024)

### Appellant Additional Proofs of Evidence and Appendices

- CD 4.1.4 E Alison Fuller Supplementary Rebuttal Proof 27 June 2024
- CD 4.1.7 F Oliver Matthews Rebuttal Formaldehyde 27 June 2024
- CD 4.1.7 G Appendix OM30
- CD 4.1.7 F Oliver Matthews Rebuttal Formaldehyde II 8 July 2024
- CD 4.1.7 I Appendix OM31 Various MSDS
- CD 4.1.7 J Appendix OM32 Letter from Dr Tranter of Chiralabs re: difficulties with testing for Formaldehyde (7 July 2024)
- CD 4.1.7 K Appendix OM33 WRA Workshop on Waste Wood Classification slides