

CAR NRW0043300- Response to the appeal dated 08/02/2024

Permit reference: EPR\AB3296HT

Operator: Install Waste Management Ltd

Facility: Unit 12F Atlantic Trading Estate Barry Vale of Glamorgan CF63 3RF

Install Waste Management Ltd have been successfully operating an Environmental Permit at Unit 12, Atlantic Trading Estate, Barry, CF63 3RF since November 2016, largely without incident or permit breach. In more recent years and with the introduction of the current waste Regulatory officer, permit breaches have been scored in increasing severity whilst the operator has not altered the ways of working on site significantly, if anything, the site has become more efficient and effective at managing waste throughput and processing on site to meet the current standards required of the waste industry.

During the previous and current site inspections, we record non-compliances with the permit conditions in line with the relevant guidance and The Environmental Permitting (England and Wales) Regulations 2016. For detailed information on non-compliances, please refer to the previous CAR forms and the photographs taken during these visits available on NRW's public register [Public register - Customer Portal \(naturalresources.wales\)](https://publicregister.naturalresources.wales).

We score breaches based on potential impact in line with our guidance, the guidance states:

'Assess the category of non-compliance based on reasonably foreseeable impact

You should consider what the potential impact on the environment, people and/or property of any non-compliance with a permit/licence condition is when assigning a category to it. This is an assessment of the reasonably foreseeable impact.

When you think about what the reasonably foreseeable impact might be, consider:

- the proximity and nature of potential receptors;*
- any procedures, resources or infrastructure in place that might mitigate the impact*
- the responsiveness of the permit/licence holder and staff;*
- any 3rd party intervention or unexpected circumstances*
- meteorological factors such as weather and river flows.'*

NRW attended the site for a post fire meeting with the Operator on 24th October 2023 where post fire actions/business plans etc were discussed. There has been no contact since this meeting with NRW in relation to site clean-up or operations.

On the 28th of November a response to the e-mail dated 22/11/2023 was sent. This e-mail included a request for a post fire plan (as this is requested by the Fire Prevention and Mitigation Plan (FPMP) Guidance) and a request for suitable timeframes for this to be provided.

On the 1st of February 2024 the Operator received a CAR form from NRW with permit breaches (to be detailed below) following the fire incident mentioned, the CAR form was sent 3½ months after the incident.

We have noted this comment.

A further point to note, the operator submitted it's FPMP to the Regulatory Officer for the site in November 2022, this is 11 months prior to the fire. The operator has never heard back from the Officer with comments regarding the FPMP not being suitable.

Although the provided FPMP has not been reviewed and approved by NRW, the operator is still obliged to comply with the FPMP Guidance. It is the operator's responsibility to ensure the FPMP is written in line with the FPMP Guidance and that they follow it.

Context and Justification

The first point that we'd like to make at this stage is that we find it extremely unfair that NRW have asked for full justification for our meeting when requested following this CAR form when, NRW didn't give the operator the same courtesy when issuing this CAR Form and its associated breaches, especially following the discussions had on site in October post fire. Providing NRW with our issues/queries only serves for you to be able to provide a well-thought reply.

For ease of reading and discussion, the layout of the provided CAR form will be followed with our concerns about the scores, comments and actions detailed within it.

Within the covering email received from NRW a comment has been made that the breaches and categorisation of incident has been done in line with the guidance and EPR. This is to be kept in mind throughout.

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Details of the assessment section

Within this section of the CAR the breaches are expanded upon and justified by NRW officers. Ahead of the first breach (D2), several paragraphs are within the report, one of the paragraphs comments that “*the majority of the firewater was recycled and reused, but some portion of the firewater was diverted to the combined sewer located on the road which is within the permitted site boundary.*”

Within the Provision and Management of Firewater section of the submitted Fire Prevention and Mitigation Plan (FPMP) the recirculation of firewater is a planned approach to a fire incident at the site to help in the reduction of impact and to extinguish the fire as quickly as possible.

This breach was recorded because the firewater was diverted to the combined sewer meaning the fire water left the site boundary. Unless the operator has an agreement with the sewerage company, discharging to the sewer is a breach permit condition 3.5 Fire and the FPMP Guidance which states:

‘You may also be able to divert fire water to your local sewers. You will need agreement in principle from the sewerage company before including this measure in your fire prevention plan (evidence of approval will need to be submitted in the plan) p. 35.

Breach D2-Incident Management-accidents, emergency and incident planning. The first point to note, is that when a submitted and live document is in use that satisfies permit condition 3.5.1, this is what NRW should be breaching against, not the guidance itself. The guidance is just that, a guide to be used by operators when compiling their FPMP documents.

The FPMP Guidance states: *‘You will need to follow this guidance if your permit condition states that you must have a fire prevention plan, or if you need to submit one as part of your permit application.’ p. 4*

If certain elements of the guidance are not achievable on site, then full justification and alternative procedures should be proposed as set out within Section 1- Introduction and Scope of the Guidance document itself.

Running theme of Site manager not being present

This accusation is simply not true, we are unsure of what evidence NRW have that this was the case. If you would like to share this evidence, please email it across.

The site director arrived at the site for approximately midnight on the night of the fire. This is just 30 minutes from when the FRS had an emergency call alerting them to the incident. Upon his arrival, a discussion was had with the chief fire officer on site and the operator informed the FRS not only of the hydrant and its location but also highlighted that the site next door has 2 large storage tanks of water that could be used if required. This was rejected and the FRS decided that their best use of water was the river.

The director remained on site until he left the site at 4am for approximately 2 hours. This was done to brief the staff for the day and to update supervisory staff, as well getting some food etc. The director returned to the site for 6am where he remained for most of the day.

It is quite clear that the director of the company was fully present for most of the incident. Therefore, the running opinion and comments from NRW that he was not on site or was not available is completely fictitious and has been made erroneously. Therefore, all breached points relating to this, should be discarded.

The FRS officers confirmed the site manager was present at the site at the start of the incident for short time. They stated they did not get any advice regarding the water supplies or water containment.

The NRW out of hours officer arrived at the site at 2:30 am and stayed there until after 8 am. He confirmed he did not see the site manager until he met him at 4:40 am for the first time.

When my colleague Environment Officer Harry Warburton and I arrived at the site at 11 am I approached the FRS, I asked about the site manager, and I was told he was not present at the site for the majority of the time of the incident. I met the site manager at 12:00 pm.

Point 1.1 of CAR Form

The 3 points listed as bullet points in the CAR were either followed or were not possible to be followed and so this point is not applicable (in addition to not breaching the actual on-site documents). The first bullet point requires that water be added to cool the waste, this did happen as the FRS clearly added water to the waste within the building to cool and/or extinguish the waste. The second and third points were not possible on site as the FRS clearly instructed all personnel who were not FRS to leave the site area as there was the threat of explosions in a Health and Safety warning. Therefore, the operator could not do these bullet points without risking his own life and those who would have been charged with the task.

Your justification for the breach in this section-doesn't appear to comment on any of the bullet points listed and so has offered no real reasoning for the breach being scored.

The firefighting section in the FPMP Guidance suggests the ways of how the operator could support the FRS with the firefighting strategy. The issue here was that the FRS and the NRW out of hours officer claim the site manager was not present at the site when he was needed.

NRW comments that the walls of the building were not fireproof and that the doors were open, aiding the spread of the fire. We would be very grateful if you could highlight in either of our FPMP or the Guidance documents where it says that the building must be a fireproof building or where all doors are to be kept closed. Please bear in mind that the FRS themselves required that the roller shutter doors be open to access the building. In fact, the guidance clearly states in Section 12-Waste Stored Within a Building, that '*waste storage areas should have some means of clearing smoke from the building, such as openable skylights or roller shutter doors, to aid firefighting*'. Therefore, the doors being opened should not be considered as a breach but as a positive move to aid firefighting as per the requirements of the published guidance.

The FRS investigation officer stated that the open doors increased the rate the fire spread in this case. However, this has not been recorded as a breach. It will be removed from the CAR form.

This section of the guidance also comments that Fire walls and/or separation should be considered. We can confirm that as per the FPMP provided to NRW, fire walls were being used on site as was a gap at the rear of the walls. This was done to aid with the lowering of fire risk on site and as an agreement between the operator and the landlord to prevent the plant using the building walls as 'push walls' to ensure the structure of the building was protected.

The site manager chose to use firewalls and the separation distances as prevention measures; however, these were not sufficient on this occasion. It is the site manager's responsibility to implement effective methods to prevent fire from spreading. If the operator was unsure of what methods would be most suitable for his site, he should have spoken to the competent advisor. This is recommended by the FPMP Guidance, for when large amounts of waste are being stored within the building/warehouse. The guidance states: '*If you are storing wastes internally in large quantities, such as in warehousing, then you should seek competent advice on the precautions to be taken. These will depend on the type of building used, the types of waste being stored and what fire precautions are already in place. This is a specialised area, and the general standards applied to the warehousing of goods may not be appropriate to the internal storage of wastes.*' p.29.

Point 1.2 of CAR Form

This point relates to the guidance again and not to the FPMP that the site work to. See above for comments on breaching the guidance and not the documents held. As above, the justification for this point of the breach only mentions that the site does not have a fixed suppression system. As per the above, the guidance allows for operators to use other techniques to aid with firefighting. If you refer to the section of the site FPMP headed Fire Detection and Suppression, you will see full justification for not having a suppression system. In summary, the relatively low levels of material, the comprehensive CCTV system and fire watch procedures along with daytime use of fire extinguishers have justified the lack of suppression system for a site of this relatively small size. Therefore, this section of the breach is not relevant.

The guidance recommends suppression systems especially when the waste is stored within the building. However, the operator may decide not to use it. In this case, the operator should provide an appropriate alternative measure and justify them.

The measures included in the FPMP were not adequate to the activities carried out at the site.

NRW did not recognise any alternative measures being implemented at the site during the incident. The justification of not having suppression system is not suitable given the CCTV burn out and there were insufficient watch procedures.

Point 1.3 of CAR Form

This section of the CAR form aims to justify the breach by commenting that due to the site manager not being on site the FRS had no idea where they could get water from, and that the hydrant was too low in pressure for them to use effectively.

Firstly, as detailed above, the site manager was present and had informed the FRS of the location of the Hydrant and the 2 sumps available within the yard next door (FRS chose not to use them). NRW have laid blame for the hydrant being low in pressure on the operator as it has been used for breach justification. This pressure issue is not the fault of the operator and so it cannot be used in any way to justify a breach scored against the operator for having a lack of water on site, there was simply no way of the operator knowing this would be the case.

According to the FPMP guidance 'you must have sufficient water supplies available to your site for firefighting to take place and to manage a worst case scenario incident (e.g. one (your largest stack) or more stacks on site are on fire).

This breach has been scored for insufficient provision of water supplies. The site relies heavily on water from hydrants. However, providing that the water pressure in hydrants is unknown the operator should consider additional water.

The FPMP states that there is a water storage tank at the site, however the capacity of the tank is unknown and whether the inlet of the tank is compatible with the fire hose couplings.

Point 1.4 of CAR Form

This section of the breach justification concerns the management of water runoff. Yet again and as per the above point, NRW have listed the Guidance points as opposed to using the submitted FPMP and its section relating to Fire water containment.

The point also comments on the site manager not being present, please refer to the above section as this was not the case. The point refers to there being an NRW officer on site and that this Officer authorised the discharge to foul sewer, as is commonplace in an emergency where both NRW and the FRS have the authority to use their discretionary powers to prevent/stop the emergency getting worse. It is unclear why this is being used against the operator as breach justification especially when considering NRW have had access to the sites FPMP for 11 months and therefore were fully informed on where the drainage system is and its capacity as this is detailed within the document.

This is further the case when NRW arrived on site at 11am, nearly 12 hours after the fire was reported to the FRS (the FRS have an automatic reporting system to NRW for Fires at Waste sites), NRW therefore had plenty of time to familiarise themselves with the drainage system on site and could have read the document prior to their arrival.

As stated above the NRW out of hours officer was at the site at 2:30 am. It is the operator's responsibility to be present at the site during the incident and provide the information when requested by NRW and FRS. Further justification around discharging to foul sewer has been provided above.

There is also a large section of the justification for the breach that relies on assumptions for events that didn't happen:

'...that the risk of diverting the fire water had not been properly assessed and had the sewer become overwhelmed, there was a risk of overflowing into the Cadoxton River. If the FRS had a sufficient water supply which was required to manage the fire, the containment measures would not have been sufficient and would have likely discharged to watercourse causing a significant impact.'

As this is a CAR form following an incident, the breaches should be dealing in facts as the actual picture and timeline of events is known. NRW cannot use assumptions for scenarios that didn't occur, observations, comments and ultimately breaches must deal with facts based on the evidence that is known to have occurred. In this instance, a *'portion of the firewater was diverted to the combined sewer'* and therefore, no pollution was noted. There is also no quantification of how much water was put to the foul network. As NRW have deemed this as being a Category 2 breach of the permit, a quantification would

be expected as to the levels of water that caused a pollution, in this case 0 as they were safely disposed of.

This breach was scored based on a potential impact, as the risk of pollution of the environment was high. Once the FRS started discharging firewater into the sewer, they were informed by the DCWW that the sewer was close to the point of being overwhelmed. If the sewer became overwhelmed, the FRS would have to stop discharging into the sewer and start discharging elsewhere, causing a high risk of pollution to the environment.

Breach E2-Emissions to Land and Groundwater

A Category 1 breach of the permit has been scored against permit condition 3.1.1 that states '*Emissions of substances not controlled by emission limits (excluding odour) shall not cause pollution. The operator shall not be taken to have breached this condition if appropriate measures, including, but not limited to, those specified in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions.*'

This breach clearly details that an operator will not be seen to have breached this condition if appropriate measures including, but not limited to, those specified in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions. As detailed above, the operator had the measures in place at the site to prevent and minimise, as far as practicable the emissions that would result from a fire. Please see the points raised above for further explanation.

Additionally, in the breach justification for the category 1, NRW have provided no evidence or detail of where a pollution that is major in nature, occurred to land or groundwater. The justification for the Category 2 breach clearly outlines that all firewater was recirculated on site and that only a portion of the water was diverted to fowl sewer, therefore preventing any escape to the environment. The breach does note that several business premises were damaged because of the fire, this is regrettably correct. However, this is not justification for this breach at all. The FPMP states that firewalls were in use to the sides and the rear of the waste reception hall and we have confirmed that there was a gap around the entire internal wall to prevent damage from the waste, plant etc being caused, therefore, the site have '*appropriate measures, including, but not limited to, those specified in any approved emissions management plan, have been taken to prevent or where that is not practicable, to minimise, those emissions.*'

As stated above, we score non-compliance in line with our guidance. Category 1 breach was recorded based on an actual impact.

There are various types of breaches indicted within our guidance. The Impact on Property and Infrastructure - Category 1 - breach is described as: '*a serious damage*

or destruction to a site, residential housing and/or commercial buildings or renders them unusable. The need to evacuate persons/and or restrict access over a wide area’.

Further to this, we do not feel that it is appropriate for NRW to alter the breach of permit headings to suit their own agenda. For example, if you refer to section 1 of the CAR form Summary of Our Findings, the breach for the Category 1 clearly defines this area as being E2-Emissions-Land and Groundwater. Then within the breach justification section 4 Details of Our Assessment, the heading has been altered and reads E2-Emissions-Land. This is clearly a deliberate act to align the breach to suit the loss of building justification and to try and pass it as a pollution to land due to the loss of infrastructure, which is inaccurate and not the case of this breach. The operator would like this breach removed.

This should have been ‘E2-Emissions-Land and Groundwater’ a grammatical error within the body of the text. The criteria is correct however and we do not deem it necessary to amend the wording at this time.

G4-Monitoring and records, Maintenance and Reporting- Reporting and notification to Natural Resources Wales

A Category 3 breach was scored against permit condition 4.3.1(a) and the justification from NRW was that they were informed by the security guard for the area, the operator believes that this breach is also not required. As NRW were already informed, the operator just thought that a secondary phone call wouldn’t achieve any different outcome to what had already happened. The FRS and the operator attended the site and NRW were fully informed. The comment that the site manager didn’t communicate with NRW across the entire incident is also inaccurate and is not true. As discussed in the meeting post fire, there were discussions relating to the questioning of the regulatory officer on site and the inappropriate nature of them. Therefore, clearly there were communications between the operator and NRW and so the CAR form factually incorrect.

The operator would like this breach removed.

This breach has been scored against the permit condition 4.3 Notifications 4.3.1 *Natural Resources Wales shall be notified without delay following the detection of: (a) any malfunction, breakdown or failure of equipment or techniques, accident, or emission of a substance not controlled by an emission limit which has caused, is causing or may cause significant pollution.*