

Ms Christie Burns  
Copeland Borough Council  
Development Control  
The Copeland Centre Catherine Street  
Whitehaven  
Cumbria  
CA28 7SJ

**Our ref:** NO/2024/116147/01-L02  
**Your ref:** 4/24/2215/DOC  
**Date:** 27 June 2024

Dear Ms Burns

**DISCHARGE OF CONDITION 11 OF PLANNING APPLICATION 4/21/2489/0F1**  
**LAND WEST OF CLEATOR MOOR ROAD, WHITEHAVEN**

Thank you for consulting us on the above discharge of conditions application, received 17 June 2024.

We have reviewed the following documents;

- Report titled 'Revised Contamination Remediation Strategy', prepared by Geo Environmental Engineering (referenced: 2024-6320; dated: 05.06.2024)
- Plan titled 'GEO2024-6320: Ivy Mills, Hensingham, Whitehaven, Phases 1 and 2- Remediation Plan', prepared by Geo Environmental Engineering.

**Environment Agency position**

We are unable to recommend the discharge of condition 11 and we offer the following comments:-

Condition 11 cannot be discharged in its entirety because section 3.2 of the Remediation Strategy (ref: GEO2024-6320) requires additional investigation of localised hydrocarbon hotspots in made ground, and remediation of soils and groundwater as necessary. In addition, section 3.3 highlights the possibility of hydrocarbon contaminated water beneath relic structures which may need delineation and removal.

To allow the full discharge of condition 11, the validation and verification of the risk assessment and remedial works will be required.

**Additional comments**

Environment Agency  
Lutra House Walton Summit, Bamber Bridge, Preston, PR5 8BX.  
Customer services line: 03708 506 506  
[www.gov.uk/environment-agency](http://www.gov.uk/environment-agency)  
Cont/d..

The Remediation Strategy highlights the re-use /disposal of made ground without reference to CLAIRE Definition of Waste Code of Practice. Comments regarding the re-use of made ground can be found below.

## Waste

The placement of a cover system using 'clean' material does not need to be regulated under an environmental permit, If the cover uses 'waste materials' in its construction the waste exemption might be available. If the installation of a proposed cover system does not meet the criteria for the registration of a waste exemption the activity may need to be regulated through a site based environmental permit.

Where the onsite reuse of material does involve the removal and subsequent re-deposition of materials, this is normally considered a waste operation unless fully justified otherwise via use of the [CL:AIRE The Definition of Waste Development Industry Code of Practice \(DoWCoP\)](#). If the deposit is regarded as waste operation it must be regulated through an environmental permit.

Redundant infrastructure that doesn't meet the article 2(1)(b) Waste Framework Directive exclusion are waste and need to be regulated as such.

## **Advice to applicant**

### Use of waste on-site

If materials that are potentially waste are to be used on-site, the applicant will need to ensure they can comply with the exclusion from the Waste Framework Directive (WFD) (article 2(1) (c)) for the use of, 'uncontaminated soil and other naturally occurring material excavated in the course of construction activities, etc...' in order for the material not to be considered as waste. Meeting these criteria will mean waste permitting requirements do not apply.

Where the applicant cannot meet the criteria, they will be required to obtain the appropriate waste permit or exemption from us

A deposit of waste to land will either be a disposal or a recovery activity. The legal test for recovery is set out in Article 3(15) of WFD as:

- any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy.
- We have produced guidance on the recovery test which can be viewed at <https://www.gov.uk/guidance/waste-recovery-plans-and-permits#waste-recovery-activities>.

You can find more information on the Waste Framework Directive here:

<https://www.gov.uk/government/publications/environmental-permitting-guidance-the-waste-framework-directive>

More information on the definition of waste can be found here:

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

More information on the use of waste in exempt activities can be found here:

<https://www.gov.uk/government/collections/waste-exemptions-using-waste>

Non-waste activities are not regulated by us (i.e. activities carried out under the CL:ARE Code of Practice), however you will need to decide if materials meet End of Waste or By-products criteria (as defined by the WFD). The 'Is it waste' tool, allows you to make an assessment and can be found here:

<https://www.gov.uk/government/publications/isitwaste-tool-for-advice-on-the-by-products-and-end-of-waste-tests>

If you require any local advice or guidance please contact your local Environment Agency office: [nwnorth\\_permitting@environment-agency.gov.uk](mailto:nwnorth_permitting@environment-agency.gov.uk)

### *Movement of waste off-site*

The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable to any off-site movements of wastes. The code of practice applies to you if you produce, carry, keep, dispose of, treat, import or have control of waste in England or Wales. The law requires anyone dealing with waste to keep it safe and make sure it's dealt with responsibly and only given to businesses authorised to take it. The code of practice can be found here: [Waste duty of care code of practice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/waste-duty-of-care-code-of-practice). Links to other relevant information [Hazardous waste: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/hazardous-waste-overview); [Dispose of business or commercial waste: Your responsibilities - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/dispose-of-business-or-commercial-waste-your-responsibilities)

If you need to register as a carrier of waste, please follow the instructions here: [Register or renew as a waste carrier, broker or dealer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/register-or-renew-as-a-waste-carrier-broker-or-dealer)

If you require any local advice or guidance please contact your local Environment Agency office: [NWNorth\\_Permitting@environment-agency.gov.uk](mailto:NWNorth_Permitting@environment-agency.gov.uk)

### *Classification of waste*

In order to meet the applicant's objectives for the waste hierarchy and obligations under the duty of care, it is important that waste is properly classified. Some waste (e.g. wood and wood based products) may be either a hazardous or non-hazardous waste dependent upon whether or not they have had preservative treatments.

Proper classification of the waste both ensures compliance and enables the correct onward handling and treatment to be applied. In the case of treated wood, it may require high temperature incineration in a directive compliant facility. More information on this can be found here: <https://www.gov.uk/how-to-classify-different-types-of-waste>

Yours sincerely,

**Miss Soraya Moghaddam**  
**Planning Advisor**

Direct e-mail [clplanning@environment-agency.gov.uk](mailto:clplanning@environment-agency.gov.uk)