

## Permitting decisions- Refusal

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We have decided to refuse the permit for Fenix Battery Recycling operated by Fenix Battery Recycling Ltd (Company No. 12770151)

The proposed facility location is:

Fenix Battery Recycling,  
Round Croft Works,  
Round Croft,  
Willenhall,  
Walsall,  
WV13 2NP.

The application relates to a new bespoke permit for a battery recycling facility permitting both transfer and treatment.

The site is situated off the A454 in the town of Willenhall, approximately 4.1km east of Wolverhampton, 2km north-west of the town of Darlaston and approximately 2km south of the town of Wednesfield. Access to the site is via Field Street. The site measures approximately 65 metres by 70 metres.

The battery recycling facility consists of a site office, three separate buildings, associated processing plant, storage infrastructure and a dust extraction system, in which the sorting of different batteries by category/chemistry and the subsequent processing of alkaline and lead-acid batteries is proposed.

We consider that in reaching that decision we have taken into account all relevant considerations and legal requirements.

### Purpose of this document

This decision document provides a record of the decision making process. It:

- highlights [key issues](#) in the determination
- gives reasons for refusal
- summarises the decision making process in the [decision considerations](#) section to show how the main relevant factors have been taken into account.

Unless the decision document specifies otherwise, we have accepted the applicant's proposals.

Read the permitting decisions in conjunction with the refusal notice.

## Key issues of the decision

### Summary of our decision

The Environment Agency (the “Agency”) has decided to refuse the application for a bespoke permit made by Fenix Battery Recycling Ltd (the “Applicant”) for the site at Round Croft Works, Round Croft, Willenhall, Walsall, WV13 2NP (the “Site”).

The application is refused on the following grounds:

- The Agency considers that the Applicant will not operate the regulated facility in accordance with an environmental permit, and so is duty-bound to refuse the permit application (Schedule 5, Part 1, paragraph 13 of the Environmental Permitting Regulations 2016 (EPR 2016)).
- The Applicant is not competent to run the site. This has been concluded because of previous poor compliance and currently insufficient technical competence (see below for details). Furthermore, given the large tonnages of inappropriately stored batteries on site we believe that granting a permit in these circumstances would pose unacceptable risk to the environment and would render the operator in immediate breach of the permit were it to be granted (regulation 13 EPR 2016).
- Despite serving a Schedule 5 notice requiring further information, the application submission is still deficient in several important areas such that the Agency cannot favourably determine the application based on the information currently submitted (Schedule 5, Part 1, paragraph 4 EPR 2016 and regulation 13 EPR 2016). These areas include:
  - Part B4 of the application has never been submitted in connection to the waste operations being applied for.
  - Technically Competent Management details is out of date and no updated information was submitted despite being requested. The continuing competence certificate expired on the 28 June 2020. On page 22 of the BAT assessment application document, it states:  
  
'It should be noted that the COTC certificate expired on the 28/06/2020 but shall be renewed as soon as possible. External WAMITAB cover can be sourced if required.'

Technical competence certification is required, therefore, the application is not supported by appropriate evidence to allow favourable determination of the permit application.

- Clarification is required in connection with waste handling, treatment, and storage on site since parts of the application state all storage and treatment activities will be within buildings or tanks. However, other parts of the application submission show clearly that waste will be handled and stored externally.
  - All the application documentation needs to match up, with additional control measures and monitoring being required if external activities are to be permitted. The site layout plans clearly show waste paper/plastics, wood (both pallets and waste wood), and Li ion batteries being stored outside in containers.
- The application does not clearly demonstrate how all waste (to be accepted) will be handled and stored, in particular hazardous electrolyte (EWC code 16 06 06\*). It is not clear what specific wastes will be accepted under this waste classification.
- The application also states liquid waste will not be accepted, however, hazardous electrolytes could be liquid waste in the form of sulphuric acid.
- Regarding wastes produced on site as part of proposed operations, the application documentation does not contain any information - whether on the plans or in the written processes - on how these waste streams will be handled and/or stored. These include:
  - Outer casings and cables
  - Empty and full steel drums
  - Empty and full IBCs
  - Waste oil
  - Spent scrubber liquors
  - Containers holding dust from the dust management system

The application documents show that the black mass from the alkaline battery processing is spilt into fine and coarse black mass but there is no reference as to how it is handled and stored to prevent pollution of the environment and/or harm to human health. More details are required.

- The proposed plastic granulation and washing processes are additional listed activities (hazardous waste treatment) that have not been formally applied for in the application submission.

- It is noted the granulator process will produce potentially harmful emissions. The applicant proposed measure to mitigate this issue within their Dust Management Plan. One such measure is the use of a 'Cyclone system'. This system pulls 'air' through a chamber where it spins in a cyclonic motion. The cyclone technology to remove heavy fractions of hazardous dust from the air emissions, however the 'air' is then discharged back into the processing hall before it is picked up by the other dust extraction system. This will mean that potentially harmful and polluting small particles of dust are discharged back into the processing hall where it may or may not be collected by the air handling system within that building. This proposal does not represent Best Available Technique (BAT) or prevent environmental pollution and/or harm to human health.
- It is proposed that the granulator will handle 2 types of plastic casings; polypropylene plastic from the wet Pb acid battery line and ABS plastic from the dry Pb battery line. The application does not contain any details on how the different waste streams will be handled, processed, and stored. Additionally, there is no clear statement of intent in respect to the next steps of this waste in line with the waste hierarchy, i.e. Will this waste be suitable/prepared for further reprocessing/recycling.
- In respect to the granulated plastics washing process, there is very little detail in the application documentation on where and how this activity will take place. The application does mention this wash water will be directed to the on-site 30,000 litre acid storage tank. The primary purpose of this tank is to store the acid removed from the battery housings at the initial treatment stage. This waste will be classified as 'Hazardous'. The mixing of these waste will increase the volumes of hazardous waste produced and stored on site. This proposal is not consistent with the rules around the production, storage, and separation of hazardous waste. The current proposal does not meet Best Available Technique (BAT).
- Regarding the dry lead acid battery processing, it is noted that casing will be drilled to allow hydrogen to escape. This drilling process will allow the hydrogen to passively vent. This technique is of concern due to the fact is classed as an 'indirect' greenhouse gas and may contribute to Global Warming. Furthermore, the escape of hydrogen can create an explosive atmosphere and within rooms with poor ventilation, hydrogen may accumulate and present a potential explosive risk. The application details make no

mention or reference of measures which seek to prevent, control nor minimise releases or accumulation of hydrogen gas. The current proposal does not represent Best Available Technique.

- Dust management procedures are detailed within the application, in document reference FEN - C08. The application detail refers to localised dust extraction systems which covers all the individual components of the process. It is not clear how all the specific localised components of the dust extraction system will be integrated across the activities undertaken on site (potentially in the 3 separate buildings) and how this system will operate effectively.

In fact, the dust management plan only mentions the cutting saw process in detail but mentions more on odour control from the alkaline battery processing operation.

There are no engineering drawings or process flow diagrams to show how the complete system will operate. Nor how the proposed building's wide negative pressures will be operated, maintained, monitored, and regulated to ensure the dust will be managed effectively.

Therefore, a more considered, detailed, and robust dust management plan will be required. Given the nature of the proposed operation the current proposal does not represent Best Available Technique (BAT).

- Fire Prevention Plan (FPP): There are numerous omissions and the current submission does not meet the required standard. The current omissions include:
  - Not all waste types have had their combustibility risks fully considered within document, including wastes produced on site such as dust etc. and any non-waste items stored on site which may impact on fire measures.
  - The risk of persistent organic pollutants (POPS) has not been identified nor considered in the application.
  - Site plans are non-compliant with section 6.2 of FPP guidance.
  - Not all wastes have been identified, in regard to storage location or times, and monitoring temp control (if applicable).
  - Total volume of waste in piles have not been identified, including separation distances.
  - The FPP makes no reference to the use or location of thermal barriers/fire walls. The site plan does identify

location of fire curtains, however, there is no reference within the FPP to how these will be operated.

- The issue of auto-ignition from damage or malfunction of the waste is not considered nor addressed.
- There is mention of a quarantine area, however these are all inside buildings and they are not identified on site plans.
- No commitment to extinguishing fire within 4hrs.
- There is mention of a fire water tank on site however there is no detail on how this water will be utilised during a fire.
- It is proposed in the application only visual inspection of hot loads takes place. Given the nature of the waste this is not adequate.
- Insufficient details in relation to detection systems, and suppression systems for all operational and storage areas, including water supply and the subsequent management of any fire water (no evidence to support water retention claims) This includes the proposal on how the drainage system will use shut off valves and the whole site bunding to prevent fire water and spillages leaving the site.

Based on the above information a revised fire prevention plan would be required which meets all the requirements set out in our technical guidance documentation on fire prevention.

- The application does not benefit for the inclusion of an effluent treatment plant and relies of a basic dip and store process for the purpose of cleansing of recyclable wastes such as plastics and lead plates.

How handling and storage on site of the acid wash waters will be managed to prevent pollution or harm is unclear.

The application refers to interim storage of acid being within a 2m<sup>3</sup> tank and transferred via a shrouded pipe to the external tank when required. There are no technical specifications for either tank or the associated pipework. There is no commitment to this system being constructed of acid resistant materials. No procedures have been provided for handling such transfers. In summary the information on the handling of sulphuric acid which may also contain dissolved lead particles on site does not meet Best Available Technique (BAT).

- There are no detailed drainage plans in the application documentation. Only a drawing showing the location of drains/manholes and the direction of fall. There is no detail to show where the shut off valves, mention in the application

documentation, are located or how they will be managed/activate in the event of a spillage/fire on site.

The application contains no details on the assessment and prevention of POPS entering the public sewer system.

Additional information will be required in any future application, in relation to the above issues.

- The Noise Management Plan contains no specific abatement measures in relation to the treatment processes (shredding and granulation) other than being carried out inside buildings. As such it does not meet Best Available Techniques (BAT) in relation to this matter.

The current plan identifies the nearest residential properties as being no more than 20 metres away. The buildings on site are simple metal frame, single skin structures with no noise attenuation features or measures included within the building design.

This will need to be investigated to confirm whether there will be sufficient mitigation to prevent noise pollution occurring within the surrounding area.

*'For this waste battery treatment facility, given its geographical location and proximity to neighbours with a variety of plant and machinery on site, noise level surveys and testing have been considered necessary. Consequently, Fenix Battery plan to commission a Baseline Noise Survey and Noise Source Inventory Report, to be produced by a qualified noise specialist. Using a Baseline Noise and Noise Source Inventory Report for guidance, further investigation will be undertaken into how to address noise sources which may be identified in the report once operations commence.'*

Since this application relates to a new permit any abatement measures should be implemented prior to operations commencing. Therefore, this survey and report must be carried before the permit can be determined and operations commence. The noise survey and report must be undertaken by a suitably qualified person and must be in line with the appropriate technical standards.

The current submission does not meet the Best Available Technique.

## The legal framework

Under Schedule 5, Part 1, paragraph 13 of EPR 2016, the Agency must refuse the grant or transfer of a permit where it is considered that an applicant would not operate the facility in accordance with the conditions of a permit.

It should be noted that were we to grant an environmental permit, as requested, the Applicant would be in immediate and serious breach of permit conditions due to how the batteries are stored on site. This is another factor we have considered in concluding that the duty in paragraph 13 arises in this case, especially as many of these batteries now pose a considerable threat to the environment due to how poorly they have been stored and their continued exposure to the elements. This factor has also been considered as part of the discretionary ground for refusal (see below).

In addition to any paragraph 13 refusal, there is also a discretionary basis for doing so where the Agency has good reason to believe an operator is not competent to operate the regulated facility, which is the subject of the application, due to, for example, persistently poor compliance with regulatory requirements (see e.g., paragraph 7.7 of Core guidance). Furthermore, due to current poor compliance, if a permit were to be granted the operator would find itself in immediate breach of permit conditions.

Defra Core Guidance on EPR 2016 states (at paragraph 9.3) that, amongst other matters, the Agency should consider an applicant's record of compliance with previous regulatory requirements and might doubt whether the applicant could, or is likely to, comply with permit conditions if it has a poor record of compliance.

The Core Guidance also states (at paragraph 9.15) that this assessment should extend to the compliance records of an applicant's 'relevant persons'.

The Agency's web based guidance [Legal operator and competence requirements: environmental permits](#) sets out our approach to assessing operator competence. This states that the Agency will look at an applicant's environmental record, including how it responded to any accidents at sites that it has operated in the past; previous convictions for environmental offences and its record of compliance with other permits (e.g., whether it has received warnings or enforcement notices and how it responded to them).

## History of Applicant

Fenix Battery Recycling Ltd (company number: 12770151) was incorporated on 27 July 2020 with three directors:

- Dr Athan FOX;
- Miles FREEMAN;
- Neil MUTTOCK.

The applicant's registered office is St. John's Innovation Centre, Cowley Road, Cambridge, United Kingdom. CB4 0WS

An additional two directors have joined the company since the date of incorporation.

- Damian LAMBKIN appointed 22 February 2021 (had significant control on 27 July 2020)
- Isabel KNIGHT appointed on 1 December 2021

Therefore, the applicant currently has 5 active directors registered on Companies House.

The following details currently show what authorisations exist for the applicant or have been applied for:

Permission type AND Current OR Application	Date application received	Site address (where relevant)	Application/ Authorisation Reference	Name of permission holder (if not applicant / holder) (i.e. held by relevant persons)	Expiry date (RWCB only)
EPR Application: New Bespoke	18/02/2021	Roundcroft Works, Round Croft, Willenhall, Walsall. WV13 2NP	EA/EPR/WP32 01LD/A001	FENIX BATTERY RECYCLING LTD	N/A
Carrier-Upper Tier:	10/08/2020	St. John's Innovation Centre, Cowley Road, Cambridge, CB4 0WS	CBDU349160	FENIX BATTERY RECYCLING LTD	10/08/2023
Exemptions S1, T4 & T9	20/11/2020	Unit 1-3, Roundcroft, Willenhall, WV13 2PN	WEX257660	FENIX BATTERY RECYCLING LTD	19/11/2023
Exemption S2	20/11/2020	Unit 1-3, Roundcroft, Willenhall, WV13 2PN	WEX257660	FENIX BATTERY RECYCLING LTD	-

NB. Whilst it is acknowledged that neither the Applicant nor its directors hold formal relevant convictions there is, nevertheless, such a persistently poor record of compliance associated with the Willenhall site, and other sites run and/or managed by the directors of the Applicant, that this history cannot be ignored when considering the suitability of the Applicant for an environmental permit.

## Operator Competence

The following is a summary of the current illegal operations at the WILLENHALL site (the proposed permit location for this application) and a summary for each of the Directors of Fenix Battery Recycling Ltd and their known history of non-compliance in the waste industry.

### Non-Permitted Activity at the application site:

- In August 2020 the battery regulation team asked Environmental Crime Team (ECT) for assistance in visiting a start-up battery reclamation and recycling centre at FIELD STREET, WILLENHALL, WV13 2NY This company was named Fenix Battery Recycling Ltd (Companies house registration 12770151). Concerns were raised that the batteries had been deposited at imported the WILLENHALL site were batteries where it was suspected they had been imported to the UK as waste batteries. It was also suspected that these batteries would be placed into the UK batteries recycling scheme whereby they would attract a recycling payment.
- In September 2020, ECT Officers attended the site to substantiate the activity. They met with the Director, Miles FREEMAN. Officers observed the batteries were stored both within the building and on a concrete pad which formed part of the outer compound. This outer area was enclosed by a HERRIS fence. The batteries stored outside were open to the elements and they were showing signs of degradation. At the time of the visit Fenix Battery Recycling Ltd had approximately 430 tonnes of alkaline batteries stored on site, with no Environmental Permit nor Waste Exemption registered. As such, this was and is, considered to be an illegal waste site. FREEMAN confirmed the batteries were imported onto the site, in July 2020 from a location in Weston Super Mare. Miles FREEMAN admitted that he did not have a permit or exemption registered at Willenhall authorising the importation and storage of the batteries pending their reclamation.
- On 1 October 2020 a Warning Letter was sent to Fenix Battery Recycling Ltd c/o Miles FREEMAN explaining the breach of EPR 2016 and that the batteries stored on site must be removed by 27 November 2020.
- On 19 November 2020 Environment Agency officers re-visited the site and found that the batteries were still on site, there was additional racking and the company had brought all the batteries under cover. On the 20 November 2020 Waste Exemptions (WEX257660) had been registered by Fenix Battery Recycling Ltd for S1, S2, T9 and T4 site. None of these exemptions allows for the storage or treatment of batteries.

Following this visit, FREEMAN requested a Local Enforcement Position, implicitly recognising the unlawfulness of the site, but the Area Leadership Team refused. A Minded to letter was sent out on the 21 December 2020 to FREEMAN and FENIX in relation to the service of a Section 59 (1) notice to remove the battery waste from the site. On 5 January 2021 FREEMAN responded stating that he was being treated unfairly and urged the EA to issue a permit, which he had applied for.

On 13 January 2021 a letter was sent to Fenix explaining that the EA would not take further action in respect of the illegal importation and storage of batteries pending his permit application, on condition that the site must neither import/store any further batteries nor treat any batteries.

- On 7 May 2021 EA Officers re-visited the site, Miles FREEMAN was on site, however, his security team stated that he was in conference and could not see us. The following site inspection revealed that many tonnes of *additional* alkaline and lithium-ion batteries were now stored on the hard-standing outside the main building thus it appeared that more alkaline batteries, as well as Lithium-Ion batteries, had been imported. A crusher on site had been commissioned and there was residue of that crushing process stored underneath the crusher and in 1 tonne bags. The crusher was not in operation during the visit. The visit was followed up with a letter (dated 12 May 2021) pointing out that they were in breach of the EPR 2016, and that they had not made any attempt to remove any batteries, which was requested back in October 2020. Furthermore, it appeared they had also imported and treated batteries which was not authorised. Consignment Notes (waste transfer) were requested for the additional alkaline and Lithium-ion batteries seen on site.
- On 27 May 2021, the EA de-registered the S2 Exemption at the WILLENHALL site. The Exemption allows the storage of no more than 10 tonnes of batteries but during the 7 May 2021 site visit EA Officers observed over 400 tonnes of batteries which is way in excess of the S2 Exemption. It was also clear FENIX had simply ignored letters from the EA telling them not to import any more batteries on site.
- On 28 May 2021, FREEMAN responded in writing and included a waste transfer “season ticket waste transfer note” for the batteries which recorded 20 containers (20 tonnes in total) of lithium-ion batteries from Eco Waste Recycling in UNIT 5 HULLOCKPILL HILL, NEWNHAM SG7 5DP to the WILLENHALL site. The note stated that the transfer was dated between 1 September 2020 to 30 September 2021. FREEMAN claimed they accepted the Lithium-ion batteries under the Waste Exemptions registered at the site. In the response letter, FREEMAN denied importing additional alkaline batteries and treating any batteries.

- On 8 June 2021, the West Midlands Enforcement Team Leader sent FENIX a letter about the de-registration of the S2 Exemption, outlining the reasons for the de-registration.
- On 16 October 2021 a site visit took place to assess compliance with the Waste Exemptions (Compliance Action Report (CAR) ref WEX257660/00001). Officers observed that waste batteries were stored on site and it appeared that waste batteries had also been treated. The CAR form explained the exemptions did not authorise the storage of batteries as these are not a relevant waste. Waste batteries are not a relevant waste under the S1, T4 and T9 exemptions.

*“The volume/type of batteries being stored, allied to the unauthorised shredding activity pose a significant risk of pollution to air from the effects of a fire involving this combustible waste. Your site is in close proximity to residential and commercial properties, the occupants of which would have to shelter or evacuate in the event of a major fire. Any contaminated run-off produced in tackling a fire at this site could escape to surface water drainage systems and discharge to the nearest watercourse.”*

FENIX were then asked to de-register all outstanding the Waste Exemptions registered to the site, as there were not relevant.

- The current situation on site is that there are approximately 500 tonnes of mixed chemistry batteries with processing equipment in place, there is no Environmental Permit in place which allows these batteries and the Waste Exemptions are still registered to the applicant at this site. These do not allow the importation, storage nor treatment of batteries in this situation.

Detailed below is a summary of the directors and their known history in the waste industry:

**Damian LAMBKIN:**

- A Standard Rules Permit SR 2003 No 23, Permit number EAWML 102105 was held at UNITS 22 & 23, POOL BUSINESS PARK, POOL, REDRUTH, CORNWALL, TR15 3RX from 2010 to 2015. The permit was initially applied for and operated by THE ELECTRONIC WASTE COMPANY (Company number 05942876) and later transferred to A1 COMPLIANCE LIMITED (Company number 08048523) in 2012.

Damian LAMKIN was a director of both companies. The operator was a Waste Electrical and Electronic Equipment (WEEE) authorised treatment facility and held an additional authorisation as an Approved Authorised

Treatment Facility (AATF). As an authorised AATF the company may claim monies from a 'producer compliance scheme for collecting, treating, recovering and environmentally sound disposal of WEEE waste collected within the United Kingdom. Any such claim must be supported by an evidential audit trail.

On 3 August 2012, the EA suspended THE ELECTRONIC WASTE COMPANY from operating as an AATF. They 'over issued' WEEE evidence in 2011 and did not adhere to the suspension notice of repaying the over issue. The permit was transferred to A1 compliance Limited and later suspended in 2015 by the EA after dissolving and leaving the site (CAR ref 102105/0253939) leaving outstanding debts to the Agency of £5,740.00 which were later written off. The operator also received permit breaches for late waste returns in 2014 (CAR form refs 102105/0212611 & 102105/0224414).

- Environment Agency Officers interviewed LAMBKIN about his involvement in a Producer Responsibility battery fraud case. This is an ongoing investigation related to offences in 2016 when he was working at ECOSURETY compliance scheme as Head of Innovation. LAMBKIN was sacked from ECOSURETY for gross misconduct in early 2019 for meeting with other battery compliance scheme contacts and another waste battery processor.
- In 2018, LAMBKIN registered the company, ANYWASTE GLOBAL LIMITED (SC621365, now called ANYWASTE (SCOTLAND) LIMITED) where he was previously the sole director. ANYWASTE GLOBAL LIMITED were identified by the Waste Regimes Operational Services (WROS) team as being involved in a mis-description and battery deception in 2019.

Batteries were imported and mis-described as non-waste to the UK by another company, they were then 'sold' to LAMBKINs' company where they were retained for 'scrapped' and became waste and were sent to an Approved Battery Treatment Operator (ABTO) or Approved Battery Exporter (ABE). The ABTO would then issue evidence as proof of treatment, recycling or export. It is suspected that the waste batteries were either sold to the ABTO or another form of financial gain attained by the individuals or companies involved in this fraud. This scheme was disrupted by direct intervention actions taken by the Environment Agency. On 15 September 2019 ANYWASTE shipped 40 pallets of 2,0884kgs of used lithium-ion power tool batteries to a customer in Hong Kong. Hong Kong's Competent Authority returned the load on 17 October 2019 as it was an illegal shipment of hazardous waste.

## **Dr Athan Fox**

- FOX is a director of both Fenix Battery Recycling Ltd and Ever Resources Limited (previously Aurelius Technology Limited) and was previously a Technical Director of Aurelius Environmental Limited.
- Based on information within the purview of the Environment Agency, FOX has been involved in negotiation with UK RESEARCH and INNOVATION (UKRI) which is an executive non-departmental public body, sponsored by the Department for Business, Energy & Industrial Strategy (BEIS). It is understood the focus of these negotiations is to secure public funds to the value of £995k to enable further development of research into battery recycling at the Willenhall site, despite the site's previous poor compliance record and not yet having an Environmental Permit in place.
- FOX has previously explained the relationship with Fenix Battery Recycling Ltd, was 50% owned by Ever Resources Limited, as a "commercial decision, based on the wish of some investors to invest in recycling and others in technology." Furthermore, he has also stated "Ever Resource has operational sites in Willenhall in the West Midlands and Kilwinning in Scotland" although both sites do not currently hold any environmental permits yet to carry out these operation activities.
- It appears that relevant persons are providing mis-leading information both within the environmental permit application itself, and to other non-governmental bodies, with the purpose of obtaining an environmental permit and potentially to acquire public funds from other regulators.

## **Miles FREEMAN**

- In 2014 Miles FREEMAN worked for a company called G & P Batteries Limited, a large batteries treatment site in the Midlands. During this time there were approximately 14 tonnes of fire damaged batteries on site and the batteries were sent to a site, organised by Miles FREEMAN, which G & P Batteries Limited believed was permitted by a company called Aurelius Environmental Limited. EA Officers obtained a copy of the permit but the details on the copy did not exist. The Aurelius site was not permitted and the copy claimed it had been permitted in 2012. No further action was taken by the EA following discussions with G & P to remove the batteries from Aurelius.
- Aurelius Environmental Limited (Company number 09126634) was incorporated on 11 July 2014 and Miles FREEMAN became a director from 1 November 2015 to 7 August 2020 with Dr Athan FOX a director for

a shorter period; from 17 July 2019 to 4 August 2020. FREEMAN was described as Chief Principal Officer and FOX as Technology Director.

Aurelius Environmental Limited operate an installation permit (EPR-FP3435RP) at ST GEORGES WORKS, BRADLEYS LANE, TIPTON, SANDWELL, DY4 9EZ. The permit allows the disposal or recovery of hazardous waste with a capacity exceeding 10 tonnes per day involving physico-chemical treatment.

The operator had a poor compliance history between 2016 and 2020 whilst FREEMAN was in control of site operations. A summary of the site inspections and correspondence are as follows:

- Following the first visit on 3 March 2016 EA Officers identified significant concerns around battery draining taking place outside and “evidence of contaminated run-off entering the drains provided for the down pipes from the roof of the building”. The concerns resulted in 4 x Category 3 permit breaches and a warning letter being issued (see CAR Form reference FP3435RP/0262436)
- A follow up visit on 30 November 2016 where Miles FREEMAN was present FREEMAN claimed he had not received the previous CAR form so the breaches were discussed during the visit. During this site visit there were still issues with outside activity and drainage but no permit breaches were recorded (CAR ref FP3435RP/0274435). FREEMAN confirmed in an email following the visit (dated 24 January 2017) that the drain and outside storage issues would be addressed by 31 January 2017
- By the next visit on 5 March 2017, EA Officers identified further breaches for waste storage, drainage and starting the ‘Green Lead Process Development’ trial before complying with a pre-operational measure and not forwarding a report in accordance with the Improvement programme. 3 x Category 3 breaches of permit and 1 x Category 4 breach, resulting in the second warning letter being issued to the site (CAR ref FP3435RP/0294096). CAR form sent to Miles FREEMAN.
- The next visit on 29 November 2017 found no permit breaches (CAR ref FP3435RPR/0297541) however, on the next visit on 11 July 2018, a 3rd warning letter had to be issued to the site for another Category 3 permit breach due to a lorry being unloaded of lead acid batteries strapped to wooden pallets. Several of the pallets were broken and unsuitable for use and the stability of the batteries was compromised (CAR ref FP3435RP/0310522). CAR form sent to Miles FREEMAN.
- Further permit breaches (2x Cat 3) and a 4th warning letter were issued after the next visit which took place on 15 March 2019. These were again for waste storage breaches and for not following

their own management procedures. Officers observed operatives draining traction batteries to separate lead plates from plastic casings without the required extraction equipment (CAR ref FP3435RP/0329569). These breaches and warnings resulted in an Action Plan being set up to resolve the issues.

- By 17 May 2019, an EA Regulatory Officer had been informed there had been a fire on the site and requested information from AURELIUS. The general manager stated in an email the fire was contained within the trailer of the vehicle and the most likely cause being the short circuiting / touching terminals on UN2794 lead acid batteries collected from a customer's site earlier that day.
- On 4 June 2019 a 5th warning letter was issued for submitting their annual report 3 ½ months late. (CAR ref FP3435RP/0334078)
- On 1 July 2019 the general manager emailed further details of the fire and reporting that "During the clean-up we found contamination of 22Kg of lithium batteries contained within the lead acid batteries". On 27 June 2019, a further site visit was made to site following the vehicle fire and a further 2 x Category 3 permit breaches were found for inadequate pre-acceptance checks, lack of signage on storage containers and the extraction equipment still not being in place (CAR ref FP3435RP/0336669) Following this visit, the EA informed the operator they now considered taking enforcement action against them.
- On 18 July 2019 and EA Officer from Waste Regimes Operational Services visited the site unannounced to carry out an audit on the site to assess the operations for the Approved Battery Treatment Operator approval (ABTO) and Battery Exporter approval (ABE). Miles FREEMAN was on site and accompanied the Officer. As the audit was unannounced the paperwork was unable to be looked at in detail, however, the Officer identified there were a number of errors with the master battery spreadsheet and lack of evidence to show where batteries had come from. Some batteries were also being stored incorrectly and not separated via scheme and chemistry. The sampling and inspection plan had not been updated to reflect changes in operations. The audit report detailed 28 x actions requiring a response. There were also health and safety concerns due to the lack of extraction and lack of railings by the acid tank which were also reported to the Health & Safety Executive.
- On 1 August 2019 the site operators were reprimanded for not submitting their waste returns (CAR ref FPO3435RP/0340450). On 3 October 2019 a site inspection resulted in a further 2 x Cat 3 permit breaches and a 6th warning letter being issued due to the waste batteries being stored outside the storage areas and inappropriate infrastructure and drainage. A 2nd Action Plan was requested to bring the site back into compliance, this was created

by the Operator with Miles FREEMAN made action owner for some specific elements.

- On 18 June 2020 the annual report was submitted late resulting in another Cat 4 permit breach and a 7th warning letter was issued (CAR ref FP3435RP/0369418). An email from SQE Assurance Ltd, representing AURELIUS, accompanying the annual report suggested FREEMAN had left the company although he was still Chief Operating Officer until 7 August 2020. The email stated figures for Caustic Soda and Hydrated Lime differed to the figures previously reported by FREEMAN.
- It is also notable that for the period April 2020 to September 2020, as Miles FREEMAN and Dr FOX were parting ways with AURELIUS, there was a significant and as yet unexplained increase in the waste tonnage inputs and outputs from the site. This is potentially related to the 'diversion' of at least one load of batteries from AURELIUS to the proposed permit application site in WILLENHALL in the same period.
- On 28 September 2021 AURELIUS ENVIRONMENTAL LTD formally entered into liquidation with an approximate debt of £5M despite receiving funding from the European Commission in 2017, Innovate in 2018 and UK government's Midlands Engine Investment Fund in 2019 totalling around £3,136,000.

### Summary of evidence

- Three quarters of the 8 x CAR visits made to AURELIUS whilst Miles FREEMAN was Chief Principal Officer recorded permit breaches (6)
- 4 x Category 3 and 3 x Category 4 permit breaches were recorded during this period
- 6 x official warnings were issued for the permit breaches and 1 x consideration of formal enforcement
- The site required 2 x specific action plans to attempt to correct the persistent permit breaches
- The site suffered a vehicle fire caused by inappropriate storage of batteries
- A visit to check compliance with Producer Responsibility battery recycling activity resulted in 28 x actions being set for the company
  
- FREEMAN has been put forward as the on-site Technically Competent Manager for FENIX and holds Waste Management Industry Training and Advisory Board (WAMITAB) for Managing Treatment Operations: Clinical or Special (Level 4). These qualifications are of a suitable level to operate such a facility; however, FREEMAN last undertook his Continuing Competency on 26 June 2018 which lasts 3 years, so is currently out of date.

As confirmed in the application documentation:

*'It should be noted that the COTC certificate expired on the 28/06/2020 but shall be renewed as soon as possible. External WAMITAB cover can be sourced if required.'*

This issue is still unresolved.

- FREEMAN, along with other management pursued, and successfully secured, significant funding from a number of granting bodies, including INNOVATE UK, part of UK RESEARCH AND INNOVATION, a non-departmental public body operating at arm's length from the Government and the government's Midlands Engine Investment Fund. These grants were awarded in pursuance of furthering battery recycling technologies and to "improve efficiency" at the Aurelius site.
- Whilst FREEMAN was 'Chief Principal Officer' and a Managing Director of Aurelius Environmental Limited the company was implicated in an investigation carried out by the Producer Responsibility Team for illegally issuing evidence in 2019 on waste batteries which had been imported. This investigation is still live.

## **Neil MUTTOCK**

- Neil MUTTOCK was a Director of Eco Waste and Recycling Ltd., (Company number 07656615) between 1 August 2015 and 31 March 2021. Eco Waste and Recycling Ltd., operate a standard rules permitted transfer and treatment waste facility at UNIT 5, HULLOCKS PIT HILL, NEWHAM, BALDOCK, HERTFORDSHIRE, SG7 5JX (EAWML 101690).
- In January 2019, the Eco Waste and Recycling Ltd. site suffered a fire which resulted in the building, a baler and waste documentation being burnt. After the fire, EA Officers visited the site on 26 June 2019, during which MUTTOCK was present. The site was scored for a Cat 3 breach of the permit due to accepting fridges and paint which were not authorised by the permit plus storing baled waste outside of the permit boundary. Due to the fire they were requested to provide a Fire Prevention Plan (CAR ref 101690/0336181).
- The next site visit was 02 October 2020 where again the site recorded a Cat 3 breach of permit for not following the measures within their approved Fire Prevention Plan (CAR ref 101690/0374418). Waste was overflowing in bays and waste was not segregated and separated by fire walls or bays.
- On 3 March 2021 a remote inspection scored the site a Cat 3 breach for transferring approximately 20 tonnes of waste lithium-ion batteries to the permit application site in WILLENHAM which did not have the relevant Environmental permit or Waste Exemption in place to accept it (CAR ref

101690/0387454). The waste transfer paperwork was also missing important information such as date, time and tonnages. Following this the site were issued a Warning Letter on 5 March 2021 for contraventions of Section 34(1), 34(5), 34(6) of the Environmental Protection Act 1990 (CMS 95748).

- Neil MUTTOCK, as a director of Eco Waste and Recycling Ltd., is linked to the deposit of approx.1,300 tonnes of waste at an illegal waste site in East Anglia area between September 2020 and April 2021. This is an ongoing investigation CMS 96470.

#### Summary of above evidence:

- MUTTOCK in control of the ECO WASTE AND RECYCLING LTD site from 2015 to March 2021
- During this time site suffered fire in January 2019 damaging site office and 2 x balers and destroying waste transfer notes
- After the fire, the site recorded 2 x permit breaches in July 2019 and October 2020 (and there has been continuing breaches since).
- ECO WASTE sent 20 tonnes of lithium-ion batteries to the FENIX site which was not permitted to accept them and received a Formal Warning Letter.
- MUTTOCK is linked to a live investigation relating to waste deposited at an illegal waste site.

#### Other Factors – Fenix Battery Recycling Ltd:

- The Scottish Environmental Protection Agency (SEPA) refused the Transfer of an Environmental Permit at BYREHILL PLACE, KILWINNING, North AYRESHIRE, KA136LD from BELMONT TRADING LTD to FENIX BATTERY RECYCLING LTD on 17 November 2021. This was due to no credible financial provision (required in Scotland) and redacted inputs and outputs on the bank statements. FENIX did not appeal and have since submitted a second application.
- **Battery accreditations**  
SEPA also refused an ABTO application by FENIX for the KILWINNING site as there was no existing authorisation in place and the new permit application had been refused.

The EA refused FENIX a ABTO application again due to the fact they did not hold a relevant authorisation for the site where the treatment would be carried out.

We also included the following reasons;

- We were not satisfied that they could meet the regulations for reporting or issue evidence is accordance with their conditions of approval. This was due to their lack of understanding of the regulations and guidance to categorise batteries as well as their recording systems.
- They could not satisfy us that they could identify imported waste as they listed a battery source that is a known importer.
- They applied for a notification to export waste portable batteries to USA but did not submit an ABE application with either authority. It is

a condition of approval that ABTO must not arrange for the export of waste portable batteries, other than by an ABE.

## **Decision summary**

In summary, we do not have confidence that the Applicant or its officers will comply with the permit conditions. In addition, there is a lack of technical information within the application.

Refusal of this permit application is therefore on the grounds of the duty set out in Schedule 5, Part 1 paragraph 13, EPR 2016, general concerns over the competence of the operator to run the site (including but not limited to technical competence), and insufficient technical detail within the permit application submission. These three grounds are based on the applicant's previous permit compliance history and attitude toward regulation as demonstrated by its actions at the Willenhall site and other locations in the case of the applicant's directors. In addition, and as stated previously, the application information provided in pursuance of an environmental permit has been inadequate. Importantly, this is despite the applicant being given the opportunity to formally submit additional information to address the lack of technical detail within the application.

Section 7.14 of the "*Environmental permitting: Core guidance For the Environmental Permitting (England and Wales) Regulations 2016 (SI 2016 No 1154): March 2020*" confirms that there is a duty upon the Agency as a regulator not to grant a permit if we consider that the operator will not comply with its conditions (Schedule 5, Part 1, paragraph 13, EPR 2016). Based on the evidence available at the time of the permit determination it is considered that the applicant is unlikely to operate the facility in accordance with the permit.