Noeleen & Sean Byrne,
Ballyminaun,
Gorey,
Co.Wexford

10 May 2005

Environmental Protection Agency,
P.O. Box 3000,
Johnstown Castle Estate,
Wexford,
Co.Wexford.

Objection & Request for oral hearing on Proposed Decision
Waste Licence Register no. – 123-1
Applicant: - Custom Compost Ltd. Ballyminaun Hill, Gorey, Co.Wexford.
Facility: Custom Compost Limited, Ballyminaun Hill, Gorey, Co.Wexford.
Objectors: Noeleen Byrne & Sean Byrne, Ballyminaun, Gorey, Co.Wexford.

Dear Sirs,

We Noeleen Byrne & Sean Byrne of Ballyminaun, Gorey, Co.Wexford wish to make an objection and request an oral hearing of the objection to the Proposed Decision dated the14th day of April, 2005 on an Application for a Waste Licence for the above named facility in accordance with Section 42 of the Waste Management Acts, 1996 to 2003.

We enclose the appropriate fee in accordance with the Regulations being €190.49 for the objection and €63.49 for our request for an oral hearing, total cheque enclosed is for €253.98.

We set out below the full grounds of our objection and the reasons, considerations and arguments on which they are based and we enclose our Solicitors' (Noonan Linehan Carroll Coffey) legal submission which forms part of our objection and is to be read in conjunction with our formal objection to the Proposed Licence.

By way of background we live with our two daughters, Karin (14 years of age) and Aideen (7½ years of age) adjacent to the above facility. This property is our Family Home and it has been in Sean Byrne's family for 97 years. Our children are the fifth generation of the family to live here.

Introduction - We note it is stated in the introduction that the Licence requires Custom Compost Limited to implement *"a series of odour reduction measures at the facility. In the case where the said measures are not successful in sufficiently reducing the odours, the licensee will be required to enclose the composting process and to install odour control technologies at the facility over a specified timeframe"*. We fail to understand how the Agency can issue a proposed licence to this facility based on Professor Ralph Noble's *"Index of Measures for the Reduction of Odours from Mushroom Composting Sites in Ireland"*, **as an alternative** to the enclosure and abatement measures recommended by the Odournet Report, when the Agency are aware and it is noted in the Inspector's Report attached to the Proposed Decision that the Licensee stated in a letter to the Agency on the 16/06/04 that the company had already implemented most of the *"Index of Measures"*.

This information was provided to the Agency in June, 2004 by the Licensee. The Agency is aware that these *"measures"* haven't successfully reduced the odours as the Agency has been in receipt of continuous and numerous complaints from the residents of this area since June of 2004 and up to date. We fail to see how the Agency can warrant these measures **as an alternative** to fully enclosing the composting process and installing odour control technologies at the facility. Furhermore, have the Agency had these *"measures"* which the Licencee's claims to have implemented as far back as June 2004 independently assessed by Odournet UK or another expert engaged independently by the Agency. It appears that the last site visit by or on behalf of the Agency was on the **17/11/03** which is 1½ years ago and 7 months before the Licensee's letter claiming that **most** of these *"measures"* have been implemented. How can the Agency honestly know what the true position is and what is working and what is not when they haven't carried out a full and independent review. It appears to us that the Licensee's is dictating the terms of the Licence and the Agency is going along with it and is not taking the responsibility of their role as *"Guardians of the Environment"*. What are the technologies currently being used in other EU member states? Please advise if Professor Noble's *"Index of Measures"* are regarded and in use in other EU member states ?

Interpretation – Daytime – how can the Agency extend the daytime and define it as being 8am to 10pm. The Licensee's Planning Permissions clearly state (as has been pointed out to the Agency before) the daytime hours as being 8am to 8pm and daytime noise levels are to apply within these hours. Likewise in their Planning Permissions the night-time is stated as being 8pm to 8am, and night-time noise levels are to be observed within these hours (35db as per the conditions of their Planning Permissions). Have the Agency the legal right to alter Planning Conditions ?

Condition 1 – Scope of the Licence

1.4 How will the Agency ensure that the Licensee adheres to the non use of noise generating mobile plant and equipment outside the restricted hours. How are we to determine what has been agreed by the Agency. The statement "unless otherwise agreed by the Agency" is wide open.

1.6 How will the Agency ensure that the maximum quantities and other constraints listed in *Schedule A: Waste Types & Quantities*, of this licence are not exceeded and breached.

1.7 **Non-compliance** - the Agency's power is restricted under this. Why doesn't the Agency set out a penalty for non-compliance – instead of mere notices and warnings and time scales ? This condition in our view inhibits the Agency from taking more severe action.

Condition 2 – Management of the Facility

2.1.1 Facility Manager – what does this mean ?

2.2. Management Structure – Surely details of the Management Structure of the facility should be submitted to the EPA **before** any licence is granted not afterwards.

2.4 Communications Programme

2.4.1 We fail to see this happening and/or how it can work in light of the history of the facility to date and its attitude to the concerns and complaints of the residents over the past number of years and the detrimental impact on our quality of life.

Condition 3 – Facility Infrastructure

3.3 Facility Notice Board

3.3.1 Within what time frame has a Facility Notice Board to be provided.

3.4 Facility Security

3.4.1 Within what time frame has the Licensee to install and maintain stockproof fencing and security gates at all entrances to the facility.

3.11 Odour Control Infrastructure

3.11.1 We note the word **minimise** odour emissions from the facility is used. Surely the Applicant should be required to **eliminate** odour emissions from the facility. The Agency has had 5½ years to consider this Application and the representations and submissions made by ourselves and the residents of this area, and have engaged the services of Odournet UK to assess the affect of the odour emissions from this facility on the environment and we cannot understand why the Agency only expect the licensee to minimise odour emissions and not eliminate them completely. This does not go far enough.

3.11.2 We see the Agency are prepared to wait a further 12 months from the date of the grant of this licence for the licensee to submit a report assessing the effectiveness of the odour control measures implemented at the facility. As the Licensee has already advised the Agency as far back as June 2004 that **most** of the *"measures"* have already been implemented at this facility it would have been appropriate for an independent assessment and report to be carried out before a Propsed Decision issued and certainly such a report should be carried out now immediately. Surely in view of the history of this facility and the Licensee's blatant disregard for the residents of this area the Agency cannot expect to receive a report from the Licensee which will reflect the true situation. The Agency should insist that an independent expert nominated by the Agency is engaged to carry out such an assessment and report immediately. The residents should also be part of such an assessment on the effectiveness of the odour control measures implemented at the facility to ensure that a fair and objective assessment is presented to the Agency. Unless an independent report is furnished and the residents' views are included in such an assessment we believe the Agency will fail in its role. **A report should be commissioned immediately.**

3.11.3 *"Unless otherwise agreed by the Agency"* - what on earth does this mean ? Are the residents not to be included in consultation with the Agency and the Licensee.

(i), (ii) and (iii) We fail to understand why the Agency in light of the history of this facility, the concerns and submissions made by us and the other residents and the Agency's research and use of experts such as Odournet UK over the past 5½ years are not insisting now as part of the proposed licence that the programme of works set out in these paragraphs are not implemented **now** and are apparently prepared to delay yet again and rely on a report on the assessment of odour control measures (which the Licensee states *"we have implemented most of the "Index of Measures")* to be provided by the licensee in 12 months time. As we have stated above the Licensee advised the Agency back in June 2004 that most of the *"Index of Measures"*, have been implemented by the facility. Is it not appropriate now for the Agency to insist that the programme of works set out in paragraphs (i), (ii) and (iii) **commence immediately ?** The Agency must know from their research that the only hope of reducing odour emissions from this facility is for the entire production process to be carried out in fully enclosed buildings and the emissions to be treated and passed through an appropriate abatement system. Has the Agency satisfied themselves that there is an "appropriate abatement system" available or are the Agency assuming there is ? We note also that an "appropriate abatement system" is to be agreed with the Agency – is it correct for the Agency to make this arrangement with the facility operator ? Why haven't the Agency independently commissioned by now the type of abatement system to be used and stipulated it in the Proposed Decision instead of procrastinating and yet again leaving it to the facility operator to decide in **2 years time** ?

The Agency have a responsibility and a statutory duty under the Waste Management Acts 1996 to 2003 to satisfy themselves **before** and not **after** a Licence is issued that the best methods are used to prevent or eliminate or to limit, abate or reduce an emission. Therefore the Agency should assess, specify and stipulate beforehand the methods to be used and not yet again leave it to the Applicant to assess the situation **2 years** after a Licence is granted. If the Agency are unable to do this are the Agency legally entitled to grant a Licence in the first place ?

This facility has given assurances and made promises to us and other residents of this area since 1979. We enclose the following copy letters:-

1. Letter to Sean Byrne's grandmother, Mary Ann Lawlor – 11th September, 1979.
2. Letter to Mr. & Mrs. S.Byrne – 12th August, 1997.
3. Letter to Mr. & Mrs. G.Parry – 12th August, 1997.
4. Letter to Mr. & Mrs.G.Parry – 25th August, 1997.

The Agency will surely have noted the contents of the Forbairt Report dated 14th May, 1997 with expert reports attached from Albert Overstijns.

Now 8 years later a further expert's report (Professor Ralph Noble) provided by the Licensee is being relied on. Are Professor Noble's *Index of Measures"* regarded and used in other EU member states ? If not what are the technologies in place in other EU member states.

This facility have been given grants by Enterprise Ireland and its predecessors, the IDA and Forbairt amounting to over £1.6 millions in various packages since 1980. See copy letter from Enterprise Ireland dated 16th January, 2001. As part of the Industrial Grant Scheme environmental conditions were imposed on the Company and one of the conditions in same number 3.3 . states *"No objectionable odours arising from plant operations shall be detectable beyond the site boundary"*. This Condition is contained in the IDA Industrial Grant Aid Scheme dated 12/4/1988 and in the Forbairt Industrial Grant Scheme dated the 14/9/1994. You may already have on file copies of all the Grant agreements received by the Licensee with conditions attached. If not we feel you should appraise yourselves of the contents of all the Grant agreements and the conditions attached to same particularly where they relate to environmental control requirements.

Promises and assurances have been made for over 26 years and have never been honoured. This facility has a track record of failure to honour agreements. What is going to be different now ? What powers have the Agency to enforce and ensure that they honour any agreements ? Yet again the facility are dictating what odour control measures are to be implemented.

Why haven't the Agency had an independent Noise Survey carried out before the issue of a Proposed Licence to assess the noise nuisance ?

3.15 **Noise Control**

3.15.1 We note you state all air ventilation systems and motors at the facility shall be designed, specified and enclosed as appropriate, so as to minimise noise emissions. What does minimise mean ? How will the vents on top of the tunnels be closed off to prevent noise emitting from them ?

3.15.2 We would suggest that a noise surey be carried out now by the Agency and within one month from the date of grant of a licence by the Licensee, and that recommended measures should be completed within 6 months from the date of the licence.

Condition 4 – Facility Operations

4.5 – **Off-site Disposal and Recovery** – Waste and/or materials sent off site for recovery or disposal should be in fully enclosed trailers/containers.

Condition 5 - Emissions

5.1. - Define "specified emission". As there is no emission limit value set out in Schedule D:- *Emission Limits* of this Proposed Decision for odour how can one measure if odour emissions exceed the emission limit ? Also can the Agency explain what are "emissions of environmental significance" ? This condition is flawed, it is vague and unclear. Surely the Agency can see form the Odour Net UK reports comissioned by them that Odour Net UK proposed a limit value for existing mushroom compost production facilities as C98 -6oue/m3 and even at that they state that odour annoyance would be likely to occur. The Odour Net UK report concludes that mushroom composting odour is similar or (arguably) more offensive than that for pig housing odour. Furthermore, the target and limit values proposed by Odournet UK are proposed as a **starting** point for licensing mushroom compost production sites. The EPA haven't included these limits even as a **finishing** point never mind a **starting** point ??

5.2. – This condition makes no sense at all the Agency are aware that the activities even when and if the Odour Control Infrastructure is implemented in full in 2 years from the grant of the licence will still result in significant impairment of or significant interference with the envrionment beyond the facility boundary (we refer you again to the Odour Net UK report dated the 22/4/02 in relation to Custom Compost Ltd. If a Licence is to issue for Custom Compost it should include conditions that the activities should be carried out in a manner such that no emissions will impair or interfere with the environment beyond the facility boundary. If this criteria can't be met then as stated earlier no Licence should be issued and the Application for such a Licence should be refused. You are aware of our proximity to the facility and we **object** on these grounds to a Licence being granted.

5.3. – This makes no sense as the emissions have not been quantified and no emission limit value has been made in the proposed decision – How can emissions be measured to see if they exceed if there is no emission limit value to measure them against ?

5.5 – Noise Emissions

5.5.2. What does *"low noise emitting plant"* mean ? Explain – *"minimise noise emissions"*. The noise conditions included in the proposed licence are based on the 55/45dB limits. These limits are more suited to a built up area where background noise levels are already elevated. We understand such limits would be typically applied to a facility located in an industrial zone. The 55/45dB limits are not suited to a rural location where background levels are relatively low, and are entirely unsuited to our siutuation as our house is located in a rural area yet adjacent to this facility.

It should be noted that background noise levels (LA90) in this area in the daytime in the absence of Custom Compost emissions were measured at 35dB in March 2003 and 38-39dB in May 2002. Night-time levels are likely to be closer to 30 dB or lower. By applying the 55/45dB limits, the Agency are effectively allowing increases of 20dB by day and at least 10dB by night at our property over background levels. Such increases are excessively high. Many noise standards note that complaints will be likely where increases of 10dB arise.

5.6 – Odour Trigger Levels

5.6.1 – Explain *"trigger levels"*.

Condition 6 – Nuisances

6.1. – We note this condition does not include Noise ?

Condition 7 – Monitoring

7.8.1. – Again we note this condition does not include noise. We can't see how the Agency expect "**subjective**" daily odour assessments carried out by site personnel to reflect the true situation. To date as the Agency and Wexford County Council are aware the Company are in denial as to the existence of odour beyond the site boundary. Such personnel would have to be trained; i.e., trained sniffers. What would the situation be if the Licensee uses someone with no sense of smell. It is well known that men are less sensitive to smell than women; 90% of the employees of the Licensee are men. It is ludicrous for the agency to rely on subjective odour assessments is. A more objective and independent means has to be employed and the Agency have to play a part in this.

Condition 11 – Charges and Financial Provisions

11.2.1. – We cannot understand the reasoning behind this condition – Why should the

Agency wait 12 months from the grant of the Licence for an Independent Third Party Risk Assessment of the facility to be carried out ? If there is a concern this Assessment should be arranged **before** the grant of a Licence. The Agency should find out if there is a problem rather than **assume** there is no problem. If the Licence is granted and in a year's time the facility is found to be unsafe it is questionable if the Applicant/Licensee would be told to close down. Would the Agency have the power to withdraw the Licence?

Schedule C: Process Control

Monitoring (where relevant): - please clarify.

Monitoring for Hydrogen Sulphide and Dimethyl Sulphide – please specify the frequency per day and the intervals when these will be measured.

Schedule D – Emission Limits – No emission limit value is set out for odours why ? Why when this is the biggest concern of all as the Agency are well aware ? Surely this is the most fundamental part of the Proposed Decision and any subsequent Licence ? Was odour not the reason for commissioning reports from independent consultants – Odour Net UK Ltd. ? Are we missing something here ?

D.1 – Noise Emissions – we would question the Agency's right to alter the night-time level as per the Applicant's Planning Permission of 35db to 45db . It should also be stated here that there shall be no clearly audible tonal or impulsive component in the noise emissions from the facility at any noise sensitive location. Please read again our comments at 5.5.2 – Noise Emissions.

Air Borne Microbes – We note there is no mention of a limit or level set out for AirBorne Microbes. We note from Schedule E Monitoring that 4 locations are to be selected for monitoring but there is no mention of an unacceptable level of airborne microbes.

Schedule E – Monitoring
E.l – Monitoring Locations

Table E.1.1. Monitoring locations
Odour– we note no monitoring locations are set out for Odours why not ? Surely monitoring locations for odours should be set out ??

We fail to see how the Agency can grant a Licence when they know there will still be a significant impairment of or significant interference with the environment beyond the facility boundary. The Licensee himself has stated in his letter to the Agency of the 15/10/02 that the "recommended technology will not bring us down to 6 odour Units at the boundary". Why has an Emission Limit for odour not been included in Schedule D of

the proposed decision to which we refer.
Why isn't a limit set as recommended in the Odour Net UK Reports dated the 22/4/02 and 28/7/02 ? We note in the Licensee's letter of the 15/10/02 it is stated that "the EPA has indicated that it has a legislative problem and **must** write a 6 Odour unit Limit into our Licence". Why therefore is this limit not written into the aforementioned Proposed Decision ?

Could it be that an Emission Limit value has not been written in because it may be contravened and if a licence were to include this emission limit value and it were to be contravened; should a licence have issued in the first place (see Section 40.4.(a) of the Waste Management Act 1996) ? Therefore would a Licence with this emission limit value in it if contravened, be void ?

E.2 Dust

Table E.2.1 – Monitoring, Frequency, Parameters and Technique
Odour – Daily (frequency per day and intervals should be stipulated) – method – see our comments at **7.8.1** a more independent method of monitoring odour on a daily basis must be implemented.

E.3 Airborne Microbes
Table E.3.1 Airborne Micro-Organism Monitoring
It is not sufficient for monitoring to only take place on an annual basis, at the very least it should be bi-annual. We believe the Agency have not taken our concerns seriously regarding the potential health implications of spores and airborne micro-organisms released from the process. The Agency have failed despite requests from us and the other residents to follow up matters on health and disease concerns, nor have they employed the South Eastern Health Board or other independent association on an agency basis to investigate the health concerns and effects that the emissions from the facility are having on us.

E.4 Noise
Table E.4.1 Noise Monitoring

Noise Monitoring should be carried out 3 times per year at least.

In summary we believe the Agency are not acting in the best interests of the environment and the Proposed Decision on this facility is inadequate. The cost to the composting industry is being put before humans and the environment and no value is being placed on humans and the environment.

Certainly the EPA are not living up to their "*vision*".

Please take our objections, observations, concerns and legal submission into account prior to the issuing of any Waste Licence. We await hearing from you with a date for the Oral hearing.

We support the objection/s submitted to the Agency by the other reisdents of this area.

Yours faithfully,

Noeleen Byrne & Sean Byrne

Noonan Linehan Carroll Coffey

SOLICITORS
54 North Main Street
Cork
Ireland

Telephone 021 4270518
Fax 021 4274347
Email info@nlcc.ie

Addressee

Office of Licensing & Guidance,
Environmental Protection Agency,
P.O. Box 3000,
Johnstown Castle Estate,
Co. Wexford.

10 May 2005
Our Ref. 23508-00/JN/JMcC
Your Ref. 123-1

RE: Our Clients: Sean & Noeleen Byrne
Waste Licence Register No. 123-1 - Proposed Decision
Proposed Licensee: Custom Compost Limited
Location of Facility: Ballyminaun Hill, Gorey, Co. Wexford

Dear Sirs,

We act for and on behalf of Sean & Noeleen Byrne, of Ballyminaun Hill, Gorey, Co. Wexford. Our clients' family home is directly bounded by this Proposed Licensee's compost manufacturing plant.

We wish to make the following legal submission, which is to be read with and form part of the formal objection of our clients to the Proposed Decision of the Environmental Protection Agency, Register No. 123-1, concerning Custom Compost Limited and their facility at Ballyminaun Hill, Gorey, Co. Wexford. Please note further our clients' request for an oral hearing of the objection, under Section 42(9) of the Waste Management Acts 1996 to 2003.

1) Environmental Pollution:

Environmental pollution is broadly defined in s.4(2) of the EPA Act 1992 (as amended) as:-

6.—The following section is substituted for section 4 of the Act of 1992:

''4. Environmental protection, environmental pollution, environmental medium and environmental quality standard.

....

(2) In this Act 'environmental pollution' means the direct or indirect introduction to an environmental medium, as a result of human activity, of substances, heat or noise which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment, and includes—

(a) 'air pollution' for the purposes of the Air Pollution Act 1987,

(b) the condition of waters after the entry of polluting matter within the meaning of the Local Government (Water Pollution) Act 1977,

(c) in relation to waste, the holding, transport, recovery or disposal of waste in a manner which would, to a significant extent, endanger human health or harm the environment and, in particular—

(i) create a risk to the atmosphere, waters, land, plants or animals,

(ii) create a nuisance through noise, odours or litter, or

(iii) adversely affect the countryside or places of special interest,

(d) noise which is a nuisance, or would endanger human health or damage property or harm the environment.

With reference to Section 40(4) of the Waste Management Acts 1996 to 2003, it is noted that the Agency cannot grant a Licence unless it is satisfied that "no significant

environmental pollution" can occur. Indeed, the introduction to the Proposed Decision states that "this Proposed Licensee must manage and operate the facility to ensure that the activities do not cause environmental pollution". This is a mandatory requirement and is not, in our opinion, satisfied by the terms of the Proposed Decision. Our reasons for this view are elaborated below.

2) Principles of Natural Justice:

We would refer to the following conditions of this Proposed Decision with are all prefaced by the
following qualification: "unless otherwise agreed by the Agency":

(a) Condition 3.11.1.(iv);
(b) Condition 3.11.3;
(c) Condition 3.15.1;
(d) Condition 4.5.4.

We would respectfully submit that there is serious structural unfairness in the use of this term which
implies bias in favour of the Proposed Licensee, and which contravenes the principles of Natural Justice
to which our clients are entitled. In addition, it allows the Proposed Licensee the facility to determine the terms of their own licence, after the licence has issued. The effect of this term is to exclude our clients, and indeed all others concerned, from the process by which the actual operating parameters are set. That exclusion is unlawful.

3) Full Disclosure:

We refer to the Letter of 14 December 2004 from the Director of the Agency, Dr. Mary Kelly, to our clients. In this letter, Dr. Kelly raised the issue of the Agency having held private consultations with both the Proposed Licensee, and the Compost Manufacturing Sector. In response to this letter, we requested access to information other than the material on the public file, and in particular, access to notes of any discussions between the Agency and the Proposed Licensee, and with the composting sector. We have yet to

receive a satisfactory response to our queries. In the absence of a suitable reply, our clients' rights to be aware of what material the EPA is taking into account, and to comment on that material, have been denied.

In addition, Dr. Kelly referred to the advice of a "leading independent expert". Previously, in a letter to
our clients of the 08 September 2004, Patrick J. Nolan, Programme Manager of the Agency's Office of
Licensing & Guidance, admitted that a report of Professor Ralph Noble was submitted to the Agency
during its discussions with the composting sector.

Mr. Nolan, in a letter to us on 22 December 2004, acknowledged that the "leading independent expert" to whom Dr. Kelly referred was indeed Professor Noble. Mr. Nolan also furnished a letter, sent to the Agency by the Proposed Licensee on 22 July 2004, submitting a report from Professor Noble, entitled "An Index of Measures for the Reduction of Odours from Mushroom Composting Sites in Ireland".

Dr. Kelly's letter also appeared to suggest that the terms of the Proposed Decision had already been formulated at that date, based on Professor Noble's report.

Given this information, and being aware that Professor Noble has over a number of years undertaken work for and acted as advisor to the Proposed Licensee, (including giving evidence on behalf of the Proposed Licensee in a court action at Wexford Circuit Court in April 2004), it is of grave concern to our clients that the Agency can claim that Professor Noble was a "leading independent expert" and for the Agency to appear to give primary importance to his report in the formulation of this Proposed Decision. Our criticism here is not of Professor Noble but of the Agency for the reason outlined.

It is, we would submit, in breach of fair procedures to which our clients are entitled, given their statutory entitlements to access to all documents considered by the Agency in the formulation of a Licence. Dr. Kelly's letter of 14 December 2004 referred to documents which were not available to our clients.

4) Emissions beyond the facility boundary:

With reference to Condition 5.2 of the Proposed Decision, we note that the Proposed Licensee is required to ensure that "emissions do not result in significant impairment of, or significant interference with the environment beyond the facility boundary".

This, we would submit, is insufficient and fails to meet the test laid down in Section 40(4). There is no justification for departing from the norm, which is to require that there should be no odour beyond the facility boundary. That has the extra merit of simplicity and avoids the potential uncertainty attaching to the multi-qualified term "significant impairment of, or significant interference with the environment".

Similarly Condition 5.5 speaks of there being no "clearly audible tonal or impulsive component in the noise emissions from the facility at any noise sensitive location". Unfortunately the Proposed Decision does not define a "noise sensitive location". It should be defined to include our clients' home so there can be no room for argument by the Proposed Licensee. Vagueness is potentially fatal to effective enforcement. The recent judgment of the High Court in *Dundalk Town Council v Bill Lawlor* is particularly relevant in this context.

5) Implications of the EPA's Recent Prosecution of Waterford Crystal Limited:

We refer to Condition 1.7.4 and to Condition 4.1.9 of the Proposed Decision.

We note the recent prosecution taken by the Agency against Waterford Crystal Limited, part of Waterford Wedgewood plc, on 01 April 2005 in Waterford District Court. This prosecution led to the conviction of Waterford Crystal Limited on a charge under Sections 8 and 84(2) of the Environmental Protection Agency Acts, 1992 and 2003, after the company had breached conditions of its Integrated Pollution Control (IPC) Licence, namely sending waste off-site to disposal/recovery facilities, without the prior written agreement of the Agency. The District Court heard in evidence that during the period from February 2004 to July 2004, 2,538 tonnes of gypsum waste from the effluent treatment plant of Waterford Crystal was sent to unauthorised outlets, of which 2,159 tonnes went to mushroom composters in Ireland and in the UK.

It was noted that one of the recipients of this waste, including gypsum waste, was Walsh Mushrooms, part of the Walsh Group of companies, and a sister company of the Proposed Licensee. It is further noted that the Agency classified this gypsum waste as hazardous (EWC 101119 – solid wastes from on-site effluent treatment containing dangerous substances), and that the Agency does not agree to the use of mushroom composters as an outlet for gypsum waste. It has not yet been possible for our clients to identify exactly to which location in the Walsh Group this disposed-of waste was delivered but we are confident that same is within the knowledge of the Agency. We note in any event that the Proposed Licensee is a primary compost manufacturing facility in the Walsh Group in close proximity to Waterford Crystal's own manufacturing facilities.

In light of this prosecution our clients must ask whether in the Agency's opinion the Proposed Licensee a "fit and proper person", as defined by Section 40 of Waste Management Acts 1996 to 2003. What inquiries has the Agency undertaken to satisfy itself that the Proposed Licensee is a fit and proper person, as therein defined? We would regard it as imperative that the Agency explain and demonstrate to us the basis for its conclusion (which we infer that it has made given the issue of the PD) that the Proposed Licensee is indeed a fit and proper person.

Further, we would request details of the test results on the potential Lead content in the gypsum used by the Proposed Licensee, given that it is a vital component of the said Proposed Licensee's manufacturing process.

6) Pending Prosecution of the Proposed Licensee RE Noise Emissions:

With reference to Condition 5.5 of the Proposed Decision, it should be noted that a prosecution of the Proposed Licensee is currently pending in Gorey District Court on charges relating to Noise Emissions. This prosecution is at the suit of Wexford County Council. This action has been listed in Gorey District Court since 2003 but appears to have been repeatedly adjourned by Solicitors for the County Council, with no satisfactory explanation forthcoming to our clients. Our clients have made themselves available as witnesses and have indicated on several occasions their anxiety to have the matter heard before the District Court.

We would submit that it would be unwise and premature of the Agency to issue a Licence to the Proposed Licensee in advance of this prosecution being determined by the District Court, as it would prejudice our clients' right to rely on the provisions of Section 40 of Waste Management Acts 1996 to 2003, should the Proposed Licensee be convicted of Noise Pollution by the said court. Such a conviction would disqualify the Proposed Licensee as a "fit and proper person" under Section 40 of the said Acts. As such, the judgment of the District Court in this action is both required and necessitated prior to any issuance of a licence.

7) Right to respect for Private and Family life and their Homes, Bodily Integrity and Life:

We would submit that the terms of the Proposed Decision infringe our clients' rights under the European
Convention of Human Rights and/or the Constitution, in particular our clients' rights to respect for their
private and family life and their homes, bodily integrity and life.

Article 2 of the Convention provides that everyone's right to life shall be protected by law, while Article 8 provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others."

In the case of *Lopez Ostra v. Spain* (1995) 20 EHRR 277, the European Court of Human Rights held that there had been a breach of the applicant's rights under Article 8. Here, the applicant lived in an area with a heavy concentration of leather industries, including a plant for the treatment of waste, which released fumes and smells which caused health difficulties for local people. The applicant claimed that the emissions had made her

family's living conditions unbearable and had caused them serious health problems, thereby violating her rights to respect for her private life.

The Court agreed, indicating that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without seriously endangering their health. It continued:

"Whether the question is analysed in terms of a positive duty on the State- to take reasonable and appropriate measures to secure the applicant's rights under Article 8(1), as the applicant wishes in her case, or in terms of an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts, regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in any case the State enjoys a certain margin of appreciation."

The Court considered that the State had failed to take appropriate steps to protect the applicant's rights and had thereby failed to succeed in striking a fair balance as between her interests and the interest of the town's economic well-being.

Similarly, in the case of *Guerra v. Italy* (1996) 26 EHRR 357, the Court found a breach of Article 8, in circumstances where the applicants complained of pollution due to toxic emissions from an agri-chemical plant located one mile from the town where they lived. The applicants contended that the failure by the State authorities to provide them with necessary information as to the risks from the factory and how to proceed in the event of a major accident infringed their right to respect for their private and family life and their right to life.

In its judgment, the Court emphasised again that there may be positive obligations inherent in effective respect for private or family life and considered Article 8 to be applicable given the direct effect of the of the toxic emissions on the applicants' rights. The State's failure, over a significant period of time, to provide the applicants with essential information as to the risks which they might run if they continued to live in close proximity to the factory, amounted to a failure to fulfil this obligation, in breach of Article 8. In the circumstances, the Court did not consider it necessary to consider whether there had been a breach of Article 2.

The Agency will of course be aware of its own particular obligations in this regard by virtue inter alia of the European Convention on Human Rights Act 2003

Conclusion:

Please note that our clients have suffered, and continue to suffer severely as a result of the Proposed Licensee's operations. Against that background, it is particularly disturbing that it has taken from 1999 to 2005 to reach the PD stage with this application. Regrettably it seems inevitable that further time will pass before this operation is either refused a licence or issued with a licence on terms which ensure respect for our clients' and their children's rights.

Yours faithfully,

Joe Noonan,
NOONAN LINEHAN CARROLL COFFEY

J. V. LOMBARD & CO.
SOLICITORS

GARRETT P. LOMBARD

DUBLIN OFFICE:
27 UPR. ORMOND QUAY

Telephone: (055) 21324.

Charlotte Row,
Gorey,
Co. Wexford.

GL/GR.

11th September, 1979.

Mary Anne Lawlor,
Ballyminaun Hill,
Gorey,
CO. WEXFORD.

re:- Custom Compost Limited.

Dear Sir,

We act for Mr. Pat. Walsh and Custom Compost Limited. Our clients inform us that you have expressed concern about the development which Custom Compost are carrying out adjacent to your property. We would inform you that the Planning Authority have laid down very stringent Health Controls and Environmental protection measures which our clients will fully comply with. There will therefore be no danger of any health hazard or other threat to hygiene in the area.

Yours faithfully,

J. V. Lombard & Co.

CUSTOM COMPOST LTD.

BALLYMINAUN HILL, GOREY, CO. WEXFORD, IRELAND.

Tel: 055-21777. Fax: 055-21059

12th August 1997

Mr. & Mrs. S. Byrne,
Ballyminaun Hill,
Gorey

Re: Indoor Compost Plant

Dear Sean/Noleen,

Firstly, we would like to sincerely thank those of you who did not object to our Planning Application, and those of you who withdrew your objection when we explained that what we were proposing to build would substantially resolve the smell problem.

As you may know, we got Planning Approval from Wexford County Council in July and were ready to start this week. Unfortunately, at the last moment, an Appeal was lodged to An Bord Pleanala on behalf of a committee called "Concerned Residents".

We understand that the Appeals procedure of An Bord Pleanala takes four months so it is with regret that we have to advise you that a resolution to the problem will run well into next year at least, depending on the outcome.

Hopefully we will get permission to go ahead, so, to avoid mucking up the roads for everyone in mid Winter, we propose to clear the site immediately of spoil from the last development.

It may be of interest to those of you who withdrew your objection to the original Planning Application to learn that your signatures were again submitted with the Appeal to An Bord Pleanala. No mention was made that you subsequently withdrew your objection.

In keeping with our promise to keep people advised, and in anticipation of delays, we are also going to immediately submit a Planning Application for future development into the foreseeable future. This will be mainly to facilitate the change over in our business from Phase 2 to Phase 3 compost.

Again, we would like to thank you for your support and understanding, and regret we are not being allowed go ahead with our proposal to minimise the smell.

Yours sincerely,

P. A. Walsh

WALSH MUSHROOMS

CUSTOM COMPOST LTD.

BALLYMINAUN HILL, GOREY, CO. WEXFORD, IRELAND.

Tel: 055-21777. Fax: 055-21059

12th August 1997

Mr. & Mrs. G. Parry,
Ballycale,
Gorey

Re: Indoor Compost Plant

Dear Graham/Kathleen,

Firstly, we would like to sincerely thank those of you who did not object to our Planning Application, and those of you who withdrew your objection when we explained that what we were proposing to build would substantially resolve the smell problem.

As you may know, we got Planning Approval from Wexford County Council in July and were ready to start this week. Unfortunately, at the last moment, an Appeal was lodged to An Bord Pleanala on behalf of a committee called "Concerned Residents".

We understand that the Appeals procedure of An Bord Pleanala takes four months so it is with regret that we have to advise you that a resolution to the problem will run well into next year at least, depending on the outcome.

Hopefully we will get permission to go ahead, so, to avoid mucking up the roads for everyone in mid Winter, we propose to clear the site immediately of spoil from the last development.

It may be of interest to those of you who withdrew your objection to the original Planning Application to learn that your signatures were again submitted with the Appeal to An Bord Pleanala. No mention was made that you subsequently withdrew your objection.

In keeping with our promise to keep people advised, and in anticipation of delays, we are also going to immediately submit a Planning Application for future development into the foreseeable future. This will be mainly to facilitate the change over in our business from Phase 2 to Phase 3 compost.

Again, we would like to thank you for your support and understanding, and regret we are not being allowed go ahead with our proposal to minimise the smell.

Yours sincerely,

P. A. Walsh

WALSH MUSHROOMS

CUSTOM COMPOST LTD.

BALLYMINAUN HILL, GOREY, CO. WEXFORD, IRELAND.

Tel: 055-21777. Fax: 055-21059

Mr. & Mrs. G. Perry,
Ballycale,
Gorey,
Co. Wexford.

25th August, 1997

Dear Graham and Kathleen,

Thank you for your letter of 18th August, and we appreciate your problem in the recent hot overcast weather.

The reason we are being so cautious about not promising to eliminate smell is, as you have correctly observed, that weather plays a huge part with this problem. In totally overcast conditions, with no air rising, even a household fire or septic tank can cause a significant smell, as I am sure you are aware. Therefore it is impossible for us to say how often in a week, or for how long, there will be a smell.

What we can say is when the indoor plant comes into use there should be virtually no smell by night or when we are not working, except in very overcast conditions when what little smell there is will not rise. There will be some smell during working hours but only a fraction of what is there presently, and again this might not be noticeable at all except in overcast conditions.

To explain the various stages:

Phase I

This is the decomposition of the raw materials into compost which has traditionally been done outdoors and this goes sour or anaerobic and causes the offensive smell. Our proposal is to have all of this process either aerobic or indoors, and hence substantially reduce the smell.

Phase II

Is the pasteurising and conditioning of the compost which we have been doing in the curved plastic tunnels. Shortly after the Phase I compost is filled into the Phase II tunnels and the fans started up there is no longer a smell.

4

Phase III

Is a new stage of growing the spawn in the compost which we do in the new building which was built last year. There is no smell associated with this phase.

Our new Planning Application is to replace the old Phase II with a new Phase II block, and then extend the new Phase III where the old Phase II was. We see that being a development over several years as our business gradually transfers from Phase II to Phase III.

If you would like to look around and see the various stages I will be happy to show you.

Yours sincerely,

P. A. WALSH

5.

ENTERPRISE IRELAND

Wilton Park House
Wilton Place
Dublin 2 Ireland

Ms Angela Kinane
Noonan Linehan Carroll Coffey
Solicitors
54 North Main Street
Cork

18 JAN 2001

16th January 2001

Re: Sean and Noleen Byrne, Ballyminaun, Gorey, Co Wexford

Your ref: 23508-00/AK/AR

Dear Ms Kinane,

Thank for your letter of 20th November and 12th December 2000.

As discussed, it is not our practice to issue copies of grant agreements relating to specific clients. The following information may be helpful, however:

- Enterprise Ireland and its predecessors, the Industrial Development Authority and Forbairt, have paid grant assistance amounting to over £1.6 millions Custom Compost Ltd in Ballyminaun in various packages since 1980.
- The standard grant agreements for all of the programmes that involve payment of sums in excess of £15,000, include a clause requiring clients to comply with legislative requirements including environmental control requirements.
- Grants towards the cost of employing additional staff and towards the cost of acquiring new capital assets require clearance by our Environmental Services Division in Glasnevin before they can be paid.
- Enterprise Ireland's Environmental Services Department is available to assist any client company to deal with environmental issues that arise. The Head of that Department is Mr Emmet McMahon (telephone 01-808 2618).

I have advised the relevant colleagues in EI of your client's concern about the matter so that they can take them into account in any further dealings with the company.

Yours sincerely,

Brendan Martin
Manager, Legal and Client Services

Tel: +353 (0)1 807 0000 / 808 2000
Fax: +353 (0)1 808 2802
Web: www.enterprise-ireland.com