



Ballaghveny Waste Licence Review 78-2

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12/10/05

Dear Inspector,

Please find attached a copy of the letter that was sent by North Tipperary County Council to An Bord Pleanála for your information

Best regards,
Siobhan Aherne

Dublin | Belfast | Cork | Galway | Limerick | Carlow | Letterkenny

RPS Consulting Engineers Ltd (formerly M.C. O'Sullivan & Co. Ltd. and Kirk McClure Morton)

Consulting Engineers

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78-2

**An Bord Pleánala,
64 Marlborough St,
Dublin 1.**

3rd October 2005

Re: Ballaghveny Waste Licence Review – 78-2

Dear Sir,

North Tipperary County Council submitted an application to the EPA in March 2004 for a review of the Ballaghveny Landfill Waste Licence 78-1.

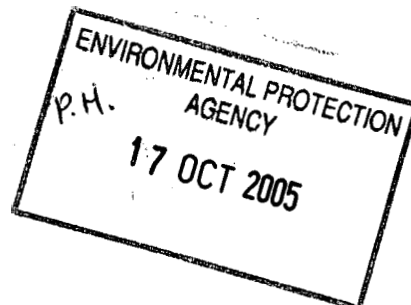
The Agency has requested a letter of confirmation from An Bord "clarifying whether approval under the Planning & Development Act 2000 as amended and/or an Environmental Impact Statement is required for the proposed changes to the facility including annual intake of waste".

The Council wishes to make the attached submission to the Bord in relation to the matter and requests a direction from the Bord in accordance with Section 5 of the Planning & Development Act 2000.

North Tipperary County Council would appreciate if the Bord would adjudicate on the matter at its earliest convenience.

Yours sincerely

Karl Cashen
Director of Environment and Emergency Services



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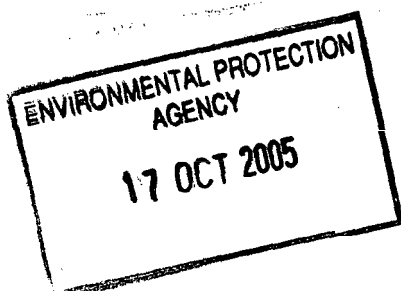
BALLAGHVENY LANDFILL LICENCE REVIEW

78-2

**REQUEST FOR DIRECTION FROM
AN BORD PLEANALA
AS TO WHETHER APPROVAL UNDER THE
PLANNING & DEVELOPMENT ACT 2000
OR AN ENVIRONMENTAL IMPACT STATEMENT
IS REQUIRED FOR DEVELOPMENT PROPOSED
UNDER WASTE LICENCE REVIEW**

**PREPARED BY NORTH TIPPERARY COUNTY COUNCIL
CIVIC OFFICES, NENAGH,
Co. TIPPERARY.**

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OCTOBER 2005

Ballaghveny Landfill Waste Licence Review 78-2

1. Introduction

Ballaghveny Landfill is an existing facility for the disposal of non-hazardous municipal solid waste in North Tipperary. It is the only municipal landfill in the County and is located approx. 15k north east of Nenagh.

The site incorporates a total land area of approx. 40ha with 10ha or thereabouts of the site being utilised for the landfilling of municipal waste. Five landfill cells were in operation in Ballaghveny before the introduction of the Waste Management Act 1996 and six additional engineered cells have since been constructed and operated in accordance with Waste Licence 78-1 granted to North Tipperary County Council in May 2001 by the EPA.

North Tipperary County Council made application to the **EPA** in September 1998 for a waste licence for Ballaghveny Landfill in accordance with the requirements of the Waste Management Act 1996. The annual waste tonnage to be landfilled exceeded 25,000 tonne and in accordance with the legal requirements in force at that time an EIS was prepared for the development.

The site is located in a lightly populated area adjacent to Woodville House which is in the ownership of North Tipperary County Council. Surrounding lands consists of open fields surrounded by forestry and agriculture is the principal land use with pig farming, and dairying as the main activities. The landfill is constructed in accordance with the principles of BATNEEC and is operated and managed in accordance with the conditions set down in the Waste Licence 78-1.

Condition 8.2 of the Waste Licence required that “unless otherwise agreed with the Agency the final post settlement height of the facility shall not exceed 114m OD at any location”.

This was the post settlement height proposed by the Council in the licence application submitted in 1998. Ballaghveny Landfill however was the only working municipal landfill in the County and before the waste licence was granted in 2001 the maximum height of the landfill, in operating cells 3, 4, 5, had increased to 120m OD or thereabouts and before the Council had obtained EPA consent to enter newly constructed cells 6, 7 and 8. The Authority could have resumed filling in the older landfill cell 1 & 2 to remain within the 114m OD level for some time. However, this was considered to be unsatisfactory as cells 1 & 2 were unlined whereas cells 3, 4 and 5 have an engineered liner in place.

The Council submitted a detailed report to the **EPA** in July 03 requesting the Agency’s agreement to increase the post settlement height of the landfill from 114m OD, as conditioned in 8.2 of the licence, to 120m OD. The Agency however, following consideration, required that the matter would be processed by way of a formal Waste Licence Review application as provided for under Art 12 (3) (d) of the Waste Management (Licensing) Regulations 2000.

The Council submitted the waste licence review application to the EPA in March 2004 and the following licence conditions were also included for modification.

i) 5.12.4. **“From 1st Jan 2004 only treated sludge shall be accepted at the facility”**.

Infrastructural works required to facilitate the treatment of municipal sludge had not been put in place by the Council and an extension to 1st July 2005 for the acceptance of untreated sludge at the landfill was requested to enable the necessary infrastructure to be provided.

ii) 5.17.2 **“The recovery of construction and demolition waste”**.

Schedule 6 – Waste Acceptance of the Waste Licence provided for the acceptance of 37,000 tonnes of waste per annum at the facility including 1,500 tonnes of C&D waste for disposal. The Council sought to accept an additional 10,000 tonnes per annum of C & D waste for recovery at the facility to meet the requirements of the Waste Management Plan for the Midlands Region 2000.

North Tipperary County Council and its Consultants RPS-MCOS did not consider that approval under the Planning and Development Act 2000 or an EIS was required for the amendments to the waste licence conditions and the review application was not therefore accompanied by an EIS. However, detailed documentation and reports were provided with the application and also in response to Article 14 and Article 12 notices from the Agency, during the application validation process, include the following:-

- a) “Visual Impact Assessment” - Mitchell & Associates, Landscape Architects
- b) “Restoration and Aftercare Plan” – RPS-MCOS.

The Agency however has requested the Authority to provide a letter of confirmation from An Bord Pleanála clarifying whether approval under the Planning and Development Act 2000 as amended and/or an Environmental Impact Statement was required for the proposed changes to the facility licence including annual intake of waste.

The EPA has however required that the Authority refer the matter to the Board for direction and it is for this purpose that the following submission is made.

2. Ballaghveny Licence Review

2.1

The EPA requested North Tipperary County Council by letter of the 19th May 2005, to provide a letter of confirmation from **An Bord Pleanála** “clarifying whether approval under the Planning & Development Act 2000 as amended **and/or** an Environmental Impact Statement is required for the proposed changes to the facility including annual intake of waste”. The Council wrote to the Agency on the 15th July setting out the reasons why it considered the matter could be determined by the EPA without reference to the Bord. However, the Agency indicated that “Section 175 of the Planning and Development Act 2000 requires the preparation **of** an Environmental Impact Statement for certain local authority developments to be submitted to the Board for approval”.

2.2 Planning & Development Act 2000

Section 179 of the Planning & Development Act 2000 regulates local authority own development and developments prescribed by the Minister must comply with the Section and any regulations under the Section.

Article SO(1) of the Planning and Development Regulations 2001 sets out development which is prescribed for the purposes of Section 179 of Act and subsection (h) includes “the use of land or the construction or erection **of** any installation or facility, for the disposal of waste not being -:

(i) development which comprises or is for the purpose of an activity in relation to which a waste licence is required.

It is submitted that as the development proposed by North Tipperary County Council is subject to a waste licence the development is not a prescribed development under Part 8 of the Planning & Development Regulations 2001 and does not therefore require approval under Section 179 of the Planning & Development Act 2000.

2.3 Planning & Development Regulations 2001

The Planning and Development Regulations 2001, Part X prescribes classes of development requiring an EIS in accordance with Section 176 of Act.

Schedule 5, Part 2, 11(b) specifies that annual waste tonnage greater than 25,000 tonne requires an EIS.

The partial licence review submitted by North Tipperary Co.Co. to the EPA in respect of the Ballaghveny landfill waste licence requests the following licence condition changes/modifications -:

a) *Condition 5.12.3 - it is proposed to amend condition 5.12.3 of the current licence regarding the period for the acceptance of untreated sludge at the facility from the 1st Jan 2004, as specified in the current licence, to the 1st July 2005*

b) Condition 5.17.2 - it is proposed to accept an additional 10,000 tonnes per annum of C&D waste for recovery at the facility in accordance with the requirements of the Midlands Region Waste Management Plan 2001.

c) Condition 8.2 – it is proposed to increase the maximum post settlement height of the landfill from 114m OD to 120m OD.

2.4

It is submitted that the waste licence changes/modifications proposed in the Council's partial licence review application to the EPA does not involve an exceedance of the 25,000 tonnes p.a. threshold set down in **Schedule 5, Part 2, 11 (b)** of the Planning and Development Regulations 2001 and the development proposed therefore, it is submitted, comes within Article 120 of the P & D Reg 2001 – Sub-threshold EIS.

Schedule 5, part 2(13) (a) (ii) of the P & D Reg. 2001 sets out the requirements for an EIS where changes or extensions of development are involved.

It states

(a) any change or extension of development which would

(ii) result in an increase in size greater than

- 25% or
- an amount equal to 50% of the appropriate threshold which ever is the greater would require an EIS.

The current Ballaghveny Waste Licence permits the acceptance of 37,000 tonnes of waste per annum at the facility while the threshold set down in **Schedule 5, Part 2 11(b)** for installations for the disposal of waste is 25,000 tonnes per annum. Calculations of the 25% and 50% respectively permissible size increase set down in 13(a) (ii) results as follows

- a) 25% size increase (25% of 37,000 tonne) = 9,250 tonne pa
- b) 50% of appropriate threshold (50% of 25,000 tonne) = 12,500 tonne p.a.

The proposal to accept an additional 10,000 tonnes per annum of C & D waste for recovery is therefore not greater than the limits outlined in **Schedule 5, part 2(13)(a) (ii)** as set out above. It is submitted therefore that the changes proposed in the waste quantity accepted in the Ballaghveny partial Licence Review Application are in the category of sub-threshold EIS development.

2.5

The change proposed under condition 5.12.3 to extend the duration for the acceptance of untreated sludge at the facility is time-based and the original condition is not based on any planning principles but on the requirements to reduce the level of biodegradable waste disposed to landfill. It is submitted therefore that the proposed change in the condition does not require an EIS or approve under the Planning & Development Act 2000.

2.6

The change proposed, under condition **8.2**, in relation to the maximum permitted post settlement height of the landfill, it is submitted, is non-material and does not constitute a material change to the overall nature or extent of the operation of the landfill facility. The licence condition provided that ***“the post settlement height & the landfill would not exceed 114m OD unless otherwise agreed with the Agency”*** which it is submitted gives the Agency discretion in relation to the matter of final landfill height.

Article 7 (development under other enactments) of the Planning and Development Regulations 2001 provides that work ***“for the purpose & giving effect to a condition attached to a licence or revised licence granted by the Environment Protection Agency under Part V & the said Act, shall be exempted development”***. It is submitted therefore that the power to change or modify the final post settlement height of the landfill rests with matter for the Agency

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2.7 Sub-threshold Development

Section 120(1) of the Planning and Development Regulations 2001 requires a local authority, where it considers that the development would be likely to have significant effects on the environment, to prepare an **EIS** in respect thereof. The process of deciding whether “significant effects on the environment” are expected is informed by the criteria set out in Schedule 7 to the Planning and Development Regulations as set out below. The evidence submitted in the original waste licence application for Ballaghveny Landfill and in the **EIS** provided with the application indicated that the local environment is composed of agricultural land with no archaeological or historic features.

<p>Schedule 7 Planning & Development Regulations 2001 Criteria for determining whether development would or would not be likely to have significant effect on the Environment.</p>
<p>1. The characteristics of proposed development, in particular</p>
<ul style="list-style-type: none"> • the size of the proposed development, • the cumulation with other proposed development, • the use of natural resources • the production of waste • pollution and nuisances • the risk of accidents, having regard to substances or technologies used
<p>2. Location of proposed development The environmental sensitivity of geographical areas likely to be affected by proposed development, having regard in particular to:</p>
<ul style="list-style-type: none"> • the existing land use, • the relative abundance, quality and regenerative capacity of natural resources in the area, • the absorption capacity of the natural environment, paying particular attention to the following areas:
<ul style="list-style-type: none"> (a) wetlands, (b) coastal zones, (c) mountain and forest areas, (d) nature reserves and parks, (e) areas classified or protected under legislation, including special protection areas designated pursuant to Directives 79/409/EEC and 92/43/EEC, (f) areas in which the environmental quality standards laid down in legislation of the EU have already been exceeded, (g) densely populated areas, (h) landscapes of historical, cultural or archaeological significance.
<p>3. Characteristics of potential impacts</p>
<p>The potential significant effects of proposed development in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to:</p> <ul style="list-style-type: none"> - the extent of the impact (geographical area and size of the affected population), the transfrontier nature of the impact, -the magnitude and complexity of the impact, the probability of the impact, the duration, frequency and reversibility of the impact.

The following table considers each of the criteria listed in Schedule 7 of the Planning and Development Regulations 2001.

Criterion	Comment
Size	The increase in C & D waste delivered to the site for recovery is not significant and can be accommodated on the access roads servicing the development.
Cumulation with other proposed development	There is no other proposed development. There is no significant effect because of cumulation. Adjacent lands are in agricultural use with a number of one off houses. The management of the facility within the terms of the waste licence ensures that the development does not impact negatively on adjacent developments.
Use of Natural Resources	Land will be taken from agriculture on a temporary basis and can be returned to its former use (grazing) after a few years. There is no significant use of natural resources.
The Production of Waste	The landfill will not produce waste. The landfill is for the disposal of waste. There is not significant effect on the environment because of the production of waste.
Pollution and Nuisance	The potential nuisances arising from landfill sites are well documented and will be controlled, as at present, by proper landfill management. The proposed increase in C & D waste recovered of the site will not have a significant effect on the environment with respect to nuisance.
Risk of Accidents having regard to substances or technologies used	There will be no substances used that would give rise to accident. The technologies used for landfilling will be as at present. The proposed amendments to the landfill is not likely to have any significant effect on the environment with respect to accidents.
Location of Wetlands	Not applicable
Location in Coastal Zones	Not applicable
Location in Mountain and Forest Areas	Not applicable
Location in Nature Reserves and Parks	Not applicable
Location in Areas Classified or Protected under Legislation	Not applicable
Location in Areas where Standards have already been exceeded	Not applicable
Location in Densely Populated Areas	Not applicable
Location in	Not applicable

Landscape of Historical, Cultural or Archaeological Significance	
Extent of the Impact	From the point of view of impact on population there will be no significant effect. The local community was consulted before the licence review commenced no objections to the proposals were raised.
The Transfrontier Nature of the Impact	Not applicable
The Magnitude and Complexity of the Impact	There is no significant intensification of use thus the impact of the extension on the environment will be no greater than that from the existing landfill
Probability of the Impact	The site is and will be managed under the control of the waste licence and thus under the control of the EPA. Proper design and management of the site will ensure that there will be no significant impact on the environment as a result of the licence review proposals.
Duration, Frequency and Reversibility of Impact	When filled with waste the landfill will be capped in 2011 or thereabouts such that only a residual impact will remain - the production of landfill gas and leachate both of which will be collected and treated and that impact will diminish over time. It is proposed to restore the landscape for agricultural use namely the grazing of animals.

It is submitted therefore that the proposed changes to Ballaghveny Landfill including the annual intake of waste will not have "significant effects on the environment" taking into account the criteria set out in Schedule 7 of the Planning & Development Regulations 2001.

3. Conclusion

3.1

It is submitted that the licence condition changes requested in the Ballaghveny Waste Licence Review will have little or no impact on the environment or operation of Ballaghveny Landfill. Mitchell & Associates, Landscape Architects, in the Visual Impact Assessment included with the review documentation, concluded that the overall visual impact of the height changes proposed for the Landfill would be not significant and neutral. In landscaping terms a neutral impact is defined as “a change that does not affect the quality of the environment” and a slight impact is defined as “an impact which causes changes in the character of the environment which are not significant or profound”.

The Planning Section of North Tipperary County Council is of the view that the increase in height is non-material and does not constitute a material change to the overall nature or extend of the operation of the facility at Ballaghveny. In any event, there would appear to be no facility in Planning law to retrospectively carry out a part VIII procedure, under the Planning and Development Regulations, to *‘retain a minor variation to finished level of a landfill’*, if such a procedure was required. The variation in the finished height of cells 1-5 from the agreed 114m OD to a new sloping gradient of between 110m OD - 120m OD across these cells did not result in an increase in the overall intake of waste at the facility, and resulted in a more satisfactory solution in view of the higher standard of lining on cells 3-5. It is also considered that any issues relating to visual impact at Ballaghveny Landfill are regulated under the conditions of EPA Waste Licence 78-2 and therefore are a matter for the Agency to determine.

It is submitted therefore that the development proposed in the Ballaghveny Waste Licence Review does not require approval under the Planning and Development Act or an EIS in accordance with Section 175 of the Planning and Development Act and that the EPA should determine the matter in accordance with the Waste Management (Licensing) Regulations 2004.