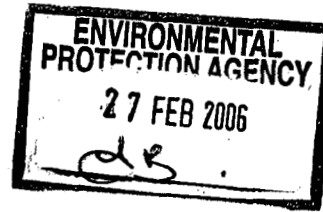


021 (4)



**OBJECTION TO A PROPOSED DECISION ON REVIEW OF
WASTE LICENCE**

Licence Register Number: - W0047-02

Applicant/Licensee:- Neiphin Trading Limited

**Location of Facility:- Kerdiffstown,
Naas,
Co. Kildare**

**Objector details: - Mr. Liam Foley & Mrs. Deirdre Foley
Kerdiffstown,
Sallins,
Naas,
Co. Kildare.**

For inspection purposes only. Copyright owner required for any reuse.

OBJECTION TO A PROPOSED DECISION ON REVIEW OF
WASTE LICENCE

INDEX

Page 3 – 6	Condition 1. SCOPE
Page 7 – 9	Condition 3. INFRASTRUCTURE & OPERATION
Page 10	Condition 5. EMISSIONS
Page 11 – 14	Condition 6. CONTROL & MONITORING
Page 14	Condition 8. MATERIALS HANDLING
Page 15	Condition 10. DECOMMISSIONING & C.R.A.M.P.
Page 16 – 18	CONCLUSION
Page 19	Photograph of curing Area B in relation to our boundary.
Page 20	Photograph of composting tunnels
Page 21	Photograph of Gas Management Infrastructure in relation to our site boundary

CONDITION 1. SCOPE

Subject matter: - 1.6 Waste Acceptance Hours and Hours of operation

1.6.1 “With the exception of emergencies or as may be agreed by the Agency, waste shall be accepted at or despatched from the facility only between the hours of 0800 to 1800 Monday to Friday inclusive and 0800 to 1700 on Saturdays.”

Grounds for objection

We object to this condition of the proposed decision on the grounds that in the Inspectors report on the Licence application to the Directors of the EPA, Dr. J. Derham states that in his opinion the operational hours at the facility are too long “having regard to the proximity of the facility to the L Foley’s and other residences, and the potential nuisance emissions profile for the site.”

Dr. Derham proposes that the operational hours be confined to 0800 to 1800 Monday to Friday and 0800 to 1300 on Saturday. He says “Condition 1 refers”.

This may be a typing error but we have asked for a reduction in the hours of operation and very much appreciate Dr. Derham’s acknowledgement that the long hours of operation may lead to an impact on our enjoyment of our home.

We also feel that the long hours of operation are unnecessary and that the facility should not be open outside normal business hours.

Dr. Derham’s proposed operational hours bring the Licence conditions in line with the Planning Permissions granted.

We also object to the wording of this condition as it restricts the movement of waste only and does not specify that no other plant, equipment or trucks of any kind may gain access to the facility outside of the hours of operation specified in the Licence.

We have recently sent a letter of complaint to the Applicant regarding concrete deliveries outside of hours. On Tuesday 21st February 06 Goode Concrete delivered ten loads of concrete between 06.20am and 07.30am. This is not an isolated incident, nor the earliest incident and has been going on for some time. The Applicant is carrying out specified engineering works of some sort in advance of a final decision in relation to this Licence. The Applicant operates flood lights from an unauthorised building illuminating the site through the night and the children are awake from the time the first concrete truck drives in to the facility. In the past when sub-contractors gained access to the facility and worked into the small hours we have made verbal complaints to the Applicant. We now appreciate that these complaints should have been made in writing and we will not be found wanting in future.

When the gates were opened to allow access to the concrete trucks on Tuesday morning, an A1 Waste lorry (although covered and in line with the regulations) drove up the access road at 06.30 am and parked at the site office until the allotted time. We feel that the gates should not have been opened to allow any traffic at this time. We do not want the EPA to approve of any building work or delivery of plant during night-time hours. This needs to be stated definitively in the condition relating to hours of operation.

1.6.2 “The facility shall be operated (automated continuous processes excepted) only during the hours of 0730 to 2000 Monday to Friday inclusive and 0800 to 1800 on Saturdays.”

Grounds for objection

We object to this proposed condition as we feel that the facility should not be open between 1800 hrs in the evening and 0800 hrs in the morning.

If work needs to be done after the last load of waste has been accepted at the facility 1700 hrs should be the cut-off time for accepting waste.

The facility should close at 1800 hrs. Dr. Derhams report also addresses this issue.

1.9 “ This licence is for the purposes of waste licensing under the Waste Management Acts 1996 to 2005 only and nothing in this licence shall be construed as negating the licensee’s statutory obligations or requirements under the Planning & Development Act 2000 (as amended), or any other enactments or regulations.”

Grounds for objection

The EPA say that certain issues are matters which should be dealt with by the Local Authority and the Local Authority in return say the EPA have higher authority in the area. As a result many issues fall between two stools.

The local residents are then left trying to argue their case with two Government Agencies which are supposed to be protecting them from pollution and health risks. It is an advantage to state that the Licence shall not be “construed as negating the Licensee’s statutory obligations or requirements under the Planning & Development Act 2000... etc. This sends a clear message to the Local Authority that they are free to enforce the Planning Laws without recrimination from the EPA and a clear message to the Licensee that they must be compliant under the Planning Acts. We feel that this condition does not go far enough to nail down overall control of this development by the EPA. We object to this condition being left hanging in mid-air like this. I refer to section 1.8 which states “ Before commencing full scale composting operations the licensee must satisfy the Agency that it has obtained consent from the Department of Agriculture to treat animal by-products in composting/biogas facilities”. A third Government Agency is introduced to the equation here. This time the EPA allows the Dept. of Agriculture to make an independent decision on a matter and the onus is on the Licensee to prove to the EPA that it has complied with this condition. We recommend that condition 1.9 be expanded to include the following requirement:

“Before commencing waste operations or specified building works or any other operation which is subject to approval under the terms of this Licence, the Licensee must satisfy the Agency that it has obtained the relevant Planning Permissions and must prove compliance with the relevant planning legislation”

1.10 “This licence is being granted in substitution for the waste licence granted to the Licensee on 16th July 2003, and bearing Waste Licence Register no. 47-1. The previous licence (Register No: - 47-01) is superseded by this licence.”

Grounds for the objection

We object to this new and improved Licence being granted to a licensee who has not complied with many of the conditions of their previous licence.

The EPA has had problems with non-compliance and has an on-going challenge on their hands trying to sort out the problems caused by this and still turns around and rewards the Licensee with an improved licence.

This is akin to giving a child a lollipop and hoping they behave themselves.

The EPA is supposed to be a protection agency, not merely a licensing authority.

The repercussions for non-compliance should be more severe to encourage compliance. The EPA needs to protect the residents of the area from emissions, pollution and nuisance by stringently enforcing the conditions of any Licence granted. The improvements to the Licence should be postponed until the EPA are completely happy with the Licensees' performance under the current Licence and until the EPA can be sure that the activities will not cause health risks for the people living close to the operations at the facility.

Condition 3. Infrastructure and Operation

Subject matter:- 3.27 Noise

“The licensee shall, following consultation with the occupants of the house adjacent to the entrance, install a 2.5m high engineering acoustic barrier along the boundary of the facility that adjoins their land within 6 months of date of grant of this licence.”

Grounds for complaint

The Licensee has inserted two more enormous buildings onto map reference NTL/284 Rev A – Existing & proposed Infrastructure.

The Licensee tends to lodge maps with the EPA as part of a Licence application and then informs the Local Authority that they have been told to build these structures as part of their licence. These new buildings have no planning permission and are less than c.50m from our boundary. The Licensee states that these buildings will be a waste recovery building and a plastic and cardboard baler. We object, in the strongest manner possible, to these buildings being sited in this location and we also object to being placated by the promise of a fence to mitigate the noise and dust which will ensue. The best dust and noise mitigation possible is not to site these buildings here at all.

Subject matter:- 3.28 Compost facility

3.28.1 “Appropriate infrastructure for the composting of waste shall be established and maintained at the facility prior to any waste being composted. This infrastructure shall at a minimum comprise for invessel composting, an appropriately sized biofilter, and associated plant, as outlined in the Licence review application.”

Grounds for objection

The Licensee has no planning permission to establish and maintain the infrastructure outlined in the Licence review application.

Planning Permission 01/1364 which relates to the recycling building beside the proposed composting infrastructure states that “ **No incineration or chemical or biological processes shall be carried out within the shed or in its vicinity**”.

The reason given for this condition is “ **In the interests of amenity and public health**”. Granting permission to locate this composting facility in this location is making the EPA complicit in encouraging the Licensee to contravene the conditions of the planning permission for the recycling building , and not protecting public health. In our opinion it could not be legal, moral or ethical for one Government Agency to grant permission for building works to be carried out or an operation to be carried out in contradiction to the terms and conditions specified by another government Agency. The EPA and the Local Authority cannot work in parallel lines with each other when the work carried out is so intricately connected as it is in this case. As far as we can determine the Licensee has commenced building the infrastructure already. What appears to be three composting tunnels are visible from our yard. This means that the Licensee not only has scant regard for the planning authorities but is also pushing ahead with the development of the site without final grant of licence from the EPA.

3.28.3 “Unless otherwise agreed, or as may be conditions in this licence, the licensee shall provide a composting area and associated infrastructure at the location shown on Drawing NTL/238 Rev B, dated 30/09/04, of the review application”

Grounds for objection – 3.28.3

We object to condition 3.28.3 for two reasons.

1. This condition is impossible to comply with unless the Licensee contravenes the conditions of current planning permissions.

2. This condition cannot be complied with unless the next condition of the same Licence is **not** complied with. **3.28.4** “Facilities for the curing of compost shall not be located within 200m of a private residence.”

We measured the distance on the ground, as the crow flies, between our house and the proposed Curing Area ‘B’ on NTL/238 Rev. B.

The distance between our house and this curing area is 90 metres.

Dr. Derham has included in his report that “the residence is c.160m from the proposed new composting units.” This is in line with our measurements and we would guesstimate that between 50 – 75% of the entire composting area is within 200m of our home.

- 3.28.4** “Facilities for the curing of compost shall not be located within 200m of a private residence.”

Grounds for objection

We object to the wording of this condition. We feel that in the circumstances which apply to this site and our close proximity to the operations of the site that the condition should say 200m from a private site boundary. We would like to point out that we cannot be confined to our house with all windows and doors locked. Our entire site is where we live, work and play. When the children are playing or we are working in the yard we can often be no more than 20 – 50 metres from the proposed composting area. The EPA is not protecting our environment, is not protecting our interests and is certainly not protecting our health by granting a licence to site and operate this composting facility in this area.

Subject matter:- Condition 5 Emissions

5.3 “ The Licensee shall ensure that the activities shall be carried out in a manner such that emissions including odours do not result in significant impairment of, and/or significant interference with amenities or the environment beyond the facility boundary”

Grounds for objection

We object to this condition as no repercussions for non compliance are mentioned. The Licensee has no incentive to look after the local residents and ensure that their environment is not impaired or interfered with. Odour, dust, noise, rats, birds, early hours and long hours have all been nuisance factors. Verbal complaints and formal objections have all been made since Licence register 47-1 was granted both to Local Authorities , the Licensee and the EPA.

5.6 “ The Licensee shall ensure that vermin, birds, flies, mud, dust, litter and odours do not give rise to nuisance at the facility or in the immediate area of the facility. Any method used by the Licensee to control any such nuisance shall not cause environmental pollution.”

Grounds for objection

This condition should state that any method used by the Licensee to control any such nuisance shall not cause environmental pollution or risks to human health. The Licensee is required to spray insecticides and insect repellent over a large area and this will be a health risk not only to those living near the facility but also to the employees of the Licensee.

Subject Matter:- Condition 6. Control and Monitoring

6.11.2 “In order to mitigate noise nuisance, the Licensee shall , within six months date of grant of this licence and in consultation with the HSA, present a report to the Agency on the use of alternatives to the standard high pitch vehicle reversing alarms. The licensee shall implement any noise attenuation measures considered appropriate arising from this report.”

We have no objection to this condition. We want to say thank you because if this Condition is enforced, at least one long term problem is solved.

6.18.9 “When siting and operating landfill gas infrastructure regard shall be had to the potential for, and mitigation of, odour nuisance. The gas plant shall not be sited within 250 metres of an odour sensitive receptor. This matter is to be addressed in the relevant Specified Engineering Works proposals as required by Condition 3.18”

Grounds for objection

1. The building of this infrastructure has commenced.

The proposed location in the review application documentation and the area being developed at present is c. 200m from our home and not the required 250 metres as specified. This will be yet another area of non-compliance and unless the EPA or the Local Authority has actual power to enforce compliance we will be living 200m from a gas management structure and 90 metres from a compost curing area. You cannot turn a blind eye to such blatant disregard for the law.

2. The licensee has no planning permission for the building of this gas infrastructure.

- 3.** The Licensee does not have final approval from the EPA for this structure.
- 4.** Dr. Derham points out in his report that these units are 24 hour noise sources and they are also odour nuisance risks. Dr. Derham is comparing the 24 hour noise and odour nuisance which we will suffer with a potential reduction in gas generation in the **completed** landfill. It could take twenty years or more for this to happen.

6.18.10 “ In order to assist in mitigation of dust nuisance, the Phase 1 landscaping plan (detailed in the review application) shall be completed within 12 months of the date of grant of this licence”

Grounds for objection

Landscaping has been a condition of every planning permission and Licence application processed over the past number of years. Every deadline has passed and the landscaping has not been done. There is a “get out” clause in most of the landscaping plans in the two words used “ **Where Possible**”.

We gave up asking the Licensee to landscape around our boundary to mitigate against dust and we planted 250 trees ourselves. Again the ability of the EPA and The Local Authority to enforce all these conditions has to be called into question.

Subject matter:- 6.20 Bird Control

“ Birds shall be prevented from gathering on and feeding at the facility by the use of birds of prey and/or other bird scaring techniques. The birds of prey and/or other techniques shall be in place at least two weeks prior to any waste being disposed of and shall maintain their presence every day, from before dawn to after dark, until the waste activities cease and all the waste is capped to the written satisfaction of the Agency. “

Grounds for objection

This condition was also included in Licence register 47-01 and was not complied with. The bird population has increased over the North-eastern territory of the site where the berms have been increased in height behind the unauthorised development covering the waste quarantine area.

6.21.8 “ The licensee shall provide and use adequate lighting during the operation of the facility in the hours of darkness”

Grounds for objection

Our objection to 1.6.1 deals with this condition also. We object to the use of flood lights after the facility closes. The new hours of operation should minimise the requirement for flood lights after 1800 hrs.

6.21.3 “All waste deposited at the landfill working face shall be compacted, using a steel wheeled compactor and covered as soon as is practicable and at any rate prior to the end of the working day.”

6.28 “ The licensee shall, within six months of date of grant of this licence and subject to the assistance of the occupants of the house adjacent to the entrance, arrange for an independent survey, assessment and report by an appropriately qualified structural engineer on the nature, extent and cause of structural damage to the residence. The report on this assessment is to be presented simultaneously to the licensee, the EPA and the occupants of the house adjacent to the entrance.”

Grounds for objection

We will address condition 6.21.3 & 6.28 together.

We are always willing to be of assistance to the Licensee and will cooperate with them on this issue. We would like to point out, however, that while the Licensee and the authorities feel that these things shouldn't happen, given the technical expertise that they are bringing to this process, our opinions come from experience of living here. If we had not been at home when the road was being built and the vibrating roller was used, the damage would have been far worse. Thankfully, we were home and could contact Mr. Kendon quickly and asked him to stop the vibrating roller being used. If we had been on holiday at the time, a very serious situation would have faced us on our return.

This is the type of scenario we are trying to avoid in the future.

We appreciate the fact that the report will be done but request that frequent surveys be carried out if cell A & B1 are being filled within 100 metres of home. We do not want a compactor used within 200 metres of our home.

Subject matter:- Materials handling

8.9.2 "No waste, other than inert waste, shall be disposed in any approved landfilling area within 100m of a private residence."

Grounds for objection

We object to this condition on the basis that we feel that no waste including inert waste should be disposed of within 200m of a private dwelling.

Very stringent enforcement and close monitoring by the EPA will be required to ensure compliance with this condition as it stands.

Landfilling within 100m of our home will cause dust and noise nuisance that a 2.5m fence will not contain and the compaction of the waste will cause disturbance and possible damage to property.

**Subject matter: - Condition 10. Decommissioning & Closure,
Restoration and Aftercare Management Plan**

10.2 “ The licensee shall restore the facility on a phased basis. Unless otherwise agreed , filled cells shall be permanently capped within twenty-four months of the cells having been filled to the required level.”

Grounds for objection

We object to the length of time granted for final capping of finished cells. Six months should be enough time to complete this work and reduce the time the residents of the area are faced with a visually obtrusive mound of waste.

We also object, that the height of the permanently capped cells has been dropped as a condition of this Licence. It was necessary to include final height of 100 Mod as a condition of Licence register 47-01 on environmental grounds and we see no reason why this situation should change. The Local Authority were not legally obliged to refuse planning permission for the final capped cells to reach 108Mod because a waste licence has been issued on this site. As a result, it is the responsibility of the EPA to ensure that the final height of the facility enhances the surrounding environment and changes the original topography of the area as little as possible. This subject is dealt with in the EPA Guide to Implementation and Enforcement in Ireland and I refer you to section 9. PLANNING AND OTHER ASPECTS in this regard. Given that it is the responsibility of the EPA to carry out this aspect of the licencing process, the EPA must also take responsibility for ensuring that the local residents rights in relation to structures overlooking their property by 12 metres is also safeguarded. We request that the 100Mod limit to final height be re-inserted in this Licence.

CONCLUSION

The interaction and cross-over of the Waste Management Act, 1996 and the Planning and Development Acts is most confusing and creates anomalies that we find very frustrating when we are trying to get to grips with the legislation pertaining to this facility. We would like to make the following points in relation to this issue:-

1. The demarcation between the responsibilities of the EPA and the Local Authority is **crucial** in this situation where residential and Industrial areas are mixed.
2. The Waste Management Act does give the higher authority where a waste licence is issued, to the EPA, over the Planning Authority but only on purely environmental issues.
3. The EPAs' guide to implementation and enforcement states that "Any condition attached to a planning permission , shall cease to have effect **insofar** as the purpose of the condition relates to the prevention, limitation, abatement or reduction of environmental pollution."
It follows that if the Waste Management Act allows the EPA to render invalid a condition attached to a planning Permission, the EPA must take responsibility for the decisions it takes and it must also take responsibility for the protection of the public interest .
 - a) Where a Waste Licence is granted it should be possible for the EPA to ensure that a licensee has complied with the planning laws before the Licence is validated.
 - b) The condition in relation to the final height of 100 Mod should be re-instated as a condition of the Licence.

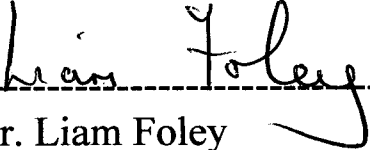
4. The Local Authority have included as a condition in Planning Permission 01/1364 that no biological processes can be carried out in the vicinity of the current waste recycling building. This condition was not applied on environmental grounds but in the interest of amenity and public health and therefore, the condition is still legally binding and does not cease to have effect as a result of the granting of an EPA Licence to carry on composting in this area.
5. No planning permission exists for the following:-
 1. Waste quarantine building
 2. Gas Management Infrastructure
 3. The composting infrastructure.
 4. Proposed waste recovery building
 5. Proposed area for cardboard and plastics recovery and baling building
 6. The unauthorised extension to the waste recycling building.

We believe that planning permission must be applied for to cover these activities and when this happens the Local Authority or An Bord Pleanala will have difficulty granting permission for these buildings, on the grounds of public health and amenity. The fact that this infrastructure is commenced leaves the Licensee non-compliant as it is. We believe the EPA will not be in a position to grant a Licence to site and operate both the gas management infrastructure or the composting facility without contravening the planning laws.

6. There is little point to this whole licensing process and attaching conditions to a Licence if the EPA do not have the power to enforce all of the conditions stringently.

We don't envy you your task.

Thank you for your attention to our submission



Mr. Liam Foley



Mrs. Deirdre Foley

For inspection purposes only. Consent of copyright owner required for any other use.



001

Curing Area
NITE 238 REV13

Curing Area

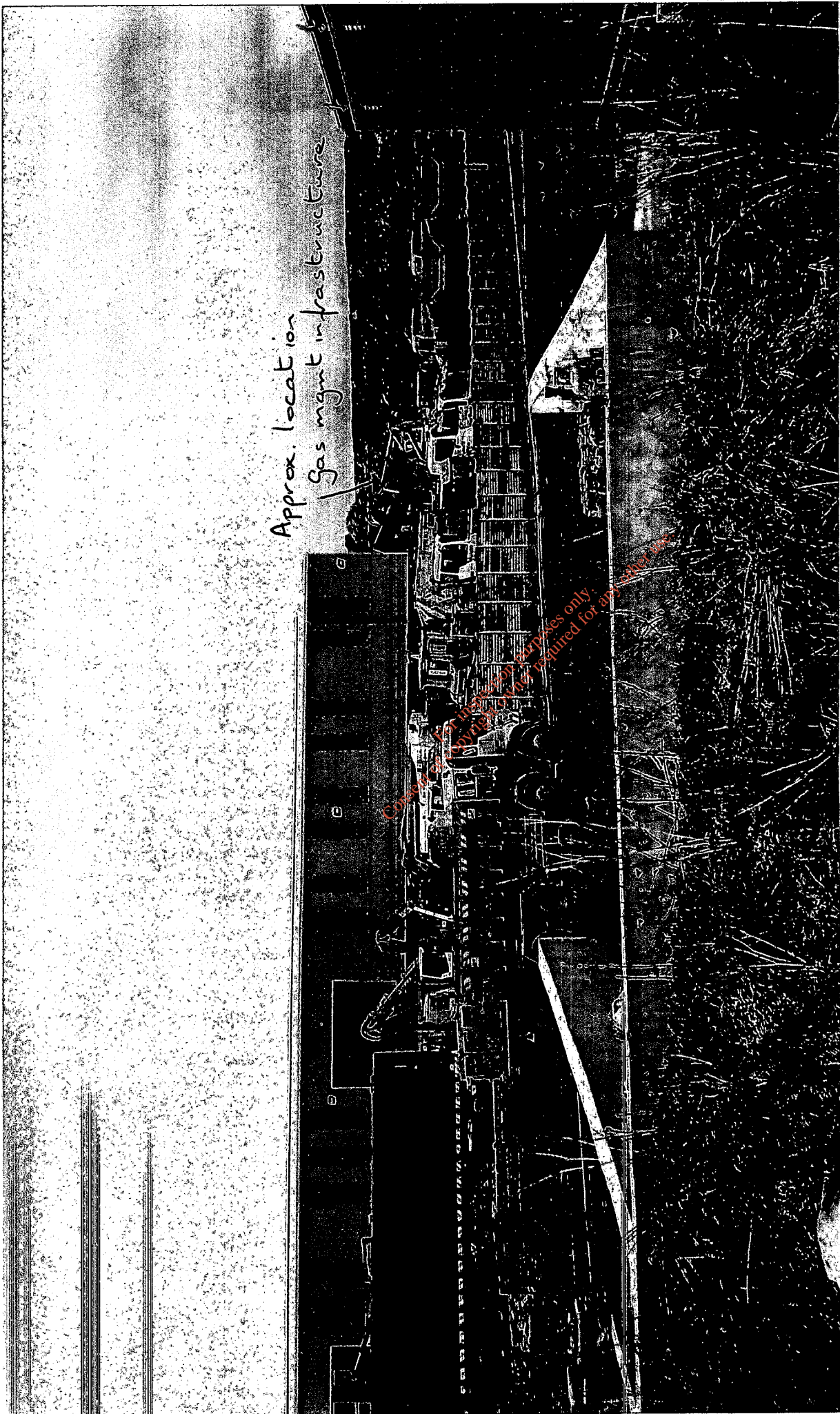
25/02/2006 17:18

Foley boundary

Formosa Development, Inc.
Consent of copyright owner to publish this report

B Composting Facility

25/02/2006 17:18



Approx. location
Gas mgmt infrastructure

Copyright © 2006 by the U.S. Environmental Protection Agency. All rights reserved. This document is for informational purposes only. No warranty is made by EPA for the accuracy of the information contained herein. EPA-823-R-06-001



L. Foley boundary fence

25/02/2006 17:18