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Mr. Paddy Nolan
Programme Manager,
EPA PO Box 3000
Johnstown Castle Estate
Co. Wexford

12th February 2007
Our Ref: 29606-06/JN/LMcE

**Re: Waste Licence Application at Ballard, Araglin, Kilworth, Co. Cork.
W0230-01
Applicant: Valeco Limited
Our Clients: Valley Residents Association c/o Nora Shanahan, Lair, Araglin, Co. Cork**

Dear Mr Nolan,

We confirm that we act on behalf of the Valley Residents Association and we write on our clients' behalf.

We have examined the Waste Licence Application ('the Application') for the above anaerobic digestion facility which was prepared by Valeco Limited on the EPA website and understand that the information contained therein is the most up-to-date information submitted by the Applicant company. We note the letter issued by the Agency under Article 12/13.

We wish to make the following preliminary observations in relation to the application and to bring them to the Agency's attention having regard to the terms of Section 45(4) of the Waste Management Act 1996.

1. Material change in ownership of Valeco Ltd

We wish to bring to your attention a change in ownership of the Applicant company, Valeco Ltd..

Cork County Council refused Planning Permission for the proposed development on the 20th June 2006. This refusal was appealed to An Bord Pleanala and an Oral Hearing was arranged, which began on the 21st November last. Mr. John Mullins, Chief Executive Officer of Bioverda and Director of Valeco, in his statement of evidence at the Oral Hearing confirmed that Valeco, which had been originally established by Greenstar was no longer a subsidiary of Greenstar and was by that date a wholly owned subsidiary of another company, Bioverda Limited. He further confirmed that the management

associated with Valeco Limited was also transferred to Bioverda Limited. The transfer to Bioverda Limited was completed in October 2006.

In the Application to the Agency the Applicant company, Valeco Limited, put much emphasis on the fact that it was a wholly owned subsidiary of Greenstar. In asserting that it was a fit and proper person under the Waste Management Acts the Applicant company relied solely on the fact that it was a subsidiary of Greenstar and further relies on Greenstar's technical competence in proving that it has the requisite technical knowledge and/or qualifications.

The Applicant company is also asked, in the application form, to provide details that show that it is likely to be in a position to meet any financial commitments or liabilities. The Applicant company answers "Valeco Limited has not yet traded but is a wholly owned subsidiary of Greenstar." There is no other evidence offered in answer to this question.

We would submit that the information provided under point L.2 of the Application is now of no relevance and is out of date. In this regard it cannot rely on Greenstar's credentials to support its assertion that it is a fit and proper person. We are surprised that the transfer of ownership of Valeco Limited to Bioverda Limited has not been brought to the attention of the Environmental Protection Agency given that the only reason provided by the Applicant company for being a fit and proper person to whom to grant a licence is the fact that it was said to be a subsidiary of Greenstar.

2. Planning Permission in relation to the activities at Ballard, Araglin. Co. Cork

At page 16, point B.3 of the Application the Applicant states that Planning Permission was obtained for the existing site and that Planning Permission is being processed for the new proposed site. This is misleading. Cork County Council refused Planning Permission for the proposed development on the 20th June 2006, i.e. prior to the Application being filed with the EPA. This should have been disclosed to the EPA. At the Bord Pleanala Oral Hearing Cork County Council made further strong submissions to the Board on planning, scientific and environmental grounds seeking to persuade the Board to uphold their decision to refuse Permission. The Board's decision is awaited. As far as the current position on site is concerned, Cork County Council has consistently been of the view that there is no current planning permission in existence for the activity on site. That view was re-iterated by Cork County Council at the Oral Hearing. Therefore the claim that the Applicant had Planning Permission for the existing site is, at best, misleading.

Further the EPA should have been told that the actions of the Irish Authorities in relation to this site were strongly criticised by the European Court of Justice in the landmark case of *Commission of the European Communities v Ireland* (Case C-494/01). **Copy judgment enclosed.** The European Commission had received numerous complaints concerning Ireland, one of which related to the activities at the above site at Ballard, Fermoy, Co. Cork. The Court found that substantial unauthorised operations involving the storage of waste in lagoons and/or its landspreading were pursued at this site without the competent authorities taking appropriate measures to bring those operations to an end. The Court further held that Ireland had failed to comply with its obligations under the Waste Directive. The non-disclosure by the Applicant of this relevant history is misleading.

3. Environmental Pollution

Attachment L, at sub-heading L.1.2 headed "Environmental Pollution" describes the design and operating practices that are proposed in order to ensure environmental pollution is avoided. Valeco Limited state that adverse effects on the countryside or places of interest are avoided by reason of the fact that the site is not located in any environmentally designated area. This is misleading. The site is located immediately adjacent to a candidate Special Area of Conservation and therefore it is clearly misleading to assert baldly that it is not located 'in' an environmentally designated area.


Further in attachment L.1.2 the applicants claims that risk to land, soil, plants and animals is avoided by location of the development removed from areas of particular ecological importance. For the reason mentioned above this is also clearly misleading.

4. Existing Environmental Impacts on the site at Ballard, Araglin, Co. Cork

Attachment I deals with existing environmental impacts on the facility. Sub-heading I.5 is headed "Ground and/or Ground Water contamination". The Applicant company asserts that "historical operations at this site have been cleaned up to the satisfaction of Cork County Council". This is demonstrably misleading. See the enclosed updated report of the scientific and environmental experts within Cork County Council. The authors of this report confirmed at the Oral Hearing that they stand over this updated report fully. As at the date of the application there were current Court proceedings by Cork County Council against the owner of the site relating to its operations, a fact which was known to the Applicant company at the date it filed the application with the EPA. The owner has since been convicted and fined at Mitchelstown District Court for an offence under Section 23 of the Water Pollution Act. Therefore the assertion made to the Environmental Protection Agency in this regard is incorrect, unsustainable and misleading.

These facts appear to us to merit urgent and serious consideration by the Agency in the context of Section 45(4) of the Waste Management Act 1996. We invite the EPA to acknowledge receipt of this letter.

Yours sincerely,



Joe Noonan

NOONAN LINEHAN CARROLL COFFEY

Enc.

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