



Objection regarding to the Proposed Decision WO201-02 for the extension of the Landfill facility at Drehid

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**Environmental
Protection Agency
04 DEC 2008**



1.0 Outline of Objection

CEWEP is making this submission as part of a nationwide campaign to highlight the impact of excess landfill capacity on the development of alternative waste management technologies, such as waste-to-energy. At present, excess landfill dominates the waste sector and has made it uneconomic for investors to develop alternatives such as composting and waste-to-energy.

However, the EPA's pre-treatment requirements as outlined in the draft Technical Guidance Note *Municipal Solid Waste – Pre-treatment & Residuals Management* effectively restrict the role of landfill. CEWEP welcomes the inclusion of Condition 8 in the Proposed Waste Licence W0201-02 for the Drehid Landfill which implements the guidance note in line with EU legislation. By restricting the types of waste that can be accepted to landfill, such conditions can encourage the development of alternative waste management facilities even where excess landfill capacity persists.

Since this is the first application of the pre-treatment conditions as outlined in the draft Technical Guidance Note, CEWEP Ireland has included here an overview of the legal and policy aspects that support these new conditions. These include, in particular, the requirements under the Landfill Directive to pre-treat waste and to reduce the amount of biodegradable waste consigned to landfill. Given that the first target is in 2010 and Ireland remains heavily reliant on landfill, it is critical that such instruments are put in place quickly and that they are effectively enforced. This will ensure that an effective precedent is set and that the necessary certainty is provided to the waste sector.

2.0 CEWEP

CEWEP represents over 340 waste-to-energy plants across Europe in 16 countries, treating approximately 52 million tonnes of municipal solid waste (MSW) per year.

CEWEP in Ireland supports European and Irish waste policy and promotes an integrated approach to managing waste. This involves supporting the development of sustainable waste-to-energy facilities in Ireland, and banning the landfill of combustible waste. CEWEP Ireland therefore strongly supports the introduction of pre-treatment conditions by the EPA for landfill operators, which will effectively contribute towards CEWEP's goals.



3.0 Legal and Policy Framework

By virtue of Section 40 of the Waste Management Act 1996 as amended by the Protection of the Environment Act 2003 (the "WMA"), in making decisions on Waste Licence applications, the EPA must not grant a landfill license unless it is satisfied that the landfill activity:

"carried on in accordance with such conditions as may be attached to the licence, will comply with Council Directive 1999/31/EC on the landfill of waste".

Article 5 of Directive 1999/31/EC (the "Landfill Directive") sets out targets in relation to the landfilling of biodegradable municipal waste (BMW). Having availed of a four year derogation under this Article, Ireland is required to ensure that the amount of BMW going to landfill does not exceed:

- 75% of the total amount (by weight) of BMW produced in 1995 by 01/01/2010
- 50% of the total amount (by weight) of BMW produced in 1995 by 01/01/2013
- 25% of the total amount (by weight) of BMW produced in 1995 by 01/01/2016

Furthermore, under Article 6 of the Landfill Directive, Member States must take measures to ensure that only waste that has been subject to "treatment" is landfilled. Treatment is defined in the Landfill Directive as:

"The physical, thermal, chemical or biological process, including sorting, that change the characteristics of the waste in order to reduce its volume or hazardous nature, facilitating its handling or enhance recovery"

All new landfills i.e. those not operational on 16 July 2001 are not permitted to accept waste that has not been so treated. From 16 July 2009, all operators of existing landfills in Ireland will be obliged to demonstrate that this treatment requirement is being met relative to all waste accepted.

The Landfill Directive has been implemented in Ireland by several different pieces of legislation, including the Waste Management (Licensing) Regulations 2004. Section 49 of these Regulations states that waste may not be accepted from 16 July 2009 at existing landfill facilities (operational prior to 16 July 2001):

- that does not satisfy waste acceptance criteria as decided by the EPA
- that has not been subject to treatment (other than inert waste for which treatment is not technically feasible, or any other waste, the treatment of which will not reduce its volume or the risk of environmental pollution)

Further to this, Article 35(2) states that:

"...the Agency may attach to any relevant waste licence that is granted by it, conditions relating to any of the matters specified in Articles 49 and 50, such conditions to have effect from a date or dates earlier than such relevant dates as are specified in those articles"

By virtue of Section 40 of the WMA and the Landfill Directive, the EPA should ensure that Irish landfills do not accept waste in quantities prohibited by the Landfill



Directive. To date, "treatment" by sorting (e.g. source separation) has been considered sufficient to meet the Landfill Directive requirements under Article 6. However, it has become evident that in the absence of any other market or legislative drivers (see Section 4.0), pre-treatment by sorting alone cannot ensure Ireland meets its landfill diversion obligations.

The EPA has therefore signalled its intent to impose more stringent pre-treatment conditions in a draft consultation paper entitled "*Municipal Solid Waste – Pre-Treatment and Residuals Management – EPA Technical Guidance Note*" (the "*Guidance Note*"). According to the Guidance Note, a source separated two-bin collection system or equivalent will be the very minimum pre-treatment requirement for waste going to landfill. In urban areas, mechanical treatment of black bin or mixed MSW is required.

Furthermore, based on current waste growth trends, the EPA estimates that approximately 50% of all BMW accepted at landfill facilities for disposal must be biologically pre-treated by 1 January 2010 in order to meet the Landfill Directive targets. Conditions will be imposed on landfill operators restricting acceptance of waste to these percentages. CEWEP is in complete agreement with the measures proposed in the Guidance Note, and welcomes them as one of the first practical measures introduced by a state body in order to ensure Ireland's compliance with the Landfill Directive.

It is noted that the EPA, as an emanation of the state, is bound by the targets in the Landfill Directive through the doctrine of direct effect. In *Commission v Ireland*¹ the ECJ held that Ireland has systematically failed to implement the Waste Framework Directive. Thus, following the general principle of that case, even if the legislative provisions have been put in place, Ireland will be in breach of the Landfill Directive if it fails to put in place the necessary licence conditions and enforce these provisions so the targets are met. The EPA should not, under EU law, avoid imposing restricting licence conditions where the imposition of such a condition is required to ensure the Landfill Directive target is met.

The Office of Environmental Enforcement (the "OEE") of the EPA will be responsible for enforcement of compliance with licences. The OEE is obliged by EU law to ensure that the 2004 Regulations and licence conditions are complied with so that the targets set out in the Landfill Directive are met. Failure to do so would mean Ireland would breach EU law and would be failing in its administrative and enforcement practices to ensure compliance with an EU waste directive.

It should be noted that if Ireland fails to comply with its targets under the Landfill Directive, it could be taken to the European Court of Justice (ECJ) and eventually be fined a lump sum as well as a daily fine of €2,000 to €115,000 per day.

4.0 Ireland's Reliance on Landfill

Since 2005, CEWEP Ireland has been monitoring the development of landfill capacity in Ireland and residual waste arising. From this it has become apparent that poor coordination between regions and the development of unplanned facilities or

¹ C-494/01[2005]ELJ



extensions has lead to a significant oversupply of landfill capacity, compared with that required for residual waste disposal.

It is estimated that there is 3.3 million tpa approved capacity compared with only 2.1 million tpa waste² deposited to landfill in 2007. Effectively, Ireland has 156% of the capacity required for residual waste arising. When compared with the amount of waste Ireland *is allowed* to send to landfill under the Landfill Directive, this excess is even greater. This is shown in Figure 1, in which the Landfill Directive targets are expressed as MSW (of which 74% is BMW).

Distance to Landfill Diversion Targets

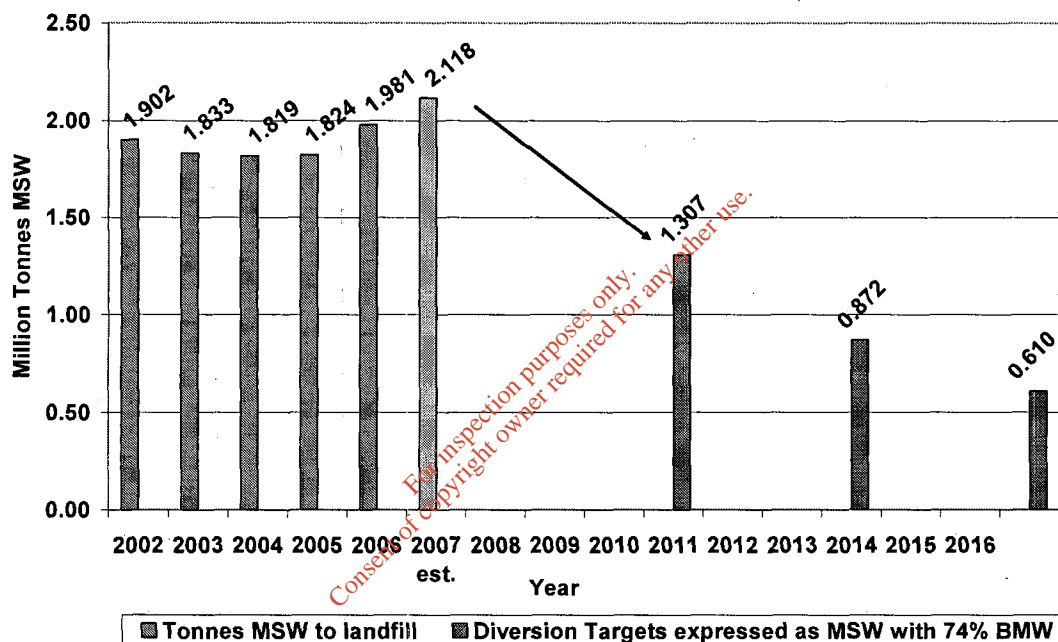


Figure 1: Landfill figures and diversion targets for Ireland³

As shown on the left hand side of Figure 1, the amount of municipal waste going to landfill has increased by an estimated 12.3% since 2004. The EPA in its 2006 report⁴ recognised that this increase was the result of a decline in landfill gate fees, which reduced the economic incentive to collect source-separated materials or to develop alternatives to landfill. This decline, in turn, can be linked to market forces whereby the surplus of landfill capacity is causing landfill operators to compete for waste.

Excess landfill and low gate fees pose a significant risk to developers of alternative waste treatment capacity, in the absence of further legislative or market drivers. It affects the development of everything from waste prevention, reuse and recycling

² Based on Annual Environmental Returns (AERs) for 2007 collated by CEWEP – See Appendix A

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programmes to mechanical biological treatment (MBT) and waste-to-energy facilities for residual waste. Without alternatives, Ireland continues to rely heavily on landfill, and seems unlikely to be able to meet its Landfill Directive targets by 2010. This urgent problem has been highlighted in a number of recent publications, including:

- The EPA's *2020 Vision* which finds that Ireland is "... a long way from meeting EU targets for diverting biodegradable waste from landfill"
- The EPA's *National Waste Report 2006*, which warned that "Urgent action is required in 2008 on diverting waste from landfill..." and that "new policy intervention is recommended to divert waste, and biodegradable waste in particular, from landfill in the short term"
- The Economic and Social Research Institute (ESRI)'s *Medium Term Review 2008-2015*⁵, which warned that without a substantial shift to recycling or large-scale use of incineration, it is unlikely that Ireland will meet its EU Landfill Diversion obligations

In January 2008 the EPA published a discussion paper seeking to tackle this problem, titled "*Hitting the Targets for Biodegradable Municipal Waste: Ten Options for Change*". One of the ten policy options included for consideration was a ban on the landfill of untreated municipal waste. It states that

"Such a ban would drive a major reduction in the landfill of biodegradable waste"

Since the other options as listed in the paper (e.g. increasing the landfill levy, providing a subsidy for the treatment of OFBMW) are out of the EPA's remit or are too slow to materialise, this ban now is critically important to achieving the landfill diversion targets. As previously mentioned, the EPA is obliged to ensure that these targets are met.

5.0 Conclusions

CEWEP Ireland submits that the EPA has both the legal ability and the policy imperative to include the pre-treatment Condition 8, as currently drafted, in Drehid's proposed waste licence.

Under Section 40 of the WMA, the EPA must ensure that any landfill facility complies with the Landfill Directive 1999/31/EC. This requires a reduction in the amount of BMW going to landfill and the pre-treatment of waste accepted to landfill. The Waste Management (Licensing) Regulations 2004, which implement the Landfill Directive, also require that waste accepted at landfills be subject to treatment and allows the EPA to attach any conditions pertaining to pre-treatment.

Furthermore, the EPA is bound as an emanation of the state to ensure the Landfill Directive targets are met. At present, landfill in Ireland is increasing. Only a significant and immediately effective instrument, like pre-treatment conditions, can make any inroads in diverting waste away from landfill before the first target in 2010.

⁵ Fitzgerald, J. et al, *Medium-Term Review 2008-2015*, ESRI, 2008



Therefore, even though the Guidance Note is a draft document and still out to consultation, the EPA can and must implement pre-treatment conditions like those in Condition 8 of Drehid's proposed waste licence. As noted, these must be carefully monitored and enforced to ensure their effectiveness. Overall, CEWEP Ireland strongly commends the EPA for making the first practical step to overcoming Ireland's reliance on landfill.

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Appendix A: Landfill Figures in 2007

This table shows the landfill capacity available compared to waste deposited in 2007 based on Annual Environmental Reports (AERs) from landfill operators, compiled by White Young Green. AER figures are typically higher than published EPA figures from National Waste Reports, but they serve as a useful indicator of landfill trends, accounting for household and commercial waste deposits (representative of municipal waste). A comparison of AER figures from 2006 – 2007 shows that waste deposited has increased slightly, which is likely to reflect the trend in EPA figures. It is anticipated that the EPA will publish official figures on municipal and biodegradable waste to landfill in early 2009.

Waste Region	Landfill	Current Status	Waste Deposited (Based on AERs 2007)	Approved Capacity
Clare	Inagh	Operational	46289	56,500
Limerick	Gortadroma	Operational	39578	130,000
Kerry	North Kerry	Operational	56794	77,000
Total			142,661	263,500
Connaught	Ballaghaderreen	Operational	23368	25,000
	Derrinnumera	Operational	14867	40,000
	Rathroeen	Operational	17523	45,000
	East Galway / Connaught Regional	Operational	74229	100,000
Total			129,987	210,000
Cork	Derryconnell	Due for closure 2008/9	9617	14,000
	Kinsale Road	Due for closure 2008/9	31823	100,000
	Youghal	Due for closure 2009/10	126286	170,000
	Bottlehill	Built but not operational		217,000
Total			167,726	501,000
Donegal	Ballynacarrick	Operational	27315	25,000
Total			27,315	25,000
Dublin	Arthurstown	Due for closure 2010	480529	400,000
	Balleally	Due for closure 2008/9	130348	450,000
Total			610,877	850,000
Kildare	KTK	Due for closure 2008/9	252370	275,000
	Drehid	Operational 2008 (1)		
	Usk	Operational 2010 (2)		
	Kerdiffstown	Operational		235,000
Total			252,370	510,000
Midlands	Ballaghveny	Operational (3)	30728	37,000
	Ballydonagh	Operational	51904	60,000
	Derryclure	Operational	60341	40,000
	Kyletalesha	Operational	45452	47,100
Total			188,425	184,100

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Waste Region	Landfill	Current Status	Waste Deposited (Based on AERs 2007)	Approved Capacity
North East	Corranure	Due for closure 2009	79816	90,000
	Scotch Corner	Operational	28568	39,500
	Whiteriver	Operational	65729	92,000
	Knockharley	Operational	136154	132,000
Total			310,267	353,500
South East	Donohill	Operational	16632	40,000
	Dunmore	Due to close 2008	21915	42,495
	Killurin	Due to close 2008 (3)	8600	8,000
	Powerstown	Operational	42455	40,000
	Holmestown	Under construction		67,000
Total			89,602	197,495
Wicklow	Rampere	Due for closure 2010	49795	50,000
	Ballynagran	Operational	149141	150,000
Total			198,936	200,000
Total			2,118,166	3,294,595

Excess:	1,176,429 tpa
	156% %

1. Normal Capacity 120,000 tpa, recently obtained approval for a 5-year extension of a further 240,000 tpa for a total capacity of 360,000 tpa
2. Recently obtained planning permission for 200,000 tpa
3. Deposit estimates based on 2006 figures due to lack of alternative data

Note: Some estimates of approved capacity have been revised to align with capacity estimates from Appendix 1.2.1 of the Drehid WMF Intensification and Extension EIS.

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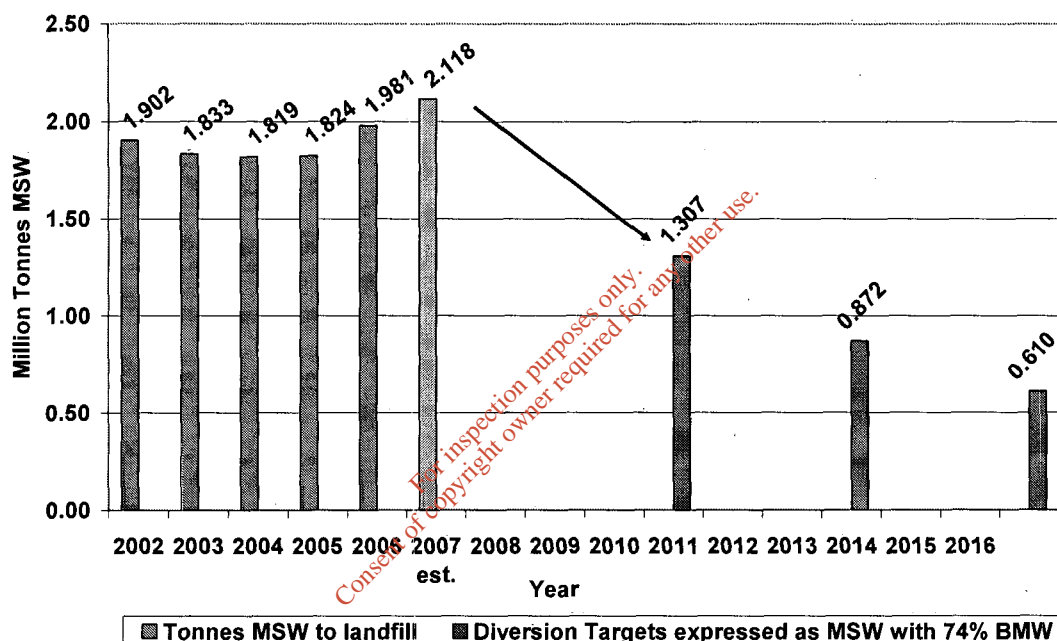


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As shown on the left hand side of Figure 1, the amount of municipal waste going to landfill has increased by an estimated 12.3% since 2004. The EPA in its 2006 report⁴ recognised that this increase was the result of a decline in landfill gate fees, which reduced the economic incentive to collect source-separated materials or to develop alternatives to landfill. This decline, in turn, can be linked to market forces whereby the surplus of landfill capacity is causing landfill operators to compete for waste.

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	Scotch Corner	Operational	28568	39,500
	Whiteriver	Operational	65729	92,000
	Knockharley	Operational	136154	132,000
<i>Total</i>			310,267	353,500
South East	Donohill	Operational	16632	40,000
	Dunmore	Due to close 2008	21915	42,495
	Killurin	Due to close 2008 (3)	8600	8,000
	Powerstown	Operational	42455	40,000
	Holmestown	Under construction		67,000
<i>Total</i>			89,602	197,495
Wicklow	Rampere	Due for closure 2010	49795	50,000
	Ballynagran	Operational	149141	150,000
<i>Total</i>			198,936	200,000
Total			2,118,166	3,294,595

Excess:	1,176,429 tpa
	156% %

1. Normal Capacity 120,000 tpa, recently obtained approval for a 5-year extension of a further 240,000 tpa for a total capacity of 360,000 tpa
2. Recently obtained planning permission for 200,000 tpa
3. Deposit estimates based on 2006 figures due to lack of alternative data

Note: Some estimates of approved capacity have been revised to align with capacity estimates from Appendix 1.2.1 of the Dredge WMF Intensification and Extension EIS.

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