Objection(2) Third party

**John Martin M. Agr. Sc.**
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20 May 2009.

To:

Office of Climate, Licensing & Resource Use
Environmental Protection Agency
Johnstown Castle Estate
Wexford

**Objection to a proposed Determination of an application for an IPPC licence.**

**Register No.:** **P0703-02**
**Applicant Name:** **Bramblemore Ltd**

**Third Party Objection by:** **The person whose name and address is at the top of this page AND the persons whose names and addresses are at the bottom of this objection.**

**Fee enclosed:** **€126.00 for this objection**
**€100.00 for an Oral Hearing; TOTAL €226.00**



**Subject matter of our objection**

The Proposed Decision of the EPA has come to our notice. As farmers who either regularly or occasionally decide to acquire pig manure from Bramblemore to supply fertiliser nutrients we require for our holdings, we are particularly concerned that some of the proposed conditions have their effect outside the installation and on land that is in our holdings if and whenever we choose to acquire and use fertiliser (that is, pig manure) from the installation. The conditions that are a source of serious concern to us are in **Condition 8 – Materials Handling**. They are the conditions that refer to various components of the acquisition and application / use of pig manure on lands that seem to us to include our lands and all other lands outside the licensed installation, and on which the occupier may choose to use pig manure. They are:
Condition 8.9,
Condition 8.10.1 (ii) to 8.10.1 (v) inclusive,
Conditions 8.10.2, 8.10.3, 8.10.4, 8.10.5, 8.10.6, 8.10.7, 8.10.8 and
The entire content of the table and its footnotes in Schedule C.6 under the heading "*Land used for landspreading*".
Please note that nobody ever uses any of our lands for "landspreading". Only we use the lands in our holdings. While we fertilise it, its use is to grow crops.

We are concerned to a lesser extent about the part of Condition 8 – Materials Handling that refers to the transport (Condition 8.1) of waste from the installation to our holdings, to the extent that the condition seems to imply that a Permit is required by the transporter for the transport of manure, when in fact a Waste Management (Collection Permit) is not required for such transport, as that matter in relation to animal manure is controlled under the Animal By-products Regulations and not under the Waste Management Act. That is all we have to say on that matter except that we ask the condition be corrected to remove the ambiguity that is not appropriate in any licence condition.

It should not be necessary for us to have to be concerned and to have to bring the matter of the transfer of animal manure between holdings and the application of fertiliser or animal manure to farmland 9which is referred to as "landspreading" in the Proposed Determination), to the attention of the EPA. Because it is necessary for us to do so, we have to state our belief that the "landspreading" conditions included in the Proposed Determination that is the subject of this objection and to which we are not party, and to which when issued as a licence must not be subject, are not appropriate proposed conditions and are not acceptable to us. In this regard, we are confident that the thousands of farmers who are entitled to choose to use pig manure to fertilise lands in their holdings and who do regularly, would share our concern and support our objection if they were aware of the rather similar conditions included in licences granted to other installations from which they acquire or draw pig manure for their holdings in compliance the legislative system under which the transfer and use of animal manures are regulated.



**Grounds for the objection and the reasons, considerations and arguments on which it based**

We are not engaged in any licensable activity to which the EPA Acts apply.
We are farmers whose farming or farming practice in relation to the application of fertiliser to land in our holdings is **not** regulated or controlled under the legislation being applied by the EPA in processing an application by Bramblemore Limited for an IPPC licence.
We are not party to the application for a licence under Reg. No P0703-02 or under any other Reg. No.
We are not under any obligation to make any application to the EPA or to any other authority for permission or approval or any other authorisation to use and apply fertiliser from any source on land in our holdings.
We are generally authorised / entitled under the Animal By-products and related Regulations (SI 252 of 2008 and SI 253 of 2008) to acquire pig manure from other farms, including the Applicant's installation, for our use to fertilise farmland in our holdings in the manner prescribed in the Nitrates Regulations (SI 101 of 2009).
The applicant is similarly authorised to supply by-product pig manure to us or any other farmer in response to our order for specific quantities when we want it for our land.

The conditions and the Schedule C.6 table to which we object a a source of serious concern to us as they are expressed in terms that make it clear that they are intended to impose a burden on us that is above and beyond that imposed in the relevant legislative system under which our acquisition and use of animal manure and other fertiliser materials is governed.

We should be able to take comfort from the text contained in proposed conditions 1.1, 1.2 and 1.3 under the heading "*Condition 1 – Scope*". But we cannot, because in contradiction to the scope described and indeed defined in those condition 1 paragraphs, we get a very different message when we read the above listed proposed conditions and the second table in Schedule C.6, to all of which we are objecting in the strongest possible terms because the landspreading and related proposed conditions should not be stated in text terms that seem to be addressed to us who are not the licensee and are not connected to the licensee, and relate to lands that would include land in our holdings that is outside the installation to be licensed and are not connected in any way with the installation. The Agency must know that our relationship with the applicant for the licence is a simple commercial relationship within which we are customers who can and do form time to time and when it suits us acquire pig manure for our farmlands that the applicant as a producer of pig manure as a by-product of his main business can supply to us as by-product for our use in fertilising land in our holdings.



Contrary to the correct and proper principle described in the first 3 paragraphs of condition 1, it seems clear to us that by including in the licence the text of the proposed conditions to which we object, the EPA would want the applicant and us to pretend or assume and to accept the EPA false presumption that the applicant when licensed can and will have access to and control of lands in our holdings, such that the licensee will be able to engage in "Ambient Monitoring" of our lands for the EPA and be able to consider that our lands are a "landbank" or part of a "landbank", and that if we decide to acquire pig manure from the licensee, our lands are to be regarded by the EPA and the licensee as "Land Used for Landspreading" by the licensee (because licence conditions "speak to the licensee"). That and the related proposed conditions, to which we object, would be wrong in fact, and it is unacceptable to us. It is also unnecessary, as the subject matter of the subject matter of the conditions objected to is already comprehensively regulated under separate legislation.

The EPA must know that the supply of fertiliser to farmers like us, and the application of fertiliser to farmland by farmers like us, are not licensable activities, and that us or our lands are not subject to control under conditions here objected to that the Agency proposes (we say, wrongly proposes) to include in a licence to which we are not a party.

We regard those proposed conditions to which we object as an inappropriate attempt at interference with the system under which our acquisition and use of animal manure to fertilise our farmlands is governed by specific legislation. We see it as an inappropriate attempt to have us, and / or another without our permission, volunteer to diminish or give

up entitlements that are ours under the several pieces of legislation that governs the transfer or distribution between holdings and the use of animal manure to fertilise farmland. There are no circumstances under which we will agree to volunteer to adopt controls of the type included in the proposed conditions to which we are here objecting.

The EPA must know that the conditions to which we object relate to matters that the applicant for the licence cannot either monitor or enforce on our holdings, and are not matters that are controllable on our holdings under conditions proposed to be included in a licence for licensable activity that is independent of us and our holdings. In this regard we are perplexed and we reject the EPA assertion contained in proposed condition 8.9:

> 8.9 Slurry/manure shall be considered to be a manure or fertilizer when recovered as defined in the Waste Management Acts 1996 to 2008 and as agreed by the Agency.

We state here that our acquisition and use of animal manure to fertilise farmland in our holdings is governed under the Animal By-products and related Regulations (SI 252 of 2008 and SI 253 of 2008) and the Nitrates Regulations (SI 101 of 2009), and that those Regulations apply not just to us, but to all holdings in the state. The use of "slurry/manure" that we may acquire from the applicant's installation, being governed as it is under the legislation referred to in the previous sentence is not subject to control under the *Waste Management Acts 1996 to 2008* and our entitlement to acquire "slurry/manure" as provided for in the Animal By-products and related Regulations, and our obligation to use it as prescribed in the Nitrates Regulations, are not subject to being "*as agreed by the Agency*".



We note and we object also to the description under the heading "Emissions" on page 2 of the Inspector's Report of 26 March 2009 by Bruce Harper in which he refers to the pig manure that we may acquire from the applicant's installation as the main emission from the activity, which is recovered off-site on agricultural lands as fertiliser. We note that such text is used and relied on to justify inclusion in the licence of the conditions that we object to on grounds that they are written in terms that make it clear that their effect can be, and is obviously intended to be, on lands that are outside the licensable installation, which lands can and do include our lands. That is contrary to the system under which the distribution and use of animal manure is governed, and it is neither fair nor acceptable to us.

To be fair to the applicant for a licence, the applicant or the licensee when licensed, cannot reliably demonstrate anything to anyone about our or any other farmer's requirement for fertiliser, including requirement for fertiliser that at most times may be acquired as pig manure by any farmer from the installation (subject to availability).

When we apply animal manure, including pig manure that we are entitled to acquire from the applicant and that the applicant is entitled to supply to us under the Animal By-products Regulations (SI 252 of 2008 and the related Regulations in SI 253 of 2008), without any prior approval from the EPA, despite assertion to the contrary in proposed condition 8.10.7, we are obliged to apply it in compliance with the European

Communities (Good Agricultural Practice for Protection of Waters) Regulations as referred to by Bruce Harper, and is referred to also in condition 8.10.5. We are not dependent on either the applicant for a licence in this case or on any other supplier of fertiliser to us, or on the EPA to inform us in relation to matters referred to in conditions 8.10.3, 8.10.5, 8.10.6 and 8.10.8. Our use of the manure is our responsibility by reference to Article 1(c), Article 16(1) and the rest of article 16, Article 22(1) and Articles 23(1)(e) and 23(1)(g of SI 101 of 2009, and it is not subject to monitoring or control by the applicant for the IPPC licence in this case or by conditions in the licence when granted in respect of activity in which we are not engaged and with which we are not connected.

When we say that the EPA is aware, or must be aware, of the relevant legislation under which the transfer or distribution of animal manure, including pig manure produced as a by-product in licensable installations is governed, we say so mindful of the obligation on the Agency as prescribed in section 52(2) of the Environmental Protection Agency Act 1992 that "*In carrying out its functions the Agency shall –*

(a) *Keep itself informed of the policies and objectives of public authorities whose functions have, or may have, a bearing on matters with which the Agency is concerned,*"



Similarly, we believe that the Agency is entitled, indeed obliged, to accept the system for control of the transfer and use of animal manure from all farmed animal sources in the state as prescribed in European and National legislation, as adequate for the protection of the environment.

The Agency surely must understand and acknowledge that nutrient management plans and maps of some or any of the lands in our holdings, for our holdings have no place and no business and no useful function in either Agency files or in files in the Applicant's office. We do not give our permission to anyone to hold or keep or to submit to the Agency any such documents that relate to any lands in our holdings as referred to in any sub-paragraph of proposed condition 8.10.1.

It seems clear to us that condition 8.10.1 in its entirety is misconceived and compliance by the applicant with it is not possible. Compliance with the demands in it by us is not required of us by any legislation. The furnishing of such data and information by us, as is detailed in the various sub-paragraphs of 8.10.1 is not a part of the system under which the transfer or use of animal manure or other fertiliser is governed. Even though we do not consider condition 8.10.1 (v) to be relevant to us, in our opinion it is seriously flawed and does not have any support in legislation. In particular, the reference to and the advice that nutrient management plans for our holdings may be based on the "Nitrogen and Phosphorus" Statements issued by the Department of Agriculture Fisheries and Food is not correct in technical, legal or practical terms. We have heard that this may be based on some arrangement between the EPA and some farm representatives. We have no real knowledge of its origin or background but we are not party to it and we are

confident that it is not part of the legislative system under which our application of pig manure and/or other fertilisers to farmland in our holdings is governed, and we would not risk relying on it. It should not be in any licence condition.

We do not accept that the applicant or any person other than us as occupiers of our holdings has any function in classifying land in our holdings with regard to them being described as "*spreadlands*" that "*Teagasc has certified* " "*as suitable for spreading of slurry*." We object to that reference to lands that include ours in the last paragraph under the heading "*Emissions*" on page 4 of the Inspectors report, and to any inference that such certification is a precondition for the fertilising of farmland when it is not, and we object to the inference that such certification is part of the system under which the application of any fertiliser to farmland is governed, when it so definitely is not.

We believe it to be fact that neither Teagasc nor Teagasc staff has any function in assessing our farmlands, or farmlands in general, in relation to "suitability to be fertilised with animal manure or any other fertiliser materials. The criteria by which the requirement for, and the application of fertilisers to farmland are as prescribed in the Nitrates Regulations (SI 101 of 2009) that implements the Nitrates Directive (91/676/EEC) and are not as might be inferred from the Inspector's Report on consideration of regulations that implement the Groundwater Directive (80/60/EEC). The appropriate criteria include the type, composition, application rate and timing as well as consideration of the crop and crop requirements for fertiliser nutrients as prescribed in SI 101 of 2009, as matters for consideration and implementation by the occupier of the holding on which manure / fertiliser is applied, without reference to the supplier of the fertiliser, who has no prescribed role in relation to its use by customers.



The nutrient management plans referred to in proposed condition 8.10.1 (v) are not necessarily the documents we as farmers keep and are obliged to keep so as to comply with the Regulations referred to in condition 8.10.5, which Regulations also requires that our application of fertiliser to our farmland be as described in the first sentence of condition 8.10.8. These conditions are unnecessary on account of their requirements being already included in the system under which the application of manure to farmland is governed and which are relevant to all occupiers of all holdings in the state anyway, BUT only in relation to each occupier's own holding.

The plans referred to in proposed condition 8.10.1 (v) are rather meaningless to anyone other than the occupier of the holding to which a particular plan would apply. They are incapable of rational assessment or interpretation in relation to our actual requirement or entitlement to acquire fertiliser from any source on any particular date during the calendar year to which the plan would refer. In any case, as stated elsewhere, plans in relation to our holdings are of no use to and have no function in our fertiliser suppliers' file.

The EPA and staff must be aware that maps of our and other customer farmers lands, of the type referred to in conditions 8.10.1 (iii) and 8.10.2 are not required of us or other customers for any fertiliser products or by-products by relevant legislation and are not required to be placed in any public files or on the EPA website. We are offended and appalled that some locations of some customers and even potential or prospective customers lands have been taken been indicated on a map and displayed on the EPA website without farmer's knowledge and consent. That is not an acceptable practice and we object to that too.

We cannot pretend that we can or will voluntarily relinquish any part of our entitlements or obligation under the system by which our acquisition and use of fertilisers from all legitimate sources, including the applicants installation, is regulated and controlled so as to oblige either the applicant or the licensing authority to which we are not subject in this regard. Neither can we do so as a pre-condition of acquiring fertiliser from the installation under terms that so greatly exceeds the prescribed control system applicable to us. To expect us to do so would be very unfair to us and to the applicant for the licence.

We feel very exposed to inappropriate non-statutory control of our fertilising of our holdings by reference to demands to be made on us by the EPA through the applicant for the licence on foot of the proposed conditions to which we have objected. We consider it proper that we should be consulted if the Agency is minded to insist on including in the licence when granted, any of those conditions to which we have objected without modification of those conditions, or without modification of the licence to remove ambiguity and make it clear that the landspreading related requirements that are different to prescribed regulations do not apply to persons other than the licensee, and do not apply to farmlands / holdings that are outside the installation and would or could include our holdings.



The relevant legislation that applies to us requires us to use any and all fertilisers we may acquire from any and all sources in the prescribed responsible manner that does not require from us the extra burden the EPA seeks to load on to us through conditions that the EPA inappropriately propose to include in a licence that should make abundantly clear that the conditions apply only to the licensee and to the licensed installation as is properly described in Condition 1.

We request and expect the Agency to respect the fact that our acquisition and use of pig manure, that we may acquire from the applicant's installation if and when we need such supply, is regulated on our holdings under a system that is separate from the IPPC system. To that end, we request that in the interest of fair procedure and any other relevant interest, that the EPA either:

a. Delete from the licence when granted the conditions and the Schedule C.6 table to which we have here objected, in circumstances where the applicant controls no farmland to which the applicant can apply slurry/manure to farmland within the installation, OR
b. Amend the text of all those conditions to which we have objected so as to remove ambiguity and conflict with Conditions 1.1 to 1.3, and to make it clear to the applicant, to us and to all readers that those conditions apply to "landspreading" done by the licensee within the installation.

We have just recently become aware that conditions like those to which we have objected have been included in IPPC licences for some time. We know that the inclusion of those conditions and their apparent meaning and the manner in which they are interpreted and intended to be interpreted by the EPA is not widely understood among the thousands of farmers who value and use the by-product that is pig manure to fertilise farmland in their holdings. We find it impossible to imagine that any significant fraction of those farmers who are not engaged in licensable activity would disagree with any significant details in this objection.

We further request an Oral Hearing in relation to the proposed conditions and matters of serious concern to us to which we have objected, so that the proposed conditions to which we have objected and our arguments in support of deletion of the proposed conditions or the very significant change in the text of the conditions or the licence as discussed above can be fairly and openly explored in technical and practical farming terms the context of the relevant legislation in the Animal By-products and Nitrates Regulations and the EPA Licensing Regulations, prior to making a final Determination of the application under Reg. No. P0703-02.
The extra fee for the Oral Hearing is included in the fee cheque attached.



Signed:

John Martin

John Martin, M. Agr. Sc.

On behalf of:

John McGrath, Shanbally
John Quinlan, Shanbally
John Martin, Templemore