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Mr. Brian Meaney,
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ENVIRONMENTAL PROTECTION
AGENCY

05 AUG 2009

31st July 2009.

Our ref: 22307-09/JN/PW

Your ref: WL W0161-01

**RE: Our clients – Bottlehill Environmental Alliance.
Cork County Council application for technical amendment to Waste Licence
WL W0161-01 Bottlehill Landfill**

Dear Mr. Meaney,

We refer to previous correspondence, and have now taken our clients' instructions on your letter dated July 12th.

Cork County Council has applied for what they consider to be a 'technical amendment' of their EPA Licence. For that to be undertaken it is necessary that the subject matter of the application would come within the provisions of Section 96 of the EPA Act (as amended). This provides that the Agency may amend a licence under Section 96(1) of the Act in order to achieve one of the following three objectives: -

- a) To correct a clerical error
- b) To facilitate of doing anything pursuant to a licence condition, where it may be reasonably regarded as contemplated by the condition or the licence as a whole but was not expressly provided for; or
- c) Otherwise facilitate the operation of the licence, provided that making the amendment does not result in the relevant requirements of Section 83(5) ceasing to be satisfied.

The requirements of Section 83(5) as referred to in item c) above are those which prohibit the Agency from granting a licence in circumstances where to do so would result in significant risk of pollution or the contravention of any relevant quality standards etc. These are the basic preconditions that must be met prior to the grant of any licence.

JOE NOONAN BCL COMMISSIONER FOR OATHS MARY LINEHAN BCL EAMONN CARROLL BCL LLB PHILIP COFFEY BCL LLM

JOHN MCCARTHY BCL LOUISE MCEVOY BCL

As a waste licence is by definition a technical document, on one interpretation of the term 'technical amendment', any amendment could be considered technical. However it is clear from the quoted section that that would be an excessively wide interpretation, and that the legislature has deliberately confined the availability of this procedure to three tightly circumscribed sets of circumstances.

This is understandable given the basis on which the technical amendment procedure works. It excludes the public concerned from participation. There is no requirement for publicity. It is a relatively informal short procedure appropriate to corrective or minor changes with which the public or other interested parties could not reasonably be supposed to have an issue.

It follows that it would be an entirely inappropriate use of this procedure to seek to avail of it for the purposes of making a significant change to the nature of the operation as originally licenced. Changing from landfill of residual baled waste ('subject only to exceptional circumstances') to a situation where the Council may routinely allow the landfilling of unbaled waste is a significant change.

Taking the three circumstances in which a 'technical amendment' is permissible in sequence:

a) *To correct a clerical error.*

There is no suggestion by the Council that this applies.

b) *To facilitate of doing anything pursuant to a licence condition, where it may be reasonably regarded as contemplated by the condition or the licence as a whole but was not expressly provided for;*

There is no suggestion by the Council that this applies.

c) *Otherwise facilitate the operation of the licence, provided that making the amendment does not result in the relevant requirements of Section 83(5) ceasing to be satisfied.*

Baling is a measure which was described by the Council during the licensing process as one which would prevent or minimise pollution risks. The precondition imposed by Section 83(5) therefore precludes any consideration of the present request as being a 'technical amendment' even before one examines the substance of the application in greater depth.

It is stretching the intent of the language of Section 96(1) beyond breaking point to claim that this change to allow routine acceptance of unbaled waste is necessary to "facilitate the operation of the licence". It is not necessary for the operation of the licence, as the licence can be operated as it stands. The Licensee may now regard it as more convenient or expedient for their own reasons but technically and legally there is no basis on which they can say it will 'facilitate the operation of the licence'. The licence is there and as it stands nothing needs to change in it for the Council to be facilitated in operating the facility as a landfill. They can use it for that purpose today if they wish.

At all stages dating back to the time a variation of the County Development Plan was first promoted to allow the site to be zoned for this activity, Cork County Council emphasised to the public and to the statutory authorities concerned that this facility would only accept baled waste. That position was staunchly maintained throughout the lengthy licensing process and again through the planning permission application process. The public concerned were repeatedly and explicitly assured in person by Council officials at both EPA and Planning Oral Hearings that this was the intention. The public concerned must not now be excluded from the decision making process which is to consider this request to draw back from that commitment.

A solution is available that will meet the needs of the Council while respecting the rights of the public and all other interested parties. The Act provides for the review of a licence. The circumstances now outlined by the Cork County Council lend themselves to the review procedure. This procedure carries with it the entitlement to public participation which one would expect to enjoy where a licence of this nature is sought to be modified in a significant fashion.

For these reasons, our clients ask the Agency to decline the Council's request for this issue to be considered as a 'technical amendment'

Yours sincerely,



Joe Noonan,
NOONAN LINEHAN CARROLL COFFEY

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