

Seskin,
Carrick on Suir,
Co. Waterford.

Date: 6/9/2010

**Response to EPA letter dated 12/8/2010 with opportunity to comment of
Objection by the applicant.**

Relevant IPPC Reg No.: P0720-03.
Objector Name: Mr. Paul Joy,(at above address), Mr William
Phelan, Mrs. Madeline O Brien, Mr. Dermot
Cunningham, Mr. Pat and John Long.
Location of the activity: Tybroughney, Piltown, County Kilkenny.

Dear Sir/Madam,

We refer to the Proposed Determination (Your Ref Licence Register No. P0720-03) issued to Mr. Robert Dowley which we believe purports to adversely affect our rights to acquire pig manure from that installation and use it on our holdings. We have read and studied the applicant's objection to certain proposed conditions in the PD. We welcome the opportunity to comment on the Applicant's objection. We support and agree with everything the Applicant has said and claimed in relation to the transfer of manure from his installation to farmers like us who are and/or may be customers for manure regularly or from time to time. Our comments and reasons for our comments are set down below.

Our problems are exclusively with the Conditions in the Proposed Determination which are being imposed by the Agency without showing due respect for National and European legislation under which we are entitled to acquire fertiliser / pig manure from outside our farms and use it in compliance with legislation applicable to us and our holdings to fertilise farmland. **We raise a number of questions which we address to the relevant staff and Directors of the EPA - who we believe have responsibility to respect relevant National and European legislation when drafting licence conditions applicable only to the licensee and his licensed activity carried on in his installation.**

We are entitled to acquire fertiliser, including pig manure if we want to, from sources of our choice for use to satisfy crop requirement for N and P on our farms, in compliance with the Nitrates Regulations in SI 101 of 2009 as they apply to our holdings and as authorised and as required by SI 252 of 2008 and SI 253 of 2008 as they to apply to our holdings. We do wish to protect our entitlements as provided by National and European legislation and to ensure

that they shall not be eroded by any extra burden purported to be imposed by reference to any conditions in a fertiliser supplier's or potential fertiliser supplier's licence.

Any of us or all of us may well request a supply of pig manure from Mr Dowley's pig rearing installation on one or more occasions this year or next year, but we do not have to give notice information about our future requirements to him at this time, or to the EPA or to any other authority at any time before ordering and acquiring a supply. Furthermore, we are certain that the applicant for a licence cannot acquire from us any reliable or useful information about our future demand for fertilisers in general or for pig manure from his installation in particular. That is so simply because it is not possible for the licence applicant /licensee to require such information from us in advance of our week-to-week decisions with regard to our fertiliser requirements, and it is neither necessary nor rational to expect us to volunteer to pretend that we can and would be able to supply that kind of information about fertiliser requirements in advance of decisions to seek a supply or place an order for fertiliser / pig manure with a source of our choice on the day we decide to do so.

We are not looking for any licence and we know we do not need any licence to fertilise our land with animal by-product pig manure if and when we choose fertiliser in that form to satisfy our requirement or part of our requirement for N and P.

We do not and will not agree with or consent to any entitlements that we know we now enjoy being eroded or taken from us as a condition in a supplier's licence of us being supplied with animal by-product pig manure with which to fertilise our land.

We have explained our objections to part of Condition 6, Condition 8.10 and parts of / most of Condition 8.11 in our Objection received by the EPA on 11/8/2010.

We expect the Agency to respect relevant legislation in force and to stop considering that any pig manure that we acquire and are entitled to acquire and use in compliance with the relevant regulations in SI 252 of 2008, SI 253 of 2008 and SI 101 of 2009, to be fertiliser only when recovered in compliance with the Waste Management Acts 1996 to 2008 as proposed in Condition 8.10 in the Proposed Determination. The applicant's reason for objecting to Condition 8.10 was and is probably the same as our reason. We support the applicant's objection to inclusion of Condition 8.10 in the licence when granted to him. That condition 8.10 is not applicable to the applicant because he is a lawful supplier of lawful fertiliser to us or to farmers like us. That condition 8.10 is not applicable to us because no condition in Robert Dowley's licence when granted is or can be applicable to us or to any aspect of our farming or fertiliser use, even if and when we acquire some of Dowley's pig manure to fertilise some of our lands. In any case, we never use and will never use any "waste" to fertilise any of our farmland. We believe the Agency is wrong as discussed above and in our previous submission to make any reference to waste legislation when dealing with the Category 2 Animal By-Product material and lawful fertiliser material, which as a matter of fact pig manure for use on farmland is.

If the Agency feels a need to retain a condition 8.10 in the licence when granted we respectfully suggest that an appropriate text for a revised Condition 8.10 could be:

"8.10. Slurry is an Animal By-Product and shall be considered to be fertiliser when sold or supplied and transferred for use as fertiliser in accordance with the relevant provisions in SI 252 of 2008, SI 253 of 2008 and SI 101 of 2009."

where SI 252 and SI 253 of 2008 are Animal By-Product Regulations and SI 101 of 2009 is the Nitrates Regulations.

Regulation EC No. 1774/2002 of the European Parliament and of the Council of 3rd October, 2002 "Laying down health rules concerning animal by-products not intended for human consumption" classifies animal manure as a Category 2 material (i.e. a Category Animal By Product). **Is it the view of the EPA that this Regulation does not apply to Ireland?**

The current Directive on waste is Directive 2008/98/EC of the Parliament & Council of 19 November 2008 on waste and repealing certain Directives has some relevance. Please read and have regard and respect for the following extracts from that Directive. We expect and would appreciate written EPA responses to the questions in "bold" type):

Recital 12:

Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ⁽²⁾ provides, inter alia, for proportionate controls as regards the collection, transport, processing, use and disposal of all animal by-products including waste of animal origin, preventing it from presenting a risk to animal and public health. It is therefore necessary to clarify the link with the Regulation, avoiding duplication of rules by excluding from the scope of this Directive animal by-products where they are intended for uses that are not considered waste operations.

Recital 13:

In light of the experience gained in applying Regulation (EC) No 1774/2002, it is appropriate to clarify the scope of waste legislation and of its provisions on hazardous waste as regards animal by-products regulated by Regulation (EC) No 1774/2002. Where animal by-products pose potential health risks, the appropriate legal instrument to address these risks is Regulation (EC) No 1774/2002 and unnecessary overlaps with waste legislation should be avoided.

We most certainly do not consider "normal" animal manure intended for use on land to be a waste of any kind, but even if it was "hazardous" (which it is not in normal circumstances), it would still be for regulation under Regulation (EC) No 1774/2002 and the Animal By-Products Regulations.

Is this the text of Recitals 12 and 13 not clear statements that animal by-products, including pig manure, are required to be regulated under Regulation EC 1774/2002, and are required to be excluded from the scope of waste legislation?

Why is the EPA with Proposed Condition 8.10 acting in defiance of this?

Recital 22 of the Directive should also be read in this context.

The following extracts from the text of Directive 2008/98/EC on waste are relevant:

Article 2

2. The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

Article 2.1 (f)

Faecal matter, if not covered by paragraph 2(b), straw and other natural non-hazardous agricultural or forestry material used in farming, forestry or for the production of energy from such biomass through processes or methods which do not harm the environment or endanger human health.

Article 2.2 (b)

Animal by products including processed products covered by Regulation (EC) No 1774/2002, except those which are destined for incineration, land filling or use in a biogas or composting plant;

Article 5

1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following are met:

- (a) further use of the substance or object is certain;*
- (b) the substance or object can be used directly without any further processing other than normal industrial practice;*
- (c) the substance or object is produced as an integral part of a production process; and*
- (d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.*

Articles 2 and 5 of the Directive on waste as shown above exclude faecal matter from whatever source and all animal by-products including manure of farmed animals as regulated by the EC 1774/2002 from the scope of waste legislation.

Why is the EPA acting in defiance of this?

Mr Dowley referred to some approval of us or our land by the EPA in relation to suitability to be supplied with pig manure. We do not need and will not seek any approval from the EPA and we do not allow him to seek it for us either. We don't need permission or approval to fertilise our land to grow our crops.

There is no requirement for such approval in the documents referred to above?

We assert that the matter to which we object in the strongest possible terms is entirely based on misunderstanding and/or misinterpretation and/or misrepresentation of the relevant facts

in relation to the lawful supply of manure to us for our use and benefit, as was clearly stated in the Application for a licence and as is fully provided for in Article 3(b) in S.I. 252 of 2008 and Article 20 in Regulation EC/1774/2002 (as amended), and in S.I. 253 of 2008 (including Article 7).

We repeat that the applicant/licensee has no authority to **either access or control or monitor** lands in our holdings or any other farmers' / customers' holdings. The applicant/licensee cannot perform the soil sampling and testing indicated in that table in Schedule C.6.2 as being required of him by the Proposed Determination of this licence. He cannot require us or any customer to carry out such sampling and testing or either him or for the EPA.

The records and documents in relation to fertiliser movements (including animal manure movements) into and/or out of a holding that are required to be maintained by the occupier of each and every holding in the State are prescribed in Article 23(1) in S.I. 101 of 2009. We believe that the Agency knows that Conditions of the applicants licence cannot impose any burden on third parties like us who are just persons who are lawful customers or potential customers for manure. We believe that it is wrong for the Agency to propose or to include in a licence any conditions that clearly refer to a farm practice (the application of slurry/manure to farmland) that is carried out on land outside the installation and is not done on the authority of or under the responsibility of the licensee.

Management of fertiliser acquired from outside a holding and the use of fertilisers from all sources on customers' holdings is a matter for each customer. That is clear National and European policy as provided for in S.I. 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009. Those are not matters for either control or influence by conditions in the licence when granted.

How could such conditions be complied with by any licensee?

How can the licence to be granted to Robert Dowley impose any requirements or obligations like those proposed in the "landspreading" and "NMP" conditions in the PD?

The EPA has a responsibility to recognise our rights as users of pig manure from this or any other pig rearing facility.

Why and how can the EPA insert the unnecessary part of Condition 6, Condition 8.10 and most of Condition 8.11 when they are in obvious conflict with the EU and National legislation governing the transfer and the use of animal manures in this country?

There is no manure ever discarded on our lands. The Agency must know that it would not be lawful for us or any farmer to deposit any animal manure or any other material containing N

and/or P on land other than for use in compliance with the statutory terms and standards prescribed under the Regulation EC/1774/2002 and Directive 91/676/EEC.

In relation to pig manure that is by-product by reference to the Animal By-products Regulations (S.I. 252 of 2008 and Regulation EC/1774/2002) and by reference to the Directive on waste (2008/98/EC; Recitals 12 and 13 and 22 and Articles 2 and 5), the deposition of by-product pig manure on land to supply N and P fertiliser nutrients as provided for and as regulated under the Nitrates Regulations (S.I. 101 of 2009 and Directive 91/676/EEC), is lawful use of the by-product manure, and so is not a waste recovery activity. Those Regulations referred to above, not the Waste Management Acts referred to in the proposed condition 8.10, are the basis of the system under which the deposition and use of pig manure on farmland by us and by farmers in general (including customers for pig manure), is governed. We respectfully put it to the Agency (again) that neither the Waste Management Acts nor "*as agreed by the Agency*" apply to either the applicant's or his customers' deposition and use of pig manure from his installation on any land that is outside the boundary of the installation where the licensed activity is or will be carried on. On all land, including all lands farmed by us, whether as customers for manure from the Dowley installation or as not customers for manure from the Dowley or any other installation, the deposition and use of animal manures and all other fertilisers is required to be in compliance with the terms prescribed in the Fertilisers and Soil Improvers Order (S.I. 253 of 2008) and the Nitrates Regulations (S.I. 101 of 2009). The statement that "*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*" is not relevant to the applicant for a licence or to his pig rearing installation because it is wrong to infer that the use of manure of any farmed animals by deposition on any farmland is subject to control under the Waste Management Acts.

Accordingly, it is necessary that Condition 8.10 either be deleted from the licence, or be replaced with the reference to the Waste Management Acts substituted by a reference requiring that manure transferred from the installation for use, be in accordance with terms and standards prescribed in S.I. 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009.

A condition requiring that the sale or supply and transfer of pig manure to farmers and that the recording of all such transfers be in accordance with terms prescribed in The Animal By-products Regulations (S.I. 252 of 2008), and the related Regulations in S.I. 253 of 2008, and in the Nitrates Regulations (S.I. 101 of 2009) would be appropriate, practical, and fully workable.

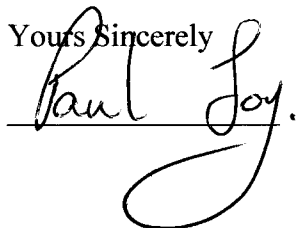
We are very concerned about the implications for Mr. Dowley of the kind of impossible regime in relation to "landspreading" that the EPA has been trying to impose on him and that the Agency has been trying to have that applicant and other applicants for a licence "volunteer" to accept not only on their own behalf but also on behalf of farmers like us who are and/or can be lawful customers for pig manure. We as farmers are aware of the long

history of conflict and confusion in relation to those "landspreading" and related conditions in licences that refer to and relate to "*the application of slurry/manure to farmland*" where the application referred to is the statutory responsibility of the occupiers of the holdings on which it is applied or deposited, and is required to be controlled by the occupier of the Holding on which the slurry/manure is used. Against that background, we request that the Agency respect all the relevant separate legislation under which the distribution and use of animal manure is so comprehensively regulated and controlled.

We expect that the Proposed Determination in this instance shall be amended to respect all relevant legislation under which the transfer and the use of manures of farmed animals are governed. We consider the Proposed Determination to be seriously flawed in relation to the "landspreading" and related conditions and schedule as addressed in Mr. Dowley's objection and as commented upon above, and on that account we consider those conditions as drafted in the Proposed Determination to be unfair and prejudicial to our rights and interests as farmers who may use pig manure from this installation.

We formally request that the Environmental Protection Agency either delete the "landspreading" and related conditions and Schedule to which the applicant's objection refers or amend the text of those conditions and Schedule to make it clear that they refer and apply only to "landspreading" in the installation that would be subject to Agency regulation or control under Licence Reg No P0720-03 when granted.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Paul Joy", written over a horizontal line.

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