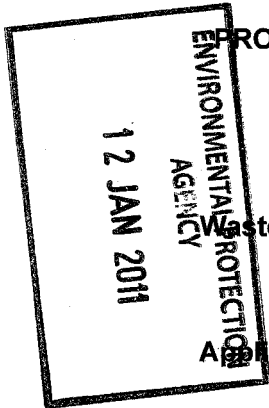




**KINGFISHER**  
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objection no 1.



**OBJECTION TO A PROPOSED DECISION, BY THE ENVIRONMENTAL PROTECTION AGENCY, TO REFUSE A WASTE LICENCE. OBJECTION MADE IN ACCORDANCE WITH SECTION 42 OF THE WASTE MANAGEMENT ACTS, 1996 TO 2010**

Waste Licence Register No.: W0256-01

**Applicant:** Lennon Quarries Limited, Glencastle, Bunnahowen, Ballina, County Mayo.

**Facility:** Lennon Quarries Limited, Tallagh, Belmullet, County Mayo.

**Last Date for Objection:** 5pm on 14<sup>th</sup> January 2010

**Objection Fee:** €200

**Summary of the Appeal:**

Appeal against the decision of the EPA to refuse a Waste Licence

**To:**

Environmental Protection Agency  
Headquarters  
P.O. Box 3000  
Johnstown Castle Estate  
County Wexford  
Ireland

**Name of Appellant:**

Mr. Freddie P.R. Symmons B.Env.Sc (HONS) MIEEM  
*Senior Environmental Consultant*  
**Kingfisher Environmental Consultants.**  
Primrose Grange House,  
Knocknarea,  
Co. Sligo.

**Date:**

10<sup>th</sup> January 2011



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Date: 10<sup>th</sup> January 2011.

Environmental Protection Agency  
Headquarters  
P.O. Box 3000  
Johnstown Castle Estate  
County Wexford  
Ireland

**Waste Licence Register No.:** W0256-01

**Applicant:** Lennon Quarries Limited, Glencastle, Bunnahowen, Ballina, County Mayo.

**Facility:** Lennon Quarries Limited, Tallagh, Belmullet, County Mayo.

**Proposed Determination:** To refuse a Waste Licence

Dear Sir/Madam

In Accordance with Section 42 of the Waste Management Acts, 1996 To 2010 we hereby made an objection to the Agency in relation to the proposed determination to refuse a Waste Licence application to Lennon Quarries for a site at Tallagh, Belmullet, County Mayo.

We include the correct fee of €200 and note that the deadline for objections is 5pm on 14<sup>th</sup> January 2010.

This is an independent objection made out of genuine concern at how this Waste Licence application has been handled by the Agency and seeking redress.

We look forward to a positive outcome with regards to this objection and that a Waste Licence is granted to Lennon Quarries.

Yours sincerely,

**Freddie P.R. Symmons** B.Env. Sc (HONS) M.I.E.E.M.  
Senior Environmental Consultant  
**KINGFISHER ENVIRONMENTAL CONSULTANTS**



## 1. Introduction

### 1.1 Statement of Professional Experience Concerning the Recovery of Inert Soil and Stones and Land Reclamation/Restoration

Kingfisher Environmental Consultants have prepared and lodged in excess of 50 waste permit applications in Ireland for land reclamation activities and in particular in relation to sites where the sole purpose is the reclamation of land using inert soil and stones for the consequential benefit to agriculture. This particular experience dates back to 1998. In addition we have vast experience in planning and case law as it pertains to land reclamation and this includes Section 5 (planning exemption) applications and planning applications for land reclamation activities.

Kingfisher Environmental Consultants formed and established the Soil Recovery Association (SRA) in Ireland in 2005 and are lead consultants to this industry led organisation. Extensive representations were made in 2005 and 2008 to the Department of Environment concerning the now enacted Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007).

Furthermore we assisted (on behalf of the Soil Recovery Association) with the drafting of the New EPA Waste Licence form for soil recovery facilities and also assisted in the preparation of the Guidance Note for Soil Recovery Activities.

**Name: Mr. Freddie Philip Rory Symmons B.Env. Sc (HONS) M.I.E.E.M.**

**Position: Senior Environmental Consultant and Principal**

**Qualifications: Honours Degree in Environmental Science (B. Env. Sc. Hons) Awarded by University of Stirling, Scotland, 1995.**

**Professional Affiliations: M.I.E.E.M – Full Member of the Institute of Ecology and Environmental Management. (Member ID No: 2150)**

#### **Professional Experience:**

- **Environmental Technician:** K.T. Cullen & Co. Hydrogeological & Environmental Consultants, Dublin. June – September 1993. (Now White Young Green)
- **Environmental Scientist/Consultant:** K.T. Cullen & Co. Hydrogeological & Environmental Consultants, Dublin. June 1995 – January 1996. (Now White Young Green)
- **Rural Environmental Protection Scheme Planner:** Philip Farrelly & Co. Agricultural & Environmental Consultants, Navan, County Meath: February 1996 – August 1996.
- **Senior Environmental Consultant:** Philip Farrelly & Co. Environmental Consultants, Navan, County Meath: August 1996 – November 2000.
- **Senior Environmental Consultant & Manager:** S.M. Bennet & Co. Ltd. Hydrogeological & Environmental Consultants, Ballymore Eustace, Co. Kildare: December 2000 – February 2002.
- **Senior Environmental Consultant and Principal:** Kingfisher Environmental Consultants, Primrose Grange House, Knocknarea, Sligo. February 2002 – Present.



## 1.2 Proposed Decision of the Agency

The following is the exact extract from the proposed determination of the EPA dated 9<sup>th</sup> December 2010:

*On the basis of the information available to it, the Environmental Protection Agency (the Agency) pursuant to its powers under Section 40 (1) of the Waste Management Acts, 1996 to 2010, proposes to refuse to grant a waste licence to Lennon Quarries Limited, Glencastle, Bunnahowen, Ballina, County Mayo to carry on the waste activities that are the subject of Waste Licence Application Register Number WO256-01 at Tallagh, Belmullet, County Mayo.*

*In reaching this decision the Agency has considered the application and supporting documentation received from the applicant, all submissions received from other parties, the objectives of the Connaught Waste Management Plan (2006 - 2011), and the report of its inspector.*

### **Reason for the Proposed Decision**

Having regard to:-

- the proposed timescale for the activity;
- the proposal to allow the site to revegetate naturally;
- the proposal to leave the settlement ponds in place after cessation of activity;
- the absence of any proposed change of use of the site; and
- the absence of a demonstrated benefit for the land from the deposit of waste on the site;

*the Agency considers that the purpose of the proposed activity is the disposal of waste, and not the recovery of waste, and would not, therefore, be in accordance with the licence application. In the absence of any proposal addressing the disposal of waste on the site, the Agency is not satisfied that such disposal would not cause environmental pollution and has decided to issue a Proposed Decision to refuse to grant a licence.*

### **1.3 Grounds of our Objection**

It is with great surprise and disappointment that we have become aware of the proposed decision of the EPA to refuse this existing recovery activity at Tallagh, Belmullet, Co. Mayo.

As independent Environmental Consultants with particular expertise in this area of Waste Management, we feel compelled to object to this decision to refuse a Waste Licence and urge that a waste licence be granted to Lennon Quarries.

The reasons for our objection are set out **Section 2** contained in the following pages:



## 2. Reasons for our Objection

### 2.1 Legislative Background to the Regulation of Recovery of Soil and Stones on Land

#### 2.1.1 The Waste Management (Permit) Regulations 1998

- The Waste Management Act, 1996 was enacted in May, 1996. This Act was subsequently amended by the Waste Management (Amendment) Act 2001 and the Protection of the Environment Act 2003.
- The Waste Management (Permit) Regulations, 1998 S.I. No. 165 of 1998 came into operation on the 20th day of May, 1998.
- The 1998 Regulations provided for the granting of waste permits by local authorities in respect of specified waste recovery and disposal activities which, because of their scale or nature, did not warrant integrated licensing by the EPA.
- From the outset of the introduction of the Waste Management (Permit) Regulations, 1998, the movement and recovery of all soil and subsoil on land whether it was for land reclamation; construction works; quarry/sand pit restoration; sports grounds development etc.. was subject to waste regulation and authorisation. The only known exceptions to this rule were the importation of topsoil onto a site or the filling of lands within the CPO line of a new road. In some cases local authorities authorised a very small number of loads of subsoil to be imported onto a domestic premises for the purposes of landscaping or construction of a raised percolation area.
- The European Waste Catalogue Code and Hazardous Waste List – Valid from 1<sup>st</sup> January 2002 listed soils and stones as a waste type under EWC Code 17 05 04.
- Under the 1998 Regulations, for land reclamation works and for land development (i.e. for infilling land for building or for road construction; restoration of quarries and sand pits; sports ground development etc..) there was no upper limit on the size of site or quantity that could be recovered.
- The recovery classes under which one applied for a Waste Permit under the 1998 Regulations was: Class 5 of Part 1 of the First Schedule of the Waste Management (Permit) Regulations, 1998 *"The recovery of waste (other than hazardous waste) at a facility (other than a facility for the composting of waste where the amount of compost and waste held exceeds 1000 cubic metres at any time)"*.
- In accordance with the Fourth Schedule of the Waste Management Act 1996 (as amended), the principal classes of Recovery activity for land reclamation or land development was Class 10: *The treatment of any waste on land with a consequential benefit for an agricultural activity or ecological system.* or: *Class 4: Recycling or reclamation of other inorganic materials.*

#### 2.1.2 Introduction of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007) which came into force on 1<sup>st</sup> June 2008

- Existing and proposed inert waste recovery activities (for the purposes of Improvement or Development of Land) which may have previously operated under a Waste Permit under the Waste Management (Permit) Regulations, 1998 became subject to the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as





amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007) as from 1<sup>st</sup> June 2008.

- These new Regulations set out new thresholds for inert waste recovery facilities and in particular for operating under Waste Facility Permits. This is set out under Class 5 and Class 6 of Part 1 of the Third Schedule of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007). These regulations set out time scales and requirements for inert waste recovery facilities that were above the new thresholds to apply to the EPA for a Waste Licence.
- The new thresholds for Waste Facility Permits were as follows: Class 5: *Recovery of excavation or dredge spoil, comprising natural materials of clay, silt, sand, gravel or stone and which comes within the meaning of inert waste, through deposition for the purposes of the improvement or development of land, where the total quantity of waste recovered at the facility is less than 100,000 tonnes.*
- Class 6: *Recovery of inert waste (other than excavations or dredgings comprising natural materials of clay, silt, sand, gravel or stone) through deposition for the purposes of the improvement or development of land, where the total quantity of waste recovered at the facility is less than 50,000 tonnes.*
- The new Regulations set out a period of 180 working days from the 1<sup>st</sup> June 2008 for all existing soil and stone recovery facilities whose threshold exceeds 100,000 tonnes to either cease operations by 13<sup>th</sup> February 2009 or else have applied to the EPA for a Waste Licence prior to the 13<sup>th</sup> February 2009. The EPA wrote out to many existing facilities on 31/10/2008 asking operators to confirm which of three following options they would be adopting:
  1. Apply to the EPA for a licence prior to the 13<sup>th</sup> February 2009 or before the expiration of your current permit (whichever is sooner).
  2. Reduce your capacity below 100,000 tonnes threshold and continue to operate under a permit issued by the Local Authority.
  3. Cease the activity by 13<sup>th</sup> February 2009.
- The EPA wrote out on the 3/3/2009 to many operators of facilities who did not respond to the EPA's request to notify them of which option they would be adopting. The EPA has stated that they are therefore assuming that such sites will operate below the threshold for EPA licensing (and therefore remain with the relevant Local Authority for enforcement of the activity) or else the activity has ceased.

## **2.2 The Activity at Tallagh, Belmullet, County Mayo is an existing established Waste Recovery Activity**

We have extensively reviewed the Waste Licence application on the EPA website and have looked at AER return available for this facility to date. We have found that a number of key facts appear to have been overlooked by the Agency:

- i.) This site is an existing established waste permitted facility for the purpose of the consequential benefit to agriculture. In fact there is clear legal precedent for the works to be regarded as *bona fide* land reclamation works for the consequential benefit to agriculture as the applicant has operated under a Waste Permit No. Per 144 06/07/2005 which was granted under the Waste Management (Permit) Regulations, 1998 in January 2006 and authorised the activity under Class 10 of the Fourth Class 10 of the Fourth Schedule of the Waste Management Act 1996 (as amended): "*The treatment of any waste on land with a consequential benefit for an agricultural activity or ecological system*"



ii). From a review of available AER returns for the site it would appear that under 30,000 tonnes of inert material has been recovered on the site to date since the site commenced its recovery operation in 2006.

Lennon Quarries were entitled under the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007) to review their existing waste permit.

This is because they did not exceed either the 50,000 tonne or 100,000 tonne thresholds as set out in Class 5 and Class 6 of Part 1 of these Regulations. This review would have allowed them to continue operation at the site for another 5 year period or until such time as the appropriate tonnage threshold of material had been recovered on site as per class 5 and 6.

However, Lennon Quarries appear to have been proactive and decided to look at the project as a long term recovery activity and to apply for a Waste Licence from the EPA. Trusting in this process they would have had every expectation to be able to continue their authorised and established recovery activity under a Waste Licence. We are unaware of any environmental issues pertaining to the site that would have meant that Mayo County Council would have been precluded from granting a Waste Facility Permit.

### **2.3 Recovery is Recovery Regardless of Size or Scale**

Kingfisher Environmental Consultants assisted with the preparation of Waste Licence Application Guidance Notes and the new licence application form for inert soil and stone recovery activities. These were prepared on behalf of the Soil Recovery Association (SRA) and followed on from extensive discussions between the SRA and its members and the EPA.

The Waste Licence Application Guidance Notes were written to cater specifically for recovery activities where inert waste is recovered for the purposes of the improvement or development of land.

More specifically these application guidance notes cover those inert waste recovery activities which may have previously operated under a Waste Permit under the Waste Management (Permit) Regulations, 1998 but may now exceed or may exceed in the future the thresholds for Waste Facility Permits as set out under Class 5 and Class 6 of Part 1 of the Third Schedule of the Waste Management (Facility Permit and Registration) Regulations 2007 (S.I 821 of 2007) as amended by the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 (S.I 821 of 2007) which came into force on 1<sup>st</sup> June 2008.

Prior to the introduction of the aforementioned regulations, a large inert waste recovery facility coming in to the Agency for a Waste Licence may have been referred to as a "Landfill" or a "Waste Disposal Site" by the EPA. In the Landfill Directive and the Waste Management Act, a "Landfill" means a waste disposal facility used for the deposit of waste onto or under land. "Disposal" is defined as any of the Waste Disposal Activities specified in the 3<sup>rd</sup> Schedule of the Waste Management Act 1996 (as amended).

There is however now new and established clarity and such sites are to be regarded as recovery facilities regardless of their size or scale (as confirmed in correspondence from the Agency and the SRA/EPA meeting on 12/6/2008). However the EPA seem still to not have grasped this concept as demonstrated by this proposed determination.

Please see the email outlined below from Dr. Jonathan Derham of the EPA dated 20<sup>th</sup> May 2008 sent to a member of the Soil Recovery Association (SRA) where he has stated for the record that all natural soils infill projects (regardless of scale) are to be regarded as Recovery. The Soil Recovery Association (SRA) has actively been campaigning for this to be recognised.



**Recovery or Disposal for inert natural soils infill**

**Date: Tue, 20 May 2008 14:48:43 +0100**

**From: j.derham@epa.ie**

**To: dluby@csa.ie**

**Derek**

**The DoE have just confirmed their support for our position to class all natural soils infill projects (regardless of scale) as Recovery. Spread the word !**

**Dr Jonathan Derham**

The Draft Waste Management (Waste Framework Directive) Regulations 2010 provide clear and unambiguous definitions of Waste Disposal and Waste Recovery.

**2.4 Existing Land Reclamation/Restoration Sites Applying for Waste Licences are not Landfills or Disposal Sites**

"Landfills" exist for the principal purpose of disposing of waste with the restoration of the site following on from the completion of the waste disposal activities. However, and this is crucial, sites for the improvement or development of land using inert waste have the primary objective of waste recovery for restoration purposes. The "restoration/development or improvement" of the site is the primary and only objective and therefore it is not applicable to apply rules and guidance notes for landfills to these sites where restoration is the primary consideration.

It is important for the Agency to acknowledge that inert waste recovery sites for the improvement or development of land are not landfills and as such the Agency's landfill manual does not apply to such sites. Furthermore and more importantly nor does the guidance provided in the Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 and Annex II of Council Directive 1999/31/EC on the landfill of waste.

It is important for applicant's who operate existing permitted facilities to stress in their application that they are existing authorised facilities and not new activities. The Waste Management (Facility Permit and Registration) Regulations 2007 (as amended) specifically allow for the continued operation of an existing permitted facility once a waste licence has been applied for and such a facility will continue to operate under their current waste permit until such time that a waste licence is either granted or refused.

Soil and stones are a low value commodity in economic terms and is not like the transport of products such as crushed stone, sand and gravel. Therefore by its very nature the cost of recovering this material is principally in the haulage and the low acceptance cost at the land reclamation site.

Existing soil and stone recovery and inert recovery facilities must be treated fairly in terms of regulation and costs when applying for Waste Licences. It is reasonable and equitable that existing authorised facilities have the opportunity to be regulated under a waste licence in such a manner that does not make the activity economically unviable.

A site which has been operating as a valid soil and stone and inert material **recovery activity** under a Waste Permit granted under the Waste Management (Permit) Regulations 1998 (and permitted as a recovery activity under the 4<sup>th</sup> Schedule of the Waste Management Act) must remain classified as a Recovery activity going into the future under Waste Licensing.

In the landfill directive it states "*Whereas the recovery, in accordance with Directive 75/442/EEC, of inert or non-hazardous waste which is suitable, through their use in*





redevelopment/restoration and filling-in work, or for construction purposes may not constitute a landfilling activity”.

“**Recovery**” is defined as any activity carried out for the purpose of reclaiming, recycling or re-using the waste and include those recovery activities listed under the 4<sup>th</sup> Schedule (Waste Recovery Activities) of the Waste Management Act. Therefore recovery is not waste disposal and must not be construed to be so.

Article 3 of the Waste Framework Directive 2008/98/EC sets out the following definitions:

- ‘waste’ means any substance or object which the holder discards or intends or is required to discard.
- ‘recovery’ means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations.

The Waste Framework Directive 2008/98/EC also sets out the following:

- The definitions of recovery and disposal need to be modified in order to ensure a clear distinction between the two concepts, based on a genuine difference in environmental impact through the substitution of natural resources in the economy and recognising the potential benefits to the environment and human health of using waste as a resource.
- It is therefore necessary to revise Directive 2006/12/EC in order to clarify key concepts such as the definitions of waste, recovery and disposal, to strengthen the measures that must be taken in regard to waste prevention, to introduce an approach that takes into account the whole life-cycle of products and materials and not only the waste phase, and to focus on reducing the environmental impacts of waste generation and waste management, thereby strengthening the economic value of waste. Furthermore, the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. In the interests of clarity and readability, Directive 2006/12/EC should be repealed and replaced by a new directive.

The reclaiming, recycling or re-using of soil and stones and inert material for land reclamation; provision of sports pitches; the restoration of former worked out sand and gravel pits; road construction projects; and development of land is **not** and **cannot** be classified as **waste disposal** as it defies the very definition of recovery of waste.

The EPA would seem to be treating the established recovery activity at Tallagh, Belmullet with suspicion from the start i.e. that the material is likely to be contaminated unless you prove otherwise – rather than the other way around – where you proceed on the basis of innocence until proven otherwise. The Agency would seem to be treating this site in no dissimilar manner to a landfill.



## 2.5 Justification of the Activity as a Recovery Activity for the Consequential Benefit to Agriculture

Mr. Freddie Symmons – Senior Environmental Consultant of this office has on his own initiative visited the site at Tallagh, Belmullet, Co. Mayo to see the site for himself. Our professional opinion is that the existing land reclamation works carried out to date and the proposed recovery works as detailed in the Waste Licence application is a **Recovery** activity and not a waste disposal activity. The said works are fully justifiable as being for the consequential benefit to agriculture. Under no circumstances can the existing or proposed activities on the site be regarded as a disposal operation.

This site is an existing established waste permitted facility for the purpose of the consequential benefit to agriculture. In fact there is clear legal precedent for the works to be regarded as *bona fide* land reclamation works for the consequential benefit to agriculture as the applicant has operated under a Waste Permit No. Per 144 06/07/2005 which was granted under the Waste Management (Permit) Regulations, 1998 in January 2006 and authorised the activity under Class 10 of the Fourth Class 10 of the Fourth Schedule of the Waste Management Act 1996 (as amended): "*The treatment of any waste on land with a consequential benefit for an agricultural activity or ecological system*"

**Photo 1** is a view into the site and shows that the lands are marginal agricultural grassland used for grazing sheep. The land would be considered poor agricultural land due to the undulating topography, poor drainage and removal of much of the top soil layers due to peat cutting. There is also widescale evidence that the area has been cut-over for peat in the past but that this has ceased.



**Photo 1: View of Existing Site – Marginal Agricultural Land**





Photo 2 shows the existing Waste Permit notice at the entrance to the site authorising the site for land reclamation recovery activity.

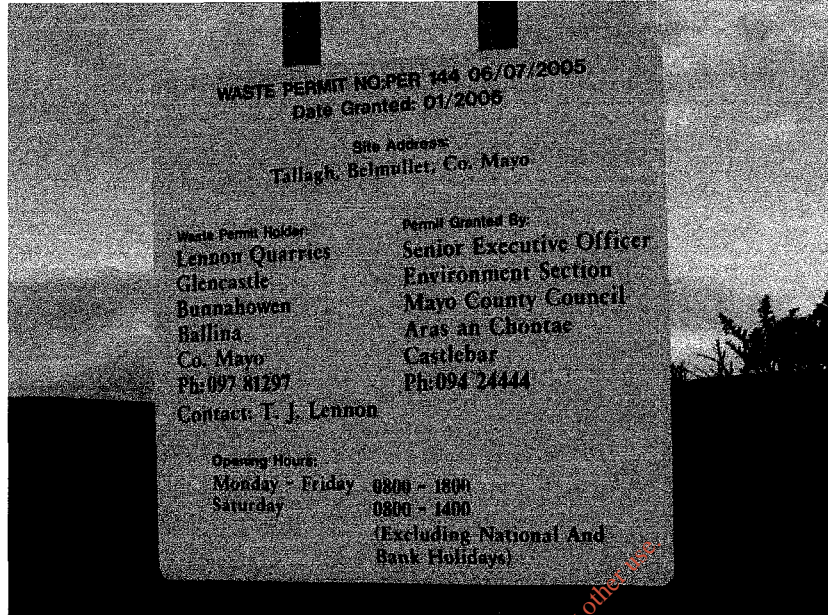


Photo 2: Existing Waste Permit Notice on the Site



Photo 3: Sheep Grazing on the Site with Adjacent Reclaimed Land in the Distance

Photo 3 and Photo 4 show that lands immediately adjacent to the existing land reclamation site have been reclaimed to form productive agricultural land. Therefore there are clearly precedents in the area for land reclamation activities.



**Photo 4: View of Site in Foreground looking towards Adjacent Land which has been reclaimed to Productive Agricultural Land.**

The existing waste permit allows Lennon Quarries to reclaim the land and use it for beneficial agricultural use. It is important to stress that were it not for the forefathers in this area and their hard work on the land, there would be little if any productive grassland in North Mayo suitable for livestock grazing.

Agriculture, particularly livestock grazing is a fundamental part of the economy and culture of the local community and this recovery project will further assist in providing productive agricultural land in the area for future generations without having any detrimental impact upon the local environment. In the general vicinity of the site at Tallagh there are many fields which have been reclaimed successfully for agriculture.

**Photo 5** and **Photo 6** show the area of the site already reclaimed under the existing waste permit. **Photo 5** clearly demonstrates that the land is used for agricultural purposes at present with sheep grazing in the foreground and within the un-reclaimed part of the site in the distance. The site would appear to be being farmed on a continuing basis as the land reclamation works progress.





**Photo 5: View of Sheep Grazing within the land reclamation site and congregating on the area which has already been reclaimed under the existing Waste Permit**



**Photo 6: View of the area reclaimed to date within the site under the existing waste permit for agricultural purposes**





Photo 7 shows the view from the portion of site already reclaimed towards the lower portion of the site towards the river. Note the reclaimed land under separate ownership on the far side of the river.



Photo 7: View from the portion of site reclaimed towards the lower portion of the site towards the river. Note the reclaimed land under separate ownership on the far side of the river.

The reclamation of agricultural land at this site is a **recovery** activity and not a waste disposal activity. Uncontaminated, inert soil and stones will be delivered to the site for use as fill material to raise the level of the land for land reclamation purposes at the site. The site will be restored to productive agricultural use.

This activity is fully justifiable as being for the consequential benefit to agriculture. According to the Waste Licence application the fill will consist of inert uncontaminated soil and stones.

In the judgement of Morris J. in the legal case *Lennon v. Kingdom Plant Hire* (unreported High Court, December 13, 1991) that case is referred to by E. Galligan in *Irish Planning Law and Procedure*, pg.126, where he stated that "Morris J. described the factors to be taken into account in determining whether what at issue is land reclamation". These considerations are:

- The primary objective in carrying out the work
- The depth and area of any excavation which a bona fide land reclamation requires
- The area in which it is proposed to carry out the works
- The type of terrain on which the work is to be done.

In regard to the above factors, it is quite clear that the primary objective in carrying out the work at the site is to improve existing agricultural land as being carried out already by Lennon Quarries. The land in question will be rendered more productive by the recovery activity and therefore the primary objective is land reclamation and a recovery activity and not waste disposal.



We also refer to the criteria set out by *Nicolas de Sadeleer* in the 2005 *Journal for European Environmental and Planning Law* which states that:

*In order for an operation to be classed for recovery, it is necessary that the waste serves a purpose other than mere storage or disposal. This classification will be made where:*

- *The operation consisting of the recovery of the waste... is justified on technical and scientific grounds;*
- *the waste has a useful purpose on the basis of its properties; in other words it must be particularly suited to the operation;*
- *the waste that is used replaces other materials which would normally have had to be used to carry out this operation.*

As the current case provides an affirmative answer to each of the above it is our professional opinion that the importation of soil and topsoil onto agricultural land at Tallagh constitutes land reclamation by way of waste recovery. The granting of Waste Permit WMP for this site confirms that Mayo County Council agree that the activity is for the primary purpose of improving agricultural land.

The materials to be used for land reclamation are uncontaminated soil and stones (17 05 04 Soil and Stones other than those mentioned in 17 05 03) as described in accordance with the European Waste Catalogue (valid from 1/1/2002). This material is suitable for land reclamation. The spreading of this material on existing agricultural land will not materially change the use of the land (i.e. it is agricultural land at present and will remain agricultural land at the end of reclamation works).

In this context we would bear the following in mind:

- The lands are currently in use for agricultural purposes, but are low lying and of poor quality as evidenced from the site vegetation, drainage channels and watercourse.
- The works proposed are for the purpose of land reclamation so as to enable the lands to be effectively used for agricultural purposes. The word 'reclamation' implies claiming back from some unsuitable state. The definition might imply an unsuitable state arising from topography, drainage, poor-quality soils, damage to soils, presence of rock or vegetation etc.
- The reclamation works would raise the lands by approx. 2 metres.

The Board's attention is also drawn to criteria set out by *Nicolas de Sadeleer* in the 2005 *Journal for European Environmental and Planning Law* which states that in order for an operation to be classed for recovery, it is necessary that the waste serves a purpose other than mere storage or disposal.

As the current case could be considered as complying with each of the criteria we consider that the importation of inert material onto agricultural land at Tallagh constitutes land reclamation by way of waste recovery, and is not simply a case of waste disposal.

In regard to the above factors, it is quite clear that the primary objective in carrying out the work is to improve existing agricultural land; having inspected the site, we concur that the field unit which it is proposed to fill may be rendered more productive by providing a terrain conducive to improved drainage; we also consider that the field unit itself is of a moderate area in terms of modern agricultural practice, and that the depth of fill and duration of operation are reasonable; we consider therefore that the primary objective of the development to be carried out by the applicant is land reclamation and not waste disposal.



### 3. Conclusions

1. Lennon Quarries have provided one of the few authorised soil and stone recovery facilities in North Mayo and the site provides an essential recovery activity for clean and inert soil and stones from local development sites. Without this facility, there would be a widespread increase in illegal fly-tipping and unauthorised activity. It is our understanding that very few land reclamation recovery sites have applied for Waste Licences for taking in soil and stones and that this is the only site in North Connaught. Even the EPA Inspector in her report agrees that the site is in keeping with the Connaught Waste Management Plan 2006-2011.

2. It is our understanding that if it were possible for Lennon Quarries to renew or review their waste permit with the local authority; there would be no environmental issues in this being granted as there appears to be no enforcement action or issues with the operation of the site. We feel that they have been treated unfairly in the issuing of this proposed decision to refuse a waste licence. We believe TJ Lennon of Lennon Quarries to be a competent and responsible operator and should be licensed to continue this recovery activity which is vital to the wider economic stability and growth of North Mayo.

3. It is our opinion that the land reclamation works at Tallagh are a recovery activity with a beneficial use to agriculture. We would refute any suggestion that this operation has been or will be a waste disposal operation.

4. The EPA's argument that the recovery operation lasting 24 years is an issue is illogical. If one of the large multi-national companies operating in Ireland were told by the Agency that their IPPC Licence couldn't be granted for this period of time and that they were going to be refused a licence then does one assume they would bother staying in Ireland to carry on their business and provide jobs.

5. The applicant does not have to "prove any proposed change of use of the site". Where the Agency has got this assertion is bewildering but is factually incorrect. The lands are marginal agricultural land at present and will be restored to agricultural lands during and after the land reclamation works.

6. The Agency has claimed that "In reaching this decision the Agency has considered the application and supporting documentation received from the applicant, all submissions received from other parties, the objectives of the Connaught Waste Management Plan (2006 - 2011), and the report of its inspector". We would contend that that this is incorrect. The board of the Agency has blatantly ignored the recommendations and advice of their own inspector – Aoife Loughnane who recommended granting a licence and had even drafted a draft licence as part of her report. Secondly in her report she examines the Connaught Waste Management Plan (2006 - 2011) and concurs that the activity is in keeping with the plan:

*"The applicant's proposal satisfies the objectives of the plan insofar as they have provided evidence from an agricultural advisor that the recovery of waste soil and stones to land is of agricultural benefit. The RD addresses the environmental concerns associated with the proposed activity. The applicant is required to implement robust waste acceptance and inspection procedures to ensure that only uncontaminated natural soil and stones are used in the waste deposition works. The applicant has undertaken ecological assessments which have found the site to be of low ecological value, with the exception of the lowland river habitat. A buffer zone is proposed as a mitigation measure to protect this habitat."*

7. The existing inert land reclamation facility at Tallagh, recovering inert soil and stones cannot cause environmental pollution, with the safeguards which have been proposed in the Waste License application and the monitoring procedures which will follow. Therefore the Agency's comment that "the Agency is not satisfied that such disposal would not cause environmental pollution" has no substance and is incorrect.




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We sincerely hope that our comments are taken on board by the Agency, in consideration of this Waste Licence application and that a Waste Licence application is granted to Lennon Quarries as per the recommendations of the EPA inspector for this case.

Yours sincerely,



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