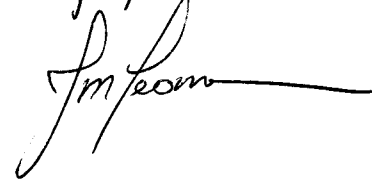


Jacqueline Yeomans,
 Apartment 45,
 Broadmeadow Castle,
 Ashbourne,
 County Meath.
 6th February 2011.
 0876811094

FAO :- Joe Reilly

I would like this application and
 the application sent in on 2nd Feb 2011
 to be treated as submissions.

Thanking you,



**Objection to planning application of MEHL waste facility in
 North County Dublin for the treatment of ash, generated
 from waste and energy facilities.**

Planning application number PL06F,PA0018

Further to my original objection, important information has come to my
 attention.

I would like to add this letter to my original objection.

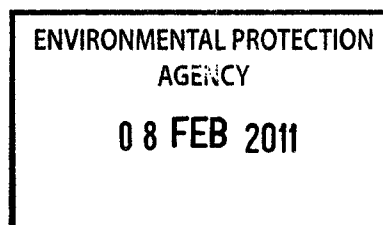
I enclose 'Guidance on Environmental Liability Risk Assessment
 Residuals Management Plan and Financial Provision'. (EPA 2006)

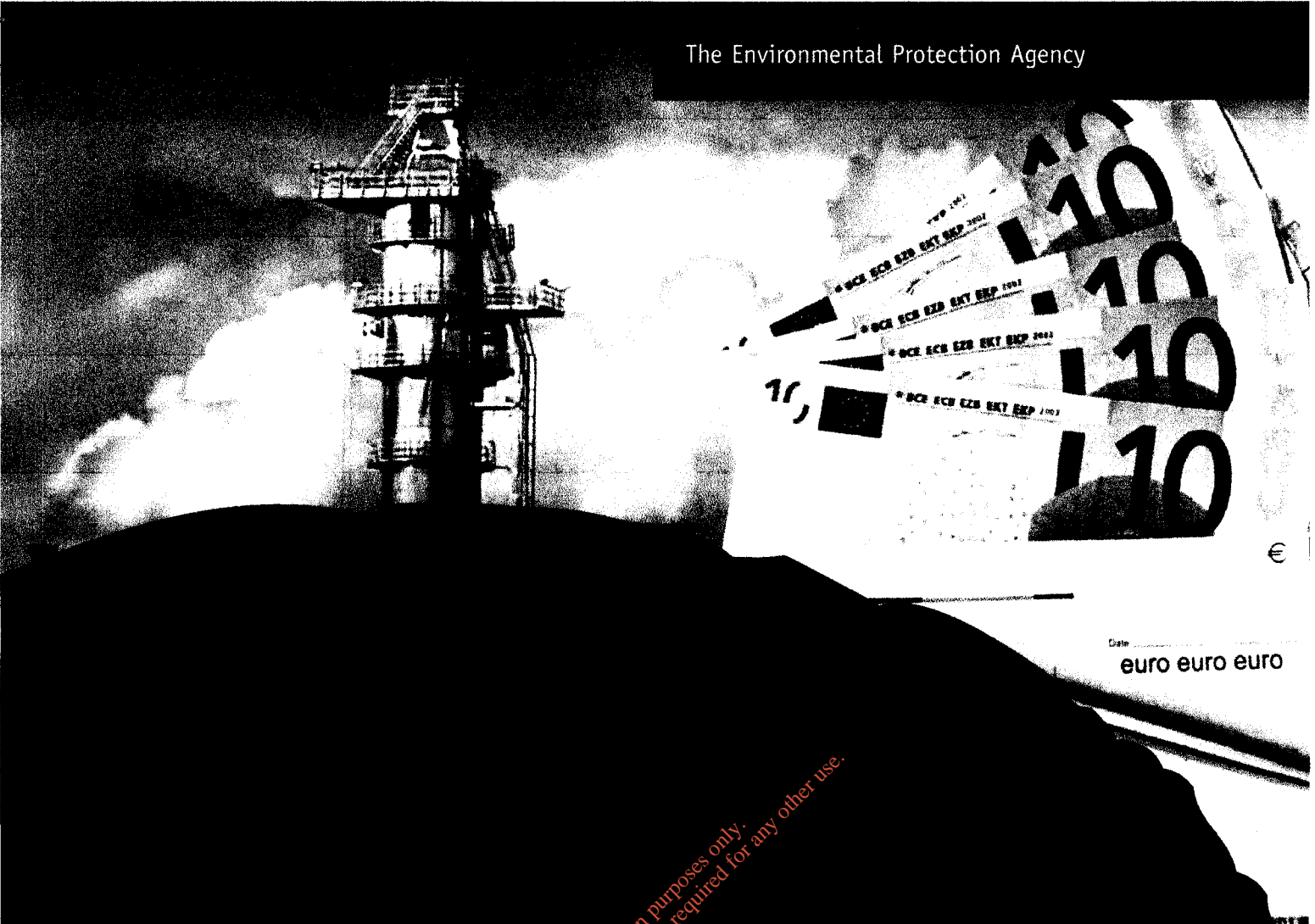
The highlighted areas display my foremost concerns.

I trust that all of these guidelines are being adhered to and if not, this is
 an addition to my objection.

Kind regards,

Jacqueline Yeomans





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Guidance on Environmental Liability Risk Assessment, Residuals Management Plans and Financial Provision



Office of
Environmental
Enforcement

1 INTRODUCTION

1.1 GENERAL INTRODUCTION

This Guidance Document presents a systematic approach to the assessment and management of Environmental Liabilities in order to comply with IPPC and Waste Licence conditions for Environmental Liability Risk Assessment (ELRA), Residual Management Planning (RMP) and Financial Provision (FP). Currently, there are variations between the IPPC and Waste Licensing systems in relation to specific conditions and terminology, but these will be gradually addressed during future revisions to existing licences (through the implementation of the IPPC Directive for example) and by the issue of new licences to new facilities.

This Guidance includes a risk assessment methodology in Step 1 (Initial Screening) that reduces the number of IPPC and waste licensed facilities that will be required to complete full ELRA and RMP reports and make Financial Provision. The Guidance also proposes a system whereby higher risk facilities can reduce their risk profile through risk management in order to reduce the costs of making financial provision.

There are several environmental benefits of proper ELRA, CRAMP and FP planning which include:

- The reduction in the potential for environmental damage as the result of accidents
- The minimisation of residual / long term impacts from manufacturing and waste management facilities upon closure
- Forward Financial planning for environmental liabilities
- Reduction in the financial provision required

A Glossary of Terms has been included within Appendix A of this document for reference.

1.2 LEGAL FRAMEWORK FOR ELRA/RMP/FP

1.2.1 European Union

Landfill Directive

Directive 1999/31/EC of 26 April 1999 on the landfill of waste makes direct reference, in particular, to RMP and Financial Provision under Article 7.

The application for a landfill permit must contain certain minimum particulars, including “the proposed plan for the closure and after-care procedures” (i.e., CRAMP) and “the financial security by the applicant, or any other equivalent provision, as required under Article 8(a)(iv) of this Directive” (i.e., FPA).¹

¹Article 7

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This security or its equivalent shall be kept as long as required by maintenance and after-care operation of the site in accordance with Article 13(d).

Waste Incineration Directive

The stated aim of Directive 2000/76/EC of 4 December 2000 on the incineration of waste is to “prevent or to limit as far as practicable negative effects on the environment...from the incineration and co-incineration of waste”.

A permit for an incineration or con-incineration plant must comply with applicable requirements under various other EU Directives including the Landfill Directive. As a result, the Landfill Directive requirements regarding adequate financial provision would apply with equal force to incineration or co-incineration plants.

IPPC Directive

Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control contains separate references to the necessary measures “to prevent accidents and limit their consequences” and “upon definitive cessation of activities, to avoid any pollution risk and return the site of operation to a satisfactory state” under Article 3.

Environmental Liability Directive

The Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage provides a framework of environmental liability based on the “polluter pays” principle. The deadline for transposition into domestic law is 30th April 2007.

The Directive applies to certain occupational activities, including the operation of installations under the IPPC Directive, the Waste Framework Directive, the Landfill Directive and the Waste Incineration Directive. The Directive will also apply to activities under the proposed Extractive Industry Waste Directive.

It imposes strict liability on those who cause environmental damage (that is, damage to biodiversity and water resources and land contamination that causes significant risk of harm to human health). It requires such persons to take preventive measure to avoid damage occurring, remedy damage that occurs and bear the remediation costs of damage that is remedied by the competent authority. Liability is principally to the competent authority and the Directive does not provide for compensation to third parties who suffer damage.

Proposed Mine Waste Directive

The EU proposed Directive “provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries”². Following Conciliation in late 2005 on a number of issues including financial provision, the Directive is expected

² Article 1 of COM(2003)0319-C5-0256/2003

to include the requirement for a ~~financial guarantee~~. The guarantee must be sufficient to cover the cost of rehabilitation of the land affected by the waste facility, including the waste facility itself, and the size of the guarantee must be periodically adjusted in accordance with any necessary rehabilitation work³.

1.2.2 Ireland

Waste Management Acts, 1996 to 2003 (the "WMA").

~~Mandatory~~ Requirements

The Agency is ~~prohibited~~ from granting a waste licence until it has been satisfied on certain matters,⁴ including that:

- ~~The activity concerned will not cause environmental pollution.~~
- ~~Provided that, the activity will comply with the Liability Directive⁵~~
- ~~The applicant is a fit and proper person to hold a waste licence⁶~~
- ~~The applicant has complied with the requirements for provision of financial security under section 53⁷~~
- Necessary measures will be taken to prevent and limit the consequences of accidents in the carrying on of the activity; and,⁸
- Necessary measures will be taken upon the permanent cessation of the activity concerned (including from abandonment) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state.⁹

Fit and Proper Person

~~The Agency~~ shall be regarded as a fit and proper person if (among other things):

"in the opinion of the Agency, ~~the applicant is a fit and proper person to hold a waste licence~~
~~and that the applicant has complied with the requirements for provision of financial security~~
~~under section 53 of the WMA 2003 and that the applicant will take, in accordance with the~~
~~terms thereof or in consequence of ceasing to carry on that activity¹⁰.~~"

It is worth noting that section 53 provides a second and separate basis for the imposition of financial provision requirements. The separate references at section 40(4)(d) and (e) (and section 47(5)(a) and (b)) both support this conclusion. The principal significance would appear to be that, although local authorities are not required to be "fit and proper", they can be required to make financial provision under section 53.

³ Report on the joint text by the Conciliation Committee for a directive of the European Parliament and of the Council on the management of waste from the extractive industries and amending Directive 2004/35/EC, A6-0001/2006

⁴ Section 40(4) of the WMA.

⁵ Inserted by section 35(d) of the Protection of the Environment Act 2003 ("POEA 2003").

⁶ Note that this requirement does not apply where the applicant is a local authority etc.

⁷ The requirements under section 53 apply to both private and public entities.

⁸ Inserted by section 35(g) of the POEA 2003.

⁹ Inserted by section 35(g) of the POEA 2003.

¹⁰ Section 40(7)(c) of the WMA.

Conditions

The Agency may grant a waste licence subject to, or without, conditions or refuse to grant to the applicant such a licence.¹¹ Certain matters must be specified as conditions in the licence¹² and other matters may be addressed by way of condition, including:

- the making of a plan setting out the measures to be taken in the event of any accident or incident (including any difficulty of an operational nature) occurring that involves the facility or any plant concerned;¹³
- require the making and maintenance of such financial provision as may be required under section 53(1);¹⁴
- require the holder of the licence to insure or to procure a policy of insurance insuring him or her as respects any liability on his or her part to pay damages or costs on account of injury to person or property arising from the carrying on of the activity concerned;
- require the making of payments by the holder of the licence to the Agency to defray costs which may be incurred by the Agency in monitoring or otherwise in performing any functions in relation to the activity concerned;
- specify requirements for the closure, restoration and remediation of, or the carrying out of aftercare in relation to, the facility concerned; and,
- require the holder of the licence to comply with such further requirements in relation to the closure, restoration, remediation and aftercare of the facility concerned, or otherwise as may in due course be determined under section 46(5).¹⁵

The Agency is permitted to recover the amount of any payment due to it arising from a condition attached to a waste licence as a simple contract debt in any court of competent jurisdiction.¹⁶ Financial Provision

Before the Agency (1) decides whether to grant or transfer a waste licence or (2) conducts a review of a waste licence, section 53(1) requires the Agency to require the applicant for, or the holder of, the licence or the proposed transferee to

“(i) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.”

“(ii) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.”

Integrated Pollution Prevention and Control - Environmental Protection Agency Acts, 1992 and 2003 (the “EPA Acts”). Mandatory Requirements

As with the WMA, the Agency is prohibited from granting a licence or revised licence for an activity unless it is satisfied of a number of matters, including that:

¹¹ Section 40(1)(a) of the WMA. Note there exists a (theoretical) possibility of the grant of a permit without conditions, which would not appear consistent with EU Directives etc. This is not an issue in practice as the Agency routinely imposes certain standard conditions, at minimum. cf section 41(2)(a), which does provide certain minimum requirements for conditions.

¹² Section 41(2)(a) of the WMA.

¹³ Effectively, this would comprise an ELRA for future operations. Note that the question of whether EPA can be required to accompany the ELRA must be addressed under section 40(7)(c) and 53 of the WMA.

¹⁴ Which relates to financial provision.

¹⁵ i.e., upon review of the waste licence.

¹⁶ Section 41(5) of the WMA.

- any emissions from the activity will not cause significant environmental pollution;
- necessary measures will be taken to prevent and to limit the consequences of accidents in the carrying on of the activity and to remedy those consequences;
- necessary measures will be taken upon the permanent cessation of the activity (including from abandonment) to avoid any risk of environmental pollution and return the site of the activity to a satisfactory state;
- and, the applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence.

Fit and Proper Person

A person shall be regarded as a fit and proper person if (among other things):¹⁷

in the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers have been, or will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms thereof or in consequence of ceasing to carry on that activity.”

Conditions

The Agency may grant a licence subject to such conditions as it considers appropriate or refuse the application.¹⁸

Certain matter must be specified in the licence, including to specify the measures to be taken, including as appropriate the duration of such measures, on and following the permanent cessation of an activity (including such a cessation resulting from the abandonment of the activity).

Financial Provision

Before the Agency (1) decides whether to grant or to effect a transfer of a licence or a revised licence or (2) completes a review of a licence or a revised licence, section 83(6) permits the Agency to require the applicant for the licence, the licensee in the case of a review, or the proposed transferee to:

“(i) furnish to it such particulars in respect of such matters affecting his ability to meet the financial commitments or liabilities that the Agency reasonably considers will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms of the licence or in consequence of ceasing to carry on that activity as it may specify, and

(ii) make, and furnish evidence of having so made, such financial provision as it may specify (which may include the entering into a bond or other form of security) as will, in the opinion of the Agency, be adequate to discharge the said financial commitments or liabilities.”

1.3 IPPC AND WASTE LICENCE CONDITIONS FOR ELRA / RMP / FP

1.3.1 Existing IPPC Licensing Requirements

The standard condition for Residual Management Plan (RMP) in a recently granted IPPC Licence is outlined below:

¹⁷ Section 84(4); inserted, s15 PoEA 2003.

¹⁸ Section 83(1) of the EPA Acts.