

Josephine Kennedy

From: Jack O'Sullivan [jackosullivan2006@gmail.com]
Sent: 10 March 2011 16:49
To: Josephine Kennedy
Cc: Wexford Receptionist
Subject: Submission on behalf of the Ballinasloe Environmental Alliance; EPA Reference P0045-05.
Attachments: BEA-104 Complete Observations on intention to revoke P0045-05, 10-Mar-11.pdf

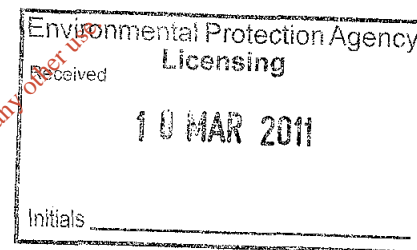
Dear Josephine,

Submission on behalf of the Ballinasloe Environmental Alliance in Relation to the Notified Intention by the EPA to Revoke the IPPC Licence issued to Premier Proteins (2000) Ltd, Ballinasloe, County Galway; EPA Reference P0045-05

Please find attached our submission on the Agency's notification of an intention to revoke the IPPC licence granted to Premier Proteins (2000) Ltd, Ballinasloe, County Galway.

Very best regards,

Jack O'Sullivan



Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants
 Outer Courtyard,
 Tullynally,
 Castlepollard,
 County Westmeath.
 Loc8 Code: MJM-20-W96
 Telephone 044 966 2222
 Fax 044 966 2223
 E-mail jackosullivan2006@gmail.com

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ENVIRONMENTAL MANAGEMENT SERVICES

Notice of Intention by the Environmental Protection Agency, pursuant to the Power given to the Agency by Section 97 of the Environmental Protection Agency Acts 1992 to 2010, to revoke a revised IPPC Licence granted on 10 October 2008 to Premier Proteins (2000) Limited, Poolboy, County Galway

IPPC Licence Register Reference P0045-05

**SUBMISSION ON BEHALF OF THE BALLINASLOE
ENVIRONMENTAL ALLIANCE**

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**Environmental Management Services
Outer Courtyard, Tullynally,
Castlepollard,
County Westmeath, Ireland**

Telephone 044 966 2222
Fax 044 966 2223

E-mail jackosullivan2006@gmail.com

10 March 2011



Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

Outer Courtyard, Tullynally, Castlepollard, County Westmeath
Clós Seachtrach, Tulaigh an Eallaigh, Baile na gCros, Co. an Iarmhí
Telephone 044 966 2222 Fax 044 966 2223 E-mail jackosullivan2006@gmail.com

10 March 2011

Environmental Licensing Programme,
Office of Climate, Licensing and Resource Use,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Co. Wexford.

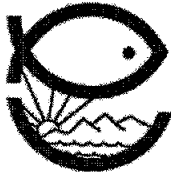
Dear Sir,

Notice of Intention by the Environmental Protection Agency, pursuant to the Power given to the Agency by Section 97 of the Environmental Protection Agency Acts 1992 to 2010, to revoke a revised IPPC Licence granted on 10 October 2008 to Premier Proteins (2000) Limited, Poolboy, County Galway

IPPC Licence Register Reference P0045-05

In response to the Agency's formal notification on 10 January 2011 of the Agency's intention to exercise its powers under Section 97 (1) (a) and (b) of the Environmental Protection Agency Acts 1992 to 2010 to revoke the revised IPPC licence, Register No: P0045-05, which was granted on 10 October 2008 to Premier Proteins (2000) Limited, please find attached our observations on behalf of the Ballinasloe Environmental Alliance.

We fully support the Agency's intention to revoke the revised IPPC licence granted on 10 October 2008 to Premier Proteins (2000) Limited, as we consider that the Environmental Protection Agency, has not only the power but an obligation to revoke a licence if a licensee does not adhere to the IPCC license conditions and thereby causes considerable nuisance and aggravation to the adjacent residential housing properties in Ballinasloe.



Environmental Management Services
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

The address of the Ballinasloe Environmental Alliance is:

c/o Ms Anita Killeen,
Hon. Secretary, Ballinasloe Environmental Alliance,
9 Riverside View,
The Pines,
Ballinasloe,
County Galway.

Yours sincerely,

Jack O'Sullivan.

Jack O'Sullivan

Environmental Management Services

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ENVIRONMENTAL MANAGEMENT SERVICES

Notice of Intention by the Environmental Protection Agency, pursuant to the Power given to the Agency by Section 97 of the Environmental Protection Agency Acts 1992 to 2010, to revoke a revised IPPC Licence granted on 10 October 2008 to Premier Proteins (2000) Limited, Poolboy, County Galway

IPPC Licence Register Reference P0045-05

SUBMISSION ON BEHALF OF THE BALLINASLOE ENVIRONMENTAL ALLIANCE

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IPPC Licence Register Reference P0045-05

SUBMISSION ON BEHALF OF THE BALLINASLOE ENVIRONMENTAL ALLIANCE

1. INTRODUCTION

On 10 January 2011, the Environmental Protection Agency (EPA) issued a formal notification to Premier Proteins (2000) Ltd., Poolboy, Ballinasloe, County Galway, giving notice of the Agency's intention to exercise its powers under Section 97 (1) (a) and (b) of the Environmental Protection Agency Acts 1992 to 2010 to revoke the revised IPPC licence, Register No: P0045-05, which was granted on 10 October 2008 to Premier Proteins (2000) Limited, Poolboy, Ballinasloe, County Galway.

In reaching this decision the EPA had regard to the compliance history of the licensee, including the number of complaints about odour made to the EPA and to the licensee by members of the public, the failure of the licensee to comply with conditions attached to the above mentioned IPPC licence and to comply with enforcement requests, and the failure of the licensee to demonstrate that it has the necessary skills and technical knowledge to operate satisfactorily the odour abatement system installed at the licensee's rendering plant.

The notification also stated that written representations concerning the Agency's intention may be made to the EPA by any person (including the licensee) on or before 10 March 2011. A notice was also published by the Agency in the 13 January 2011 issue of the "Connaught Tribune", similarly stating that written representations may be made to the Agency.

As the Agency will be aware, the **Ballinasloe Environmental Alliance (BEA)** has consistently drawn attention to the widespread nuisance odour problems caused by the operation of the licensee's rendering plant; and we have now been instructed by the Ballinasloe Environmental Alliance to make the following submission on their behalf. In our submission, we will comment on the Agency's reasons for arriving at the intended decision to revoke the above IPPC

licence, add further information which we believe should be taken into account by the EPA in making a final decision in this matter, and will briefly comment on the legal options which the Agency may exercise when faced with a serious, ongoing and long standing failure by a licensee to comply with the valid conditions attached to an IPPC licence.

2. BALLINASLOE ENVIRONMENTAL ALLIANCE

As the Agency may already be aware, the Ballinasloe Environmental Alliance (BEA) was established in October 2007 following a series of public meetings attended by people living in and around the town of Ballinasloe. These meetings were held because of increasing concern about the almost continuous odour nuisance and other environmental problems caused by the rendering plant operated by Premier Proteins at Pollboy and because of the frequent breaches by the company of the conditions attached to the plant's IPPC licence issued by the Environmental Protection Agency.

These public meetings were attended by residents, business people and representatives of civic bodies from the vicinity of the Premier Proteins facility and from the Ballinasloe area generally. Local residents and other persons attending these meetings expressed considerable frustration and concern about the continuous and offensive odour emissions, noise levels and the mode of transport of raw materials to the facility. The aim of the Ballinasloe Environmental Alliance (BEA) is therefore to ensure that Premier Proteins comply in full with the conditions required by the company's IPPC licence, as issued by the EPA; or, if full compliance cannot be achieved, the plant should cease to operate.

Members of the Ballinasloe Environmental Alliance would like to be able to enjoy the residential amenities of their own homes and gardens and the facilities of the town without being constantly subjected to the malodours from the licensee's rendering plant. They believe that this is a basic right and a very reasonable request; and they have stated at public meetings and at meetings with elected representatives and local authority officials that the Ballinasloe Environmental Alliance does not want to damage employment prospects in the Ballinasloe area. At the same time, the BEA contends that the inability of the plant management to operate the facility within the terms of the IPPC licence has been, and still remains, a significant threat to the health of the licensee's own workforce. The BEA further believe that the continuous odour from the rendering plant has a depressing effect on the economic life and the social life of the town of Ballinasloe; and, that if the odour emissions were to cease, businesses in the town would benefit as a result of the town becoming more attractive to visitors, and its potential as a location for clean industry would be greatly improved.

The Agency's intention to revoke the rendering plant's current IPPC licence has therefore been welcomed by the BEA, and it was agreed that Environmental Management Services should be instructed to make a submission to the Agency in support of this declared intention.

The Ballinasloe Environmental Alliance urges the EPA to proceed with its intention to revoke the IPPC licence issued to Premier Proteins on 10 October 2008, and to set stringent conditions for the decommissioning and closure of the licensed activity.

The address of the Ballinasloe Environmental Alliance is:

**c/o Ms Anita Killeen,
Hon. Secretary, Ballinasloe Environmental Alliance,
9 Riverside View,
The Pines,
Ballinasloe,
County Galway.**

3. REASONS FOR THE AGENCY'S INTENDED DECISION TO REVOKE THE CURRENT IPPC LICENCE HELD BY PREMIER PROTEINS FOR THE RENDERING PLANT AT POLLBOY

Before commenting on the Environmental Protection Agency's reasons for arriving at its intended decision to revoke the current IPPC licence held by Premier Proteins for the company's rendering plant at Pollboy, it may be appropriate to list the matters to which the EPA had regard, as set out in the formal notification dated 10 January 2011:

1. *The compliance history of the licensee and in particular:*
 - a. *The failure of the licensee to operate the installation in a compliant manner on a consistent basis in accordance with the requirements of the existing revised licence granted by the Agency;*
 - b. *The history of the licensee over a number of years and in particular over [the] last 12 months;*
 - c. *The 2 (two) successful District court prosecutions recorded against the licensee as a result of which the licensee was given the benefit of the Probation Act in 1999 and a subsequent conviction recorded against the licensee in 2008 regarding the terms of the IPPC Licence Reg. No. P0045-05;*
 - d. *The significant on-going lack of control of odours from the installation and the failure of the operator to adequately treat / abate odours from the on-site operations, in contravention of the terms of IPPC Licence Reg. No. P0045-05;*

- e. *The impact of the odours from the licensed activity on the surrounding environment and local sensitive receptors;*
 - f. *The intensifications of complaints and the number of non-compliant odours detected by the Office of Environmental Enforcement (OEE) in 2010; and,*
 - g. *The failure of the licensee to comply with enforcement requests from the OEE over a considerable period of time;*
2. *The absence of demonstrated requisite technical skills and knowledge necessary to carry out the operation of the existing abatement equipment in a manner that would prevent the generation of nuisance odours likely to impact on the surrounding environment, the local community and sensitive receptors.*

Having taken these matters into consideration, the Agency concluded that it:

"is not satisfied that that the licensee can operate the facility in a manner that will not cause environmental pollution and has decided to issue this notice of its intention to exercise its powers under Section 97 to revoke the revised licence, Register Number P0045-05".

Furthermore, before reaching this very significant decision, the issues were discussed at a full Technical Board Meeting held on 21 December 2010, the Agency's Legal Advisors were consulted, and the matter was again discussed at a Licensing Meeting of the Agency's Board held on 04 January 2011. The Agency's Office of Environmental Enforcement (OEE) also submitted a memo outlining the compliance record of the licensee with the existing licence and recommended revoking the licence to the Board of the Agency at its meeting on 07 December 2010. It is also very likely, and would be appropriate, that the inspector attached to the Agency's Office of Climate, Licensing and Resource Use would have consulted with colleagues (including the inspector responsible for the site, other inspectors and managers) in the Office of Environmental Enforcement before making a recommendation to the Board.

3.1 Observations on the Decision-Making Process Employed

It is our submission, on behalf of the Ballinasloe Environmental Alliance, that the decision-making procedure employed by the Agency reflected the serious nature of the decision being considered, that appropriate internal consultations were undertaken, that all relevant matters were taken into account, and that the proposed decision to revoke the licence was not taken in haste. If there is any criticism of the process, from the perspective of the BEA, it is that such a long period of time had to pass, and local residents had to endure malodours from the licensee's rendering plant for many years, before the Agency came to the conclusion that revocation of the plant operator's IPPC licence was the only and the most effective solution to the odour nuisance problem.

4. LEGAL BASIS FOR THE AGENCY'S INTENDED DECISION

As stated in the formal notification to Premier Proteins, the Agency relied on a power granted to it by Section 97 (1) (a) and (b) of the Environmental Protection Agency Acts 1992 to 2010.

The Environmental Protection Agency Act, 1992, contained no provision by which the EPA could suspend or revoke either an IPPC licence or a waste licence, and this power was introduced only in 2004 by the Protection of the Environment Act 2003 (No. 27 of 2003). Section 15 of this later Act substitutes a new Part for Part IV of Act of 1992, and the new Section 97 of the EPA Act now states that:

- 97. — (1)** *The Agency may revoke, or suspend the suspension of operation of, a licence or revised licence if it appears to the Agency that —*
- (a) the licensee no longer satisfies the requirements specified in section 84(4) for his being regarded as a fit and proper person,*
and
 - (b) the circumstances occasioning his no longer satisfying those requirements are, in the opinion of the Agency, of such seriousness as to warrant the revocation of the licence or the suspension of its operation.*
- (2)** *References in this Act to the cessation of the activity to which a licence or revised licence relates shall be construed as including references to such a cessation in consequence of the revocation of the licence.*
- (3)** *None of the requirements of section 90 or of any other provision of this Part shall apply to the exercise of the power under subsection (1) but where the Agency proposes to exercise the power it shall afford the licensee and any other person whom it considers ought to be afforded such an opportunity an opportunity to make representations to it in relation to the matter.*
- (4)** *The cesser of a licence's or a revised licence's effect under this section shall in no way affect or diminish such conditions, requirements or obligations (being conditions, requirements or obligations that apply to, or fall on, the licensee by virtue of the licence) as may be specified by the Agency in exercising the powers under this section.*
- (5)** *The licensee or the former licensee may appeal to the High Court against a revocation or suspension of a licence or revised licence under this section and, on*

the hearing of the appeal, the High Court may confirm or annul the revocation or suspension or, in the case of a suspension, vary the period for which the suspension shall operate.

- (6) *The Minister may by regulations make such incidental, consequential or supplementary provision as may appear to him to be necessary to give full effect to any of the provisions of this section.*

It seems clear that suspension or revocation of a licence can be used by the Agency only when the circumstances are “*of such seriousness*” as to warrant it; this particular power is one of last resort and is to be used only when other enforcement mechanisms are close to exhaustion or have not had the required effect.

A very similar power to revoke, or suspend the operation of, a waste licence has been given to the Agency by a new Section 48A of the Waste Management Act 1996, inserted in that Act by Section 41 of the Protection of the Environment Act 2003. In both situations, revocation or suspension of a licence hinges on a licensee no longer being a fit and proper person, either because the licensed site is no longer being managed by suitably qualified or experienced individuals, if the licensee has been convicted of environmental offences, or where the licensee’s reduced financial status calls into question the person’s ability to fulfil the obligations of the licence, or where there is a combination of all these reasons.

Since, as far as we know, this is the first occasion on which the Agency has announced its intention to use its power to revoke an IPPC licence, there is no guidance or case law which can be cited; and therefore the legislation must be interpreted at face value, i.e., in accordance with the normal meaning of the words used in the Act.

Unfortunately, the legislation has been drafted in a way which may leave some matters unclear, and we would like to comment briefly on these:

- the difference between “revocation” and “suspension” is not clearly stated;
- is revocation or suspension a terminal measure, or can a licence be revoked or suspended for a definite period of time; and,
- can an IPPC licence be revoked or suspended on environmental grounds.

4.1 Revocation or Suspension – Permanent or Temporary ?

Though not explicitly defined in the Protection of the Environment Act 2003, the term “revocation” has a sense of finality – the contract between the EPA and the licensee has been cancelled or annulled, and there is no mechanism in the legislation for undoing the act of revocation. In other words, the licence cannot be revived or reviewed by the Agency.

The term "suspension" is generally regarded as creating a temporary stop of an activity or of a right, a partial extinguishment, or an extinguishment for a time. A suspended activity or a right may be revived. However, as in the case of "revocation", there is no mechanism or procedure in the legislation which would allow the Agency to remove a temporary suspension. In any event, we would suggest that in this case, the objective of ensuring cessation of the odour nuisance would not be achieved by temporarily suspending the rendering plant operator's IPPC licence, as it would be very unlikely to result in an improvement in the situation described by the Agency in its intended decision to revoke the licence.

Therefore, we would submit that revocation of the licence must be considered as a permanent resolution of the odour problem.

4.2 Revocation or Suspension on Environmental Grounds

At first sight, Section 97 (1) makes no reference to revoking an IPPC licence on environmental grounds, for example, if the licensed activity, as a result of failure to comply with licence conditions, or for any other reason, is causing serious environmental pollution. However, it seems clear that the section has been drafted in such a way as to include environmental grounds, provided these are considered by the Agency to be "*of such seriousness as to warrant the revocation of the licence*". Section 97 (1) appears therefore to include a wide range of grounds which may be considered sufficiently serious by the Agency, and environmental reasons are not excluded from consideration.

Therefore, we would submit that one of the serious environmental grounds for the Agency to consider revoking the licence, i.e., "*the impact of the odours from the licensed activity on the surrounding environment and local sensitive receptors*", is a legally valid reason which may be taken into account when reaching a decision to revoke the IPPC licence.

4.3 An Appropriate Solution

Given that the Agency has sought legal advice from its own legal team, and that the meaning of Section 97 is quite clear, we would agree that the power to revoke or suspend an IPPC licence is an appropriate instrument to ensure compliance and to terminate an environmental nuisance when other means of doing so have not been effective.

4.4 Locus Standi of the Ballinasloe Environmental Alliance

In planning law there is no doubt that local residents, and in fact any persons, have a right to make submissions to the relevant Planning Authorities, provided that the required conditions about making a submission within a particular time period, and paying the required fee, are fulfilled. But Section 97 (3) quoted above is much less clear, as it states that:

" ... where the Agency proposes to exercise the power it shall afford the licensee, and any other person whom it considers ought

to be afforded such an opportunity, an opportunity to make representations to it in relation to the matter”.

In case there should be any dispute or concern about whether or not the Ballinasloe Environmental Alliance should be given an opportunity to make a submission to the Agency, we would refer to two of the reasons given by the EPA for intending to revoke the licensee's IPPC licence:

- i) the “*impact of the odours from the licensed activity on the surrounding environment and local sensitive receptors*”; and,
- ii) the “*intensifications of complaints*”.

As the Agency will be aware, “*local sensitive receptors*” include “*areas of residential housing, schools, hospitals, places of worship, sports centres and shopping areas, i.e. locations where members of the public are likely to be regularly present*”.¹ Sensitive receptors is a term also applied to individuals who have become sensitised to an environmental contaminant or nuisance, and have therefore become more vulnerable, or they experience the nuisance to a greater degree than those less sensitive persons who have not been previously exposed to the contaminant. It is clear therefore, that a significant number of the members of the Ballinasloe Environmental Alliance would come within the above definition, as they have become acutely aware of the malodours from the licensee's rendering plant, and feel that their lives have been adversely affected by these odours. The very lengthy duration of the odour nuisance, extending over a number of years, and the perception that nothing has been done so far to alleviate the distress of these local residents, puts them squarely within the definition of “sensitive receptors”.

Creagh National School is also a locally based sensitive receptor, and the Agency will be aware that the Principal of the School has previously made submissions to the Agency, and has made complaints about malodours from Premier Proteins' rendering plant disrupting the work of the school and affecting detrimentally the health of the children.

Secondly, the reference by the Agency to an increasing number of complaints, and the listing of complainants in an Appendix to the Notice of Intention, shows that many members of the Ballinasloe Environmental Alliance are among the numerous local complainants.

Thirdly, the Agency's Directors made a decision on 04 January 2011 that copies of the Notice of Intention should be provided to any parties who made submissions or objections in relation to the IPPC licences numbered P0045-05 and P0045-06, that copies of the Notice would be sent to the Local Authority, to the complainants named in Appendix 1 of the Notice of Intention, and that a notice would also be placed in a local newspaper. These actions clearly show that the Agency intends to obtain the views of local residents and other persons living in or connected with the town of Ballinasloe. Members of the Ballinasloe Environmental Alliance are among those whose views are sought.

¹ National Roads Authority: Guidelines for the Treatment of Air Quality During the Planning and Construction of National Road Schemes. Undated.

It is therefore clear that the Agency considers members of the Ballinasloe Environmental Alliance as persons whom it considers ought to be afforded an opportunity to make representations to it about the Agency's intention to revoke the IPPC licence.

In conclusion, we would submit that there is no doubt that the Ballinasloe Environmental Alliance as an organisation, and its members individually, have a more than adequate interest in the subject matter of the Agency's intended decision, and have a right to make representations to the Agency in relation to the proposed decision.

5. OBSERVATIONS ON THE AGENCY'S REASONS FOR THE INTENDED DECISION TO REVOKE PREMIER PROTEINS' IPPC LICENCE

In this section of our submission, we will comment on the reasons given by the Environmental Protection Agency for intending to revoke the IPPC licence granted to Premier Proteins. The reasons are closely related to each other, and overlap with each other to some extent, and our observations reflect this fact.

5.1 Failure to Operate the Rendering Plant in Compliance with Revised IPPC Licence Conditions

The failure of the licensee to operate the installation in a compliant manner on a consistent basis in accordance with the requirements of the existing revised licence granted by the Agency.

It is logical that if the licensee had operated the rendering plant and the odour control and abatement system in compliance with IPPC licence conditions, there would not be a widespread and long-continuing odour problem, caused by the plant.

Conditions 5.1 and 5.2 of the IPPC licence state that:

- 5.1 *No specified emission from the installation shall exceed the emission limit values set out in Schedule B: Emission Limits of this licence. There shall be no other emissions of environmental significance.*
- 5.2 *No emissions, including odours, from the activities carried on at the site shall result in an impairment of, or an interference with amenities or the environment beyond the installation boundary or any other legitimate uses of the environment beyond the installation boundary.*

The number of complaints by local residents, and the wide variety of addresses from which these complaints are made, clearly shows that condition 5.2 has been frequently breached over a long period of time, and is an indication that

the licensee has consistently failed to operate the installation in compliance with this condition of the revised IPPC licence.

This unsatisfactory situation was also noted by the Agency's Inspector in section 9 (page 8) of her report dated 17 April 2008:

"Recent enforcement issues at the installation relate to odour and to a lesser extent noise. The installation has been the cause of considerable local complaint, mainly due to odour, with an increase in complaints from late 2007 to early 2008. The Agency (OEE) has carried out a number of site visits and inspections and has required the licensee to undertake corrective actions including odour assessments. Recent non-compliances included: odours emanating from the installation and detected off-site, failure to notify the Agency of non-operation / malfunction of the TO, and failure to ensure that the primary odour abatement system (i.e. the TO) was operational when cooking was in progress. Ongoing enforcement action is likely to continue pending satisfactory performance of the TO."

We do not need to remind the Agency that other site inspection reports have also found significant odours and non-compliances. For example, the site inspection report dated 11 September 2008 (which will be in the Agency's files), covering the period 25th and 27th to 29th of August 2008, recorded odours off-site on 34 occasions during those few days. When recording these odour events, the Inspector noted that the odour resulted in significant interference with amenities and the environment beyond the boundary of the licensed facility. Locations affected by the odour included residential premises and commercial premises which were regarded by the EPA as "extra sensitive" because of previous complaints of odour from these locations.

The most obvious conclusion to be drawn from the applicant's record of non-compliances over such a long period of time is that:

- (i) no significant effort was being made by the licensee to address the odour problem; and / or,
- (ii) whatever steps were taken to address the odour problem were ineffective, most probably because the licensee did not have the necessary technical knowledge and skill to understand and operate the air pollution abatement equipment.

We therefore submit that the above reason given by the Agency for intending to revoke the IPPC licence granted to Premier Proteins is appropriate and correct.

5.2 History of the Licensee

The history of the licensee over a number of years and in particular over [the] last 12 months.

As the Agency will be very much aware, the licensee's rendering plant has a history of odour emissions which have caused considerable nuisance and widespread public concern, especially about potential ill-health consequences

of the emissions. Even though the rendering plant is located approximately 1.4 km south-east of the town centre of Ballinasloe, the odour from the plant frequently permeates the town; while residential housing estates closer to the plant suffer much more frequently from odours at a higher intensity.

Premier Proteins has operated since 1953 a rendering plant on the present site under the original company name of Burnhouse Ireland Limited. The plant came under the control of the Wilson family from 1969 to 1983, during which rendering continued under the name of Robert Wilson (Ireland) Ltd. In 1994, the IAWS Group took over the plant, and the facility is now part of the One51 Plc group.

Complaints about odours from the plant go back many years, but during the most recent two or three years the number of complaints has increased. The report dated 14 December 2010 by the Agency's Inspector who examined the applicant's request for a review of the plant's IPPC licence (reference P0045-06) observed that *"since 2008, OEE have received on-going complaints in relation to odour (161 since 01 July 2009). An Office of Environmental Enforcement (OEE) Audit in July 2009 and OEE site visits have identified significant issues with the odour abatement, discharges to water and the management of the site".*²

The direct experience of members of the Ballinasloe Environmental Alliance is that the history of the plant, and especially its recent history of increasing odour problems, is a valid reason for the Agency to revoke the plant's IPPC licence.

5.3 District Court Prosecutions Recorded against the Licensee, and the Legal Consequences of these Prosecutions ("fit and proper person")

The 2 (two) successful District court prosecutions recorded against the licensee as a result of which the licensee was given the benefit of the Probation Act in 1999 and a subsequent conviction recorded against the licensee in 2008 regarding the terms of the IPPC Licence Reg. No. P0045-05.

In her report dated 14 December 2010, the Agency's Inspector noted that there were two successful District Court prosecutions in relation to breaches of the Licensee's IPPC licence conditions.

In the most recent of these cases, initially brought before the District Court in Ballinasloe in early May 2008, the Agency alleged that commencing on 02 May 2007 and ending on 01 November 2007, Premier Proteins breached the conditions of the company's IPPC Licence by failing to ensure that all operations on site were carried out in a manner such that odours did not result in significant impairment or significant interference with amenities or the environment beyond the site boundary.

² EPA Inspector's Report dated 14 December 2010, page 2, "Compliance Record".

It was further alleged by the EPA that for a period commencing on June 11 and ending 09 October 2007, Premier Proteins failed to notify the Agency as soon as was practicable after the occurrence, of a malfunction or break-down of the control equipment (thermal oxidiser) which was likely to lead to loss of control in the odour abatement system.

Premier Proteins were also charged that, for the period commencing 11 June 2007 and ending 23 October 2007, they failed to ensure that offensive gases arising from the on-site cookers in the rendering plant were directed to the thermal oxidiser for treatment, and that the company sent these offensive gases to an alternative treatment system without the prior agreement of the Agency.

The fourth breach of the licence conditions alleged that Premier Proteins permitted a specific emission to the River Suck which exceeded the emission limit values set out in the company's licence.

On 03 September 2008 at Ballinasloe District Court, Premier Proteins pleaded guilty to two of the above charges, admitted breaching conditions of its IPPC licence by:

- failing to control odours emanating from the facility; and,
- directing off-gases to alternative treatment options without the prior agreement of the Agency.

The result of the proceedings was that Judge Denis McLoughlin imposed a fine of € 1,500 on each charge and awarded the EPA costs of € 8,820. The success of these proceedings, and the previous case taken in 1999 against Premier Proteins clearly indicate that there is a significant on-going problem with odour control and water pollution arising from the licensee's rendering operation at Pollboy. Furthermore, the findings of the Court clearly establish that the licensee is not a "fit and proper person" for the purposes of Section 84(4) of the EPA Act.

Section 83 (5) (a) (xi) of the EPA Act, 1992, as inserted by Section 15 of the Protection of the Environment Act, 2003, states that:

"The Agency shall not grant a licence or revised licence for an activity unless it is satisfied that the applicant or licensee or transferee, as the case may be, is a fit and proper person to hold a licence, and, where appropriate, the Agency shall attach conditions relating to matters specified in the foregoing subparagraphs to the licence or revised licence."

Section 84 (4) states that:

"A person shall be regarded as a fit and proper person if ---

- Neither that person nor any other relevant person has been convicted of an offence under this Act, or the Act of 1996, ...*
- In the opinion of the Agency, that person or, as appropriate, any person or persons employed by him to direct or control*

the carrying on of the activity to which the licence or revised licence relates or will relate has or have the requisite technical knowledge or qualifications to carry on that activity in accordance with the licence or revised licence or the other requirements of this Act, and,

- (c) *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 ..."*

Section 84 (5) of the EPA Act, as amended, states that the Agency may regard a person as fit and proper even if they have convictions under the relevant legislation. However, the view expressed by OEE and outlined to the Board of the Agency in their memo is *"that the applicant has not demonstrated that they can comply with the requirements for a fit and proper person"*.³

As long as problems described above persist, and there is no reason to believe that they have been effectively resolved, we would submit that the Agency's intention to revoke the company's IPPC licence on the grounds that the company has been convicted a number of times in the Courts, and is not a "fit and proper person" to hold an IPPC licence, is soundly based, and we would concur with it.

5.4 Lack of Control of Odours from the Installation and Failure to Adequately Treat or Abate Odours from the On-site Operations

The significant on-going lack of control of odours from the installation and the failure of the operator to adequately treat or abate odours from the on-site operations, in contravention of the terms of IPPC Licence Reg. No. P0045-0.

This reason for the Agency's intention to revoke the operator's IPPC licence is very similar to that given in section 5.1 above, and our submission is that this reason is also a valid and appropriate reason on which to base a decision to revoke the IPPC licence.

5.5 Impact of Odours from the Licensed Activity on the Surrounding Environment and Local Sensitive Receptors

The impact of the odours from the licensed activity on the surrounding environment and local sensitive receptors.

We have already referred to the adverse impacts of odours from the licensee's rendering plant on the residents of nearby housing estates, on visitors to the town of Ballinasloe, and on the local environment. An indication of the impacts of these malodours may be found in the Agency's own files which record some of the complaints received from members of the public. In addition, as we shall

³ EPA Inspector's Report dated 14 December 2010, page 3, "Fit and Proper Person Assessment".

point out in section 5.6 below, the number of odour complaints recorded is much less than the number of persons adversely affected by the odour.

As an example of the type of adverse impact of odours from the licensee's rendering plant, we may point out that the Chairperson of the Ballinasloe Environmental Alliance, Mr. Mick O'Hehir, has on two occasions written to the Health Service Executive expressing concerns about the health of persons exposed to these odours. Copies of his letters, to which he has not received replies, were appended to our submission to the Agency dated 02 February 2011 on behalf of the Ballinasloe Environmental Alliance (Reference P0045-06).

In his letter dated 16 September 2010, Mr. O'Hehir provided information about two serious incidents of bad odour, "the stench" as he described it, from the Premier Proteins 2000 Ltd plant prior to 26 August and on 03 September 2010. On the first occasion, two local schoolchildren and two teachers of Creagh National School became ill and got sick during an open day at the school due to the smell from the plant, and the event was reported in the Connacht Tribune. During the second incident, two local window cleaning contractors had to take refuge in a local house in the Pines Estate for the same reason.

We would submit that the type of malodour, and its intensity, has on many occasions had an extremely adverse impact on local residents, on residential amenity and on "sensitive receptors" such as Creagh National School, its pupils and teachers, and on persons who have become sensitised to the nuisance aspect of the odour.

Our submission is that the above reason is also a valid and appropriate reason on which to base a decision to revoke the company's IPPC licence.

5.6 Intensification of Complaints and Number of Non-compliant Odours Detected by the Office of Environmental Enforcement

The intensification of complaints and the number of non-compliant odours detected by the Office of Environmental Enforcement (OEE) in 2010.

It is accepted that the installation has been the subject of a significant number of complaints, in particular in 2007 and early 2008, and to an increasing extent in more recent years.

Appended to the formal notice of intention to revoke the operator's revised IPPC licence are two lists – notifications of non-compliance, and complaints received from members of the public.

The number of notifications of non-compliance clearly shows that the licensee is not merely failing to comply occasionally with licence conditions, but is almost constantly in a situation of non-compliance. The Agency considers that this is unacceptable, and we would agree fully with this assessment.

The number of recorded complaints received from members of the public is also very substantial, and again indicates more or less continuous emissions of mal-odours to such an extent that local air quality is adversely affected.

However, it is our submission that the number of complaints is far greater than recorded by the Office of Environmental Enforcement; and in Appendix I attached to our objection dated 02 February 2011 (Reference No P0045-06), we included a log of complaints about odour emissions from the Premier Proteins plant, prepared by just one member of the Ballinasloe Environmental Alliance, and covering the period 09 June 2009 to 24 December 2010. Every one of these complaints has been made by telephone to the Agency and has been given a reference number. It would be fair to say that our appended log of complaints is only "*the tip of the iceberg*", as there are many occasions when other local residents experienced significant malodour, and could have made a complaint, but did not do so.

In addition, we pointed out that we had been informed by the member of the Ballinasloe Environmental Alliance who provided the log of complaints attached in Appendix I attached to our objection dated 02 February 2011 that he has recorded approximately 750 incidences of nuisance odour during the last 10 to 12 years, and that he made approximately 250 complaints directly to the rendering plant, and some 25 – 30 to the EPA.

We therefore agree with the Agency's conclusion regarding "*the intensification of complaints*", and we would point out that it is supported by the evidence of local residents, and that the number of complaints is much greater than recorded by the Office of Environmental Enforcement.

5.7 Failure to Comply with Enforcement Requests from the OEE

The failure of the licensee to comply with enforcement requests from the OEE over a considerable period of time.

As we have observed in section 5.7 above, the number of notifications of non-compliance clearly shows that the licensee is not merely failing to comply occasionally with licence conditions, but is almost constantly in a situation of non-compliance. It is our understanding that the OEE has made frequent requests to the licensee to have these non-compliances attended to, but on almost every inspection and audit, the same or a very similar list of non-compliances has been recorded by the inspector.

The most obvious conclusion to be drawn from the applicant's record of non-compliances, and the connected failure to comply with enforcement requests over such a long period of time is that:

- (iii) no significant effort was being made by the licensee to address the odour problem and other non-compliances with licence conditions; and / or,
- (iv) whatever steps were taken to address the odour and other problems were ineffective, most probably because the licensee did not have the

necessary technical knowledge and skill to understand and operate the air pollution abatement equipment.

We would therefore submit that the above reason constitutes a valid ground for the Agency to consider revoking the operator's IPPC licence.

5.8 Absence of Demonstrated Requisite Technical Skills and Necessary Knowledge

The absence of demonstrated requisite technical skills and knowledge necessary to carry out the operation of the existing abatement equipment in a manner that would prevent the generation of nuisance odours likely to impact on the surrounding environment, the local community and sensitive receptors.

Arising from the continuing odour problems and the licensee's long record of non-compliances with IPPC licence conditions and failure to comply with enforcement requests, we would agree with the Agency that:

- the licensee has not demonstrated the requisite technical knowledge to carry on the operation of the existing and proposed pollution abatement equipment; and,
- the Agency is not satisfied that the licensee will operate the proposed scope and scale of installation in a manner that would not cause environmental pollution.

In a lengthy objection submitted to the Agency by the licensee in response to the Agency's proposed decision to refuse a revised IPPC licence (Reference No P0045-06), the licensee asserted that the technical knowledge of the relevant staff on the site is excellent and that the requisite technical knowledge is more than adequate to carry on the operation of the existing and proposed abatement equipment. In the same document, the licensee attributes a very significant measure of blame for the present unsatisfactory situation on the Environmental Protection Agency and on the manufacturer and supplier of the existing regenerative thermal oxidiser, which is alleged to be an inappropriate item of equipment, and not fit for its purpose.

It is our submission that these assertions and allegations serve only to emphasise the licensee's problem with selecting and operating the air pollution control and odour abatement system currently installed. We would have to conclude that:

- If the licensee had selected the most appropriate odour abatement technology, and had been able to operate it efficiently, there would be no need to apportion blame on the manufacturer and supplier;
- The licensee has avoided describing the reasons for selecting a regenerative thermal oxidiser in the first place; and, if it was unsuitable, should have been aware of this fact, or should have carried out sufficient research before committing what must have been a very large expenditure on this allegedly unsuitable technology;

- If the applicant's operational personnel are so experienced, and have the necessary technical knowledge, why did the odour problem persist for such a long time; and,
- We might also conclude that the reason for selecting a regenerative thermal oxidiser initially was not because it is the most efficient plant for dealing with concentrated noxious odours, but because it is more energy efficient and therefore cheaper to operate.

We would therefore submit that the licensee's inability to select and properly operate the most appropriate odour control system, i.e., to select and use the Best Available Technology, is evidence of a lack of the requisite technical skills and knowledge, and constitutes a valid ground for the Agency to consider revoking the operator's IPPC licence

6. UNSUITABILITY OF THE LOCATION

6.1 Proximity of Housing Estates and Local Amenities

The Premier Proteins rendering plant is located 1.4 km south-east of the town centre of Ballinasloe, in an area south-west of the River Suck which was formerly rural in character, and where farmhouses and farm buildings comprise some of the older building stock. The rendering plant site extends over a total area of approximately 8.3 hectares, and is located in an area zoned as industrial in the Ballinasloe Development Plan.

Within recent years, the rural character of the area has been changed to mainly residential as a result of the construction of a large number of new dwellings to the south-west, west and north-east of the rendering plant. These residential estates include Cúil na Canalacht, Oak Glen housing estate and others; and the nearest houses are within 100 metres of the Premier Proteins plant boundary. The nearest houses at "The Pines" and "Riverside Lawn", in Portnick, on the opposite side of the River Suck, are located no more than 280 metres north-east of the rendering plant, and are therefore downwind from the plant under the prevailing wind conditions. Furthermore, Oak Glen and Cúil na Canalacht housing are located in a depression within the general landscape, giving rise to a situation where fugitive malodorous emissions from the plant become trapped and stagnant in the immediate vicinity of these houses.

The expansion of the town of Ballinasloe led to the growth of housing estates on the perimeter of the town, including the estates to the south-west, west and north-east of the rendering plant. These areas must also be considered as sensitive and vulnerable to noxious odours, i.e., these estates and their residents are among the "sensitive receptors" identified by the Agency.

Amenities within 1.0 km of the rendering plant site include the River Suck, Pollboy Bog, the canal and a recently constructed marina close to the town of Ballinasloe. The River Suck is navigable from its confluence with the River Shannon near Shannonbridge; and Ballinasloe is therefore linked to the Shannon/Erne Waterway. Some years ago, the Shannon Boat Rally finished in

Ballinasloe at the Lock Gate in Pollboy, south-east of the rendering plant. A 25 berth marina has been completed at Slí na hAbhainn, opposite the Civic Offices, and visiting boats can now reach almost to the town centre. It is a major aim of Ballinasloe Town Council to increase the attractiveness of the town to visitors, whether these come by boat or other transport.

The protection of these amenities can be achieved only if the rendering plant ceases completely to emit noxious odours, or is required to cease operation.

6.2 Proximity and Vulnerability of Sites of Conservation Interest

The rendering plant is located on an esker (the Esker Riada), which remains a landscape feature of historical and geological interest, even though it has been damaged by unrestrained and unsuitable development works. Part of the rendering plant site (approximately 0.94 ha) lies within the River Suck Callows Natural Heritage Area (NHA) and proposed Special Protection Area (SPA). The plant abstracts cooling water from the River Suck, and the water is discharged back to the river. Treated industrial effluent generated on the site is also discharged to the river Suck.

These nature conservation sites are therefore very vulnerable to any run-off, discharges or emissions which would affect their conservation objectives or value. As we will note below, the rendering plant has on at least one occasion discharged to the River Suck effluent which has exceeded the emission limit values set out in the company's licence.

When Burnhouse Ireland began operating a rendering plant at Pollboy in 1953, there was no great recognition of the importance of protecting areas of unique or vulnerable habitats or species, and the site would have been located well outside the town of Ballinasloe. Growing awareness of nature conservation, aided by Ireland's necessity to transpose and implement European Union Directives, led to the establishment of SACs, SPAs and NHAs, including the River Suck Callows Natural Heritage Area (NHA) and proposed Special Protection Area (SPA) adjacent to the rendering plant (see section 3 above).

In November 2007, the Agency noted floating white material in the discharge pipe and in the River Suck adjacent to the outfall. Nitrogen and ammonia levels were found to grossly exceed the Emission Limit Values, and the licensee was not permitted to discharge effluent for 38 days. The incident was attributed to a pump malfunction, giving rise to the discharge of mixed liquor.⁴

It is our submission that the environmental record of the applicant, the number of odour complaints, and the applicant's failure to comply with existing licence conditions, creates a significant risk to the sensitive and vulnerable areas described above. It would be inappropriate for the EPA to allow this risk to continue, and therefore we would submit that the present inappropriate location of the rendering plant is a further reason for the Agency to revoke the existing revised IPPC licence.

⁴ EPA Inspector's Report dated 17 April 2008; section 9, page 8; IPPC licence reference P0045-05

7. CONCLUSIONS

In conclusion, we submit that the Agency has provided adequate and valid reasons for making a decision to revoke the revised IPPC licence, Register No. P0045-05, which was granted on 10 October 2008 to Premier Proteins (2000) Limited, Poolboy, Ballinasloe, County Galway. Furthermore, we consider that the Environmental Protection Agency, has not only the power but an obligation to revoke this IPPC licence if the licensee does not comply with the license conditions and thereby causes considerable nuisance and aggravation to the adjacent residential housing properties in Ballinasloe.

Jack O'Sullivan

Environmental Management Services

On behalf of the

Ballinasloe Environmental Alliance

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