



**Edward O'Connor
Annaghmore
Strokestown
Co Roscommon**

26 September 2011.

**Environmental Protection Agency
Office of Climate, Licensing and Resource Use
Johnstown Castle Estate
P.O Box 3000
Wexford**

Objection to the Proposed Determination in IPPC Reg. No P0913-02 issued on 31 August 2011.

Type of Objection: Third Party against some conditions of the Proposed Determination.

Objector Name: Seamus Cusack, Andrew Moore, Edward O'Connor; Concerned farmers; producers and users of livestock manure which is lawful animal by-product fertiliser.

Location of activity: Greenfield Foods Ltd, Mullandavagh, Smithboro, Co Monaghan.

Fee due: €126 (Attached).

The Proposed Determination includes some conditions which we believe refer and relate to farm practice on lands that are not part of the licensable installation which would appear to impose a burden on the Operator's customers for animal by-product manure / fertiliser. The licence should not include or seek or seem to impose any demands on farmers in general who may choose to lawfully acquire lawful fertiliser as manure from the installation

The Proposed Determination includes conditions that refer to fertiliser use and fertiliser / nutrient management) and seek to control movement/transfer to customers in terms that conflict irreconcilably with statutory standards in relation to those practices contained in separate governing legislation.

The conditions to which we object and the grounds of our objections, together with the reasons, considerations or arguments on which the objections are based, are set down below.

Introduction

We have read and studied the Proposed Determination (PD) under Reg No P0913-02 and the Inspectors' Report prepared in relation to the PD.

We have identified a number of significant matters of fact that we believe the Agency has misunderstood or misinterpreted in relation to the trading and transfer of manure / fertiliser

between farms (including the installation to which the PD refers and its farmer customers) for use in fertilising land.

Most of those matters relate to the management of poultry manure, particularly to the sale or supply and transfer of poultry manure from the installation to others for use in fertilising farmland remote from the installation.

Details of our objections

Farmers who choose to acquire manure from sources outside their own holdings use that manure as the fertiliser that it is. They do not "recover" it by "landspreading" or otherwise in any place. They do not use any land/ farmland to "recover" manure or any other fertiliser. They use the land to grow crops. They use fertiliser, including manure, to support crop growth.

We believe that the Agency and its relevant staff know that the users of poultry manure and other manures who acquire manure from suppliers of such manures to farmers who want it for their holdings, are required by separate legislation that is independent of the IPPC system, to store it, manage it and either use it or transfer it to others in accordance with prescribed standards binding on them in the context of their holdings. A producer of manure like the Applicant in IPPC Reg No P0913-02 does not and cannot manage N and P nutrient use on third party / customers' / farms.

Most if not all of the conditions to which we object arise from an apparent restricted understanding and / or interpretation of the separate legislation under which livestock manures are classified and under which the management and the use of livestock manures to fertilise land are governed. Evidence of such limited understanding and acceptance of the standards, rights, entitlements and obligations of different and separate parties in relation to the sale or supply and transfer of manure between producers and users for use by the new owners, and in relation to responsibility for use of the transferred manure and all fertilisers, as provided for variously in Regulation EC/1069/2009 and S.I 610 of 2010, is in the Inspectors' Report dated 9 August 2011 prepared as a basis for and in support of the Recommended Determination and the Proposed Determination, particularly in relation to those proposed conditions that refer to customers for manure and to the burden imposed on the licensee to collect and submit or maintain customers plans and / or N and P Statements for inspectors. Use of all fertilisers is governed separate from the IPPC system and so conditions in relation to fertiliser use by non-licensable third party farmers are out of place in the PD or IPPC licence when granted.

Under the heading "Compliance with EU Directives" commencing on page 8 of the Inspectors Report of 18 August 2011 there are 2 paragraphs under the sub-headings "Nitrates Directive" (91/676/EC) and "EU Animal By-Products Regulations (EC No 1774/2002", respectively, which at least recognise the existence of those pieces of relevant governing legislation separate from the IPPC legislation. The full text of that paragraph under the in the "EU Animal By-Products Regulations EC No 1774/2002" is:

"Poultry carcasses arise due to mortalities (approximately 1.5%) and approximately 1% of eggs are wasted. Condition 8.7 requires such waste to be stored on site pending disposal in covered leak proof containers and to be removed fortnightly at a

minimum. This waste is currently transported to College Proteins (Reg. No.PO037-03), where the material will be rendered in accordance with the Animal By-products Regulations.

First, Regulation EC/1774.2002 has been replaced by Regulation EC/1069/2009 which entered into force on 4 March 2011. That little detail in itself demonstrates that the Agency has not kept staff / itself fully informed in relation to legislation relevant to matters very relevant and important to either the activity that is the subject of proposed Determination under Reg No P0913-02, and to those very separate farmers who are entitled to acquire and use the fertiliser referred to in the conditions that refer to nutrient management and "landspreading" of manure away from the installation.

Second, the poultry carcasses and eggs referred to are indeed animal by-products (Category 2) that may be placed on the market under EC/1069/2009 but are required under EC/1069/2009 to be consigned to any rendering plant authorised under that Regulation. However, Manure is also Animal by-Product (Category 2) but that fact is ignored. It is wrong to ignore that fact. Other wrongs arise from that refusal of the Agency to recognise that manure too is animal by-product and under provisions in Regulation EC/1069/2009.

Third and most important, is the omission from that text of any reference to poultry manure (or livestock manure in general terms). It is a fact that poultry manure, (livestock manure generally), is also animal by-product (Category 2) that may be placed on the market and sold or supplied to others for use as fertiliser under that same EU Regulation, but in the case of manure it may be sold or supplied as fertiliser to any person who wants it for use to fertilise land. Both transfer and use of manure are lawful and do not require any prior permission or specific authorisation prior to either movement or use as fertiliser on land.

The status of manure of farmed animals as fertiliser was recognised as far back as 1991 in the Nitrates Directive (Directive 91/676/EC and in Directive 91/156/EEC amending Directive 75/442/EEC on waste which excluded "*faecal matter and other natural, non-dangerous substances used in farming*" where covered by other legislation.

The status of manure as Animal By-product authorised for use, and as fertiliser has been further confirmed in Ireland by the Nitrates Regulations (currently S.I 610 of 2010) and the changes to the Waste Management Act 1996 replacing the definition of waste in that Act and excluding livestock manure from the scope of that Act.

So as to recognise and respect the by-product status of poultry manure (and of livestock manures generally) and the rights of farmers to trade manure as the fertiliser it is, needs to be recognised and respected in the licence when granted.

The full text of the paragraph on the "Nitrates Directive (91/ 676/EC)" in the Inspector's Report is:

"The Nitrates Directive (91/676/EEC) - Council Directive of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources - has the objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing such pollution, with the primary emphasis being on the management of livestock manures and other fertilisers. The Directive is currently transposed into Irish legislation by the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2010 (S.I.

No.610 of 2010). Condition 3.5 of the RD specifies the minimum manure storage requirements for this installation of 26 weeks storage of manure on-site in accordance with these Regulations. The RD provides for the landspreading of poultry manure and wash water in accordance with the Nitrates Regulations and licence conditions."

The only feature or provision of the Nitrates Regulations recognised and referred to by the Inspector / Agency is in relation to minimum manure storage requirements indicated as having been provided for in proposed condition 3.5. The statutory inclusion of livestock manure in the definition of "organic fertiliser" and in the definition of "fertiliser" (Article 3) is ignored. The assignment of statutory responsibility in relation to nutrient management (Article 16 - including soil sampling / testing, where appropriate) and statutory responsibility in relation to compliance with all aspects of the Nitrates Regulations (Article 22) to the Occupier of the Holding on which fertiliser is used by "Application to land" is also ignored by the Inspector and the Agency. Those are important facts that should not be ignored and cannot be ignored by farmers. Fertiliser suppliers, including suppliers of manure for use on land, are not and cannot be held in any way responsible for any aspect of nutrient planning or fertiliser use on customers' lands needs to be unequivocally recognised in the licence when granted, with no ambiguity in that regard. Statutory responsibility for compliance by farmers with all aspects of fertiliser management and use is assigned in the Nitrates Regulations, not in IPPC licences.

Based on the seriously deficient consideration of statutory standards, statutory entitlements, and the statutory responsibilities in relation to the transfer and to the use of manure contained in both the Nitrates Regulations (S.I 610 of 2010) and the Animal By-Products Regulation (EC/1069/2009), it is not a surprise that all the proposed conditions that relate or refer to the transfer of manure from the installation to customers / users of the manure, and/or to the use of the manure (all of which use is by customers/users outside the installation) are themselves seriously flawed e.g impractical, inappropriate in a licence addressed to the licensee who does not propose to use any manure in the installation and cannot manage N and P nutrients in the installation or on customers' holdings, and irreconcilably conflict with relevant governing legislation in relation to responsibility and entitlement to trade. Accordingly, proposed conditions and Schedule C.6.1 needs to be deleted as it contains nothing relevant and applicable in the installation and nothing that is the responsibility of the Applicant for a licence / licensee when the licence is granted.

Objection to Condition 8.13

The first line of condition 8.13 is:

Slurry/manure shall only be recovered by landspreading subject to the following conditions:

As far as we know, the applicant does not propose to recover, or to use, any slurry/manure in the installation and cannot do so on any customer's holding. The applicant can sell or supply manure to others for use in fertilising land on the terms provided for in Regulation EC/1069/2009. As the applicant is not the person responsible for the use of fertiliser it may supply to customers all of that that condition should be deleted from the licence or changed to make it clear that it refers only to "landspreading" by the licensee in the installation.

The proposed licence and its conditions are addressed to the proposed licensee. As the proposed licensee does not propose to engage in any landspreading of slurry/manure in the

installation the sub-paragraphs 1 to 5 of condition 8.13 are not applicable to the licensee and so the entire condition 8.13 (8.13.1, 8.13.2, 8.13.3, 8.13.4 and 8.13.5) should be deleted from the licence.

In particular, **Condition 8.13.5** which is:

Slurry shall only be supplied to customer farmers for whom a current nutrient management plan or Nitrogen and Phosphorus Statement is maintained on-site.

is wrong, because it would seek to prevent or distort lawful trade of fertiliser which is by-product organic fertiliser, and to prohibit trade in a fertiliser that is authorised under Regulation EC/1069/2009.

That condition imposes a burden on customers who are entitled to source fertiliser / manure from the applicant, the trade of which is authorised in Regulation EC/1069/2009. That condition along with all other parts of Condition 8.13 should not be in the licence.

Objection to Conditions 6.10 and 8.7 and to Schedule "C.4 Waste & Manure Monitoring"

Condition 6.10 is

Monitoring of available storage capacity for waste and manure shall be undertaken as outlined in Schedule C.4 Waste and Manure Monitoring of this licence. Results shall be retained on-site and record of the results shall be available for inspection by authorised personnel, including Agency personnel, at all reasonable times. The results shall be submitted to the Agency in a summary report included as part of the AER.

Condition 8.7 is

"Waste for disposal/recovery off-site shall be analysed in accordance with Schedule C: Control & Monitoring of this licence."

Schedule C.4 refers to "*Waste & Manure Monitoring*"

It is fact that poultry manure is animal by-product under Regulation EC/1069/2009 (and previously under regulation EC/1774/2002), and is included in the definition of "fertiliser" in article 3 of S.I 610 of 2010 which implements Directive 91/676/EEC.

However, taken together, Conditions 6.9 and 8.7 and Schedule C.4, wrongly describes and/or labels poultry manure produced in the installation as "waste" when in fact manure is not discarded in or from any farm or any licensable farming installation, and when in fact livestock manure (includes poultry manure) is excluded from the scope of European and National waste legislation. (Refer to S.I. 126 of 2011 (Article 4) which gives effect to Directive 2008/98/EC and replaces sections 3 and 4 of the Waste Management Act 1996).

We request and expect that poultry manure should not be dealt with in these or any other conditions of the licence as if it is, or as if it will be "waste", when in fact it is and will because it is required to be managed as the animal by-product that it is, and as the fertiliser that it is if and when it is despatched / transferred as fertiliser for use, and will be placed on the market to sell or supply and transfer to customers for their use and benefit as is authorised in legislation. Use of the manure / fertiliser produced in the installation cannot really be by the licensee. Use by the new farmer owner is not a matter for control under conditions of the

licence. It is a fact that any new owner of transferred manure is separately required by governing legislation to use the acquired manure in compliance with statutory standards applicable to the new owner / user in relation to his/her holding (mostly in the Nitrates Regulations).

Objection to Condition 8.13.4 and to Schedule "C.6.1 Ambient Monitoring Land used for Landspreading" where "Monitoring Location" is specified as "all lands included in the landbank"

Condition 8.13.4 is

Soil monitoring shall be undertaken as outlined in Schedule C. 6.1 Ambient Monitoring, Land used for Landspreading, of this licence where nutrient management plans, required under Condition 8.11.3, are based on soil monitoring results. A summary report of soil monitoring results shall be maintained on-site as part of the nutrient management plan required under Condition 8.13.3 above.

Schedule C.6.1 refers to "Ambient Monitoring" and "Land used for Landspreading" and to a "landbank" in a draft licence that is to be our responsibility as the licensee.

NOTE (Correction ?) : Condition 8.11.3 on 3rd line of the Condition must be a mistake; we assume it should be Condition 8.13.3.

In relation to the installation:

"**Ambient Monitoring**" by reference to the meaning of "ambient" would be monitoring in "the immediately surrounding area" or in "the surrounding area", in this case in relation to the activity / installation to which the application refers.

"**Land used for Landspreading**" as a term is mistaken and wrong in concept. The "landspreading" referred to is a normal farm practice (not a licensable activity) that has the same meaning in relation to the use of poultry manure as the term "*Application to land*" in article 3 of S.I 610 of 2010 (the Nitrates Regulations), under which the application of all fertilisers to farmland is governed, under which Regulations that "*landspreading*" or "*application to land*" is the statutory responsibility of the Occupier of the Holding on which the fertiliser / poultry manure is deposited on land.

"**landbank**" is a strange and undefined and meaningless word in relation to the proposed licence and the installation where the activity to be licensed is carried on. The land available to any farmer is the land for the time being is in his Holding. Other than that farmers do not have "landbank" under their control for farming use.

Land is not used for "landspreading", and land may not be "*used for landspreading*".

Land /farmland is used to grow crops. Animal manure and other fertilisers may be deposited on land only in a controlled manner that is in compliance with statutory standards for the purpose of supporting crop production.

As far as we know, the licensee does not propose to use any land for landspreading and we as farmers, or farmers like us or farmers we advise do not and will not use any land for "*landspreading*". Intensive Agriculture Licensees do not use customers' lands for anything. A licensee cannot engage in any "*landspreading*" of poultry manure or any other material on customers' lands. A licensee can only supply manure for the customer's use and benefit.

Licensees cannot and generally do not consider that customers' farmlands are part of a "landbank" of theirs and are not entitled to do so. The term "landbank" in relation to intensive

agriculture originated prior to the introduction of the Nitrates Directive, the inclusion of livestock manures as by-product in the Animal By-products Regulation the exclusion of animal manures / faecal matter from the scope of waste legislation and the implementation of the Nitrates Regulations in this country. It was never right and should cease now.

Licensees have no entitlement or need to engage in monitoring any lands outside the installation.. Such monitoring of land as is referred to in proposed condition 8.13.4 and schedule C.6.1 is a matter for individual customers for manure on their respective holdings as may or may not be required of them under separate legislation. Such monitoring on customers' lands is not a matter for the licensee or anyone except the Occupier of the Holding concerned.

Conditions of the licence need to be written in terms that are clear and unambiguous, and terms that make it clear that they are not applicable to either customers or to lands farmed by customers. Licensees do engage in any "landspreading" of poultry manure or any other manure or material on any land that is subject to conditions of an PPC licence, and cannot engage in "landspreading" on any other persons' lands.

Objection to part of Condition 11.7 and an item in the Annual Environmental Report.

Condition 11.7 is

The licensee shall submit to the Agency, by the 31st March of each year, an AER covering the previous calendar year. This report, which shall be to the satisfaction of the Agency, shall include as a minimum the information specified in Schedule D: Annual environmental Report of this licence and shall be prepared in accordance with any relevant guidelines issued by the Agency.

The Manure Record required by Article 23(1)(g) of the Nitrates Regulations is the same as the Organic Fertiliser Register referred to in condition 11.7. It contains Customers' personal data and is not for any public file. Because it would contain customer's personal data it should not be in the AER for public file. It is not a document transfer to public file that is specified or protected under Article 31 of S.I 610 of 2010. The proposed condition needs to be revised.

SUMMARY

The omission from the Proposed Determination of any reference to or recognition of poultry manure (or livestock manure in general terms) as animal by-product that may be placed on the market to sell or supply and transfer to others for use denies rights and entitlements due not only to the proposed licensee but also due to those customers on which the licensable business relies for customer demand for the by-product manure / fertiliser produced in the installation.

It is a fact that poultry manure, (livestock manure generally), is, by law in Regulation EC/1069/2009, animal by-product (Category 2) that may be placed on the market and sold or supplied to others for use as fertiliser under that same EU Regulation. In the case of manure, it may be sold or supplied as fertiliser to any person who wants it for use to fertilise land. Both transfer and use of manure are lawful and do not require any prior permission or specific authorisation prior to either movement or use as fertiliser on land. That needs to be recognised in the licence when granted.

The status of manure as Animal By-product authorised for use, and as fertiliser has been further confirmed by the Nitrates Regulations (currently S.I 610 of 2010) and the changes to the Waste Management Act 1996 contained in S.I 126 of 2011, which replaced the definition of waste in that Act and excludes livestock manure from the scope of that Act.

The by-product status of poultry manure (and of livestock manures generally) and the rights of farmers to trade manure as the fertiliser it is, needs to be recognised and respected in the licence when granted.

The statutory inclusion of livestock manure in the definition of "organic fertiliser" and in the definition of "fertiliser" (Nitrates Regulations, Article 3) is ignored in the PD and in the Inspector's Report.

The assignment of statutory responsibility in relation to nutrient management (Article 16 - including soil sampling / testing, where appropriate) and statutory responsibility in relation to compliance with all aspects of the Nitrates Regulations (Article 22), to the Occupier of the Holding on which fertiliser is used by "*Application to land*" is also ignored by the Inspector and the Agency. The fact that fertiliser suppliers, including suppliers of manure for use on land, are not and cannot be held in any way responsible under licence conditions for any aspect of nutrient planning or fertiliser use on customers' lands, and that fact needs to be unequivocally recognised in the licence when granted, with no ambiguity in that regard.

We request that the reference to the Organic Fertiliser Register be removed from Schedule D as that record would contain personal information of customers and no supplier would have the necessary protection or the consent of customers to submit that record to the EPA (except when requested) or to public file as in the AER.

We respectfully ask that the EPA to respond to the issues raised in this submission by deleting and or changing conditions, and to request the applicant to comment on these issues.

Signed:

Producers and Users of By-Product Organic Fertiliser / Fertiliser:

Seamus Cusack BAgSc

Andrew Moore BSc (Agr)

Edward O'Connor BAgSc

