



Irish Organic Fertiliser Producers
c/o Ahearn & Co
Greatmeadow
Boyle
Co Roscommon.

14 December 2011.

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

Objection to some conditions in the Proposed Determination in IPPC Reg. No P0945-01.

Type of Objection: Third Party against some conditions of the Proposed Determination issued on 23/11/2011 to Messrs P.J. and Michael O'Reilly (T/A Annalitten Farm Eggs).

Objector Name: Irish Organic Fertiliser Producers.

Location of activity: Installation at Annalitten, Castleblaney, 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, as well as a burden on the licensee with which it is impossible for him to comply. The licence should not include or seek or seem to impose any demands on any farmers who may choose to lawfully acquire from the installation manure/litter as the lawful fertiliser it is for their use and benefit.

The Proposed Determination includes conditions that refer or relate to the management of manure/litter and the N and P nutrients contained in the manure/litter in terms that have little or no real regard to governing legislation specific to the management and use of the N and P in all fertilisers including manures of farmed animals. Those particular conditions seek to control movement/transfer to customers and use which can only be by customers, in terms that conflict irreconcilably with statutory standards in relation to transfer and use contained in separate legislation under which management of manure of farmed animals including transfer and use of manure, are governed.

A person like the applicant in this case has no more function, responsibility or control in relation to the use of litter/fertiliser sold or supplied and transferred from his installation to customers / new owners for their use and benefit than he has in relation to the use or processing of either the dead animals or the live animals sold or supplied and transferred from the installation for the use and benefit of their new owners.

The conditions to which we object at least contain elements that require or imply licensee control of customers. The grounds of our objections, together with the reasons, considerations or arguments on which the objections are based, are set down below.

Details of our objections

We have read and studied the Proposed Determination (PD) under Reg No P0945-01 and the Inspectors' Report dated 14/11/2011 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, and/or between the installation and an authorised animal by-product composting plant.

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

Farmers who choose to acquire litter/manure from sources outside their own holdings are entitled to do so and their use of that manure as the fertiliser that it is, in a manner that is in compliance with statutory rules applicable to them. They use it to fertilise land, but do not "recover" it anywhere. 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 litter/manure, to support crop growth.

We believe that the Agency and its relevant staff must know that the users of poultry litter/manure (and/or other manures) who acquire such animal by-product from suppliers do so because the users want it for use in their holdings. We also believe that the agency and staff must know that, the new owners of the acquired litter/manure are required by governing legislation (S.I. 610 of 2010) that is separate from 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 / operations. It is understood from the application and from the Inspector's Report that the animal by-product litter/manure produced in the installation is currently transferred from the installation to a composting plant that is required to be authorised to compost that by-product in accordance with standards prescribed in / under Regulation EC/1069/2009.

Conditions or parts of conditions drafted in terms that would require the licensee to collect data or documents (**other than** the information required to satisfy the recording requirement in article 23(1)(g) of S.I. 610 of 2010) from customers / users of litter, and/or require the licensee to either submit the data or documents to the Agency or to retain / maintain the data or documents for Agency inspectors, all in exchange for a supply of litter/fertiliser need to be either deleted or drastically changed to make it clear that they apply only to litter used by the licensee in the installation.

A producer of manure like the Applicant in IPPC Reg No P0945-01 does not and cannot carry responsibility to manage N and P nutrient use on third party / customers' farms, because management of the use of all fertilisers deposited on land is the statutory responsibility of the occupier of the holding on which the fertiliser (manure or litter) is used.

Most if not all of the conditions to which we object arise from an apparent restricted understanding and / or interpretation by the Agency 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. Use of all fertilisers outside the installation 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.

In the Inspector's Report dated 14 November 2011 there are 2 paragraphs under the sub-headings "Regulation (EC No. 1069/2009) Animal By-products Regulation" and "Nitrates Directive (91/676/EEC)", which at least recognises the existence of those pieces of governing legislation which are relevant to Applicant's operation of the activity in the installation. Both of those are particularly relevant to the transfer, management and use of animal manures in fertilising land, which legislation in relation to the transfer and use of animal manures, including poultry manure and litter, is separate from the IPPC legislation and is applicable separately to producers and users of manure, including litter/manure transferred from a producer to users. The single paragraph in relation to Regulation EC/1069/2009 refers only to poultry carcasses arising due to mortality. Regulation EC/1069/2009 is also relevant to the classification, transfer and use of poultry manure which, like mortalities/carcasses is Category 2 animal by-product but that **fact** is ignored in the Inspector's Report and in the Proposed Determination. Manure management and storage capacity for of manure in the installation and the recording of transfers of manure from the installation are governed under the Regulations in S.I 610 of 2010 which implements Directive 91/676/EEC. The fact that the applicant is authorised to place manure on the market and transfer it to others for their use and benefit, subject to transfers being recorded as required by Article 23(1)(g) of S.I. 610 of 2010, is ignored in the Inspector's Report and is irreconcilably contradicted by requirements contained in Condition 8.13 and Schedules C.4 and C.6.1 and Condition 8.12.

It is necessary that the Agency / Agency staff study Regulation EC/1069/2009 and all related Irish Regulations and study the Irish Regulations implementing Directive 91/676/EC and then make changes / deletions to certain conditions in the licence when granted, so as to fully recognise and respect all the authorisations and entitlements and statutory responsibilities in relation to manure transfer from the licensee / installation to customers / users as contained in EC/1069/2009 and S.I. 252 of 2008 and S.I 253 of 2008 (as may be amended or replaced) and in S.I 610 of 2010.

It is necessary to remove from the licence when granted the obvious and irreconcilable conflicts between, on the one hand, governing legislation similarly applicable where relevant to the licensee and the licensee's customers for manure, and on the other hand, conditions that refer and/or relate to the transfer of manure from the installation to customers and/or to the use of that manure in fertilising land, where that use IS NOT and cannot be by the licensee, and is not and cannot be in the installation that is within the scope of the licence by reference to the IPPC legislation as reflected in Condition 1 in the Proposed Determination.

The full text of the paragraph under the sub-heading "**Regulation (EC No. 1069/2009) Animal By-products Regulation**" on page 7 of the Inspector's report is:

Poultry carcasses arise due to mortalities. Carcasses and waste eggs will be stored on site temporarily in sealed leak-proof containers. The waste will be collected and delivered to College Proteins Limited, which is a licensed rendering plant (IPPC Licence Reg. No. POO37-03), or an agreed installation /facility. Condition 8.1 of the RD requires that waste sent off-site for recovery or disposal shall be transported only by an authorised waste contractor or an exempted person (Waste Management (Collection Permit) Regulations 2007 - 2008).

The above text refers and relates only to dead animal carcasses/tissue. The above text is very selective and is completely inadequate as a consideration of the relevance of EC/1069/2009 to the management, transfer and use of Category 2 animal by-products, particularly inadequate in relation to the main Category 2 animal by-product, that is poultry manure produced by the activity to be licensed.

That text completely ignores the fact that manure of farmed animals was formally and legally classified as animal by-product under EC/1774/2002, but that fact and the provisions contained in it and in the current Regulation EC/1069/2009 in relation to transfer and the use of manure is not reflected in either the Inspector's Report or the Proposed Determination. No part of the text of that paragraph relates in any way to the classification or transfer or management of the transfer of manure from the installation to customers for use, as is laid down in the combination of the Animal By-Products Regulations and the Nitrates Regulations.

That text ignores the fact that under EC/1069/2009 manure is animal by-product (Category 2) and is authorised to be placed on the market by the applicant / licensee to sell or supply to customers / users for their use and benefit. In such circumstances all transfers of manure are required by Article 23(1)(g) of the Nitrates Regulations (S.I 610 of 2010) to be recorded by both the transferor and the transferee. Most importantly, prior notice or prior specific authorisation or prior permission or prior approval of transfers of manure from a producer to a customer/user is not required.

It is wrong for those relevant facts to have been ignored in the Inspector's Report, and it would be wrong to further ignore them in the Report of the Technical Committee that will consider submissions and objections to this PD, and/or to ignore them in the licence when granted. Other wrongs arise from that failure of the Agency to recognise or comment on the fact that litter/manure is animal by-product, and from failure to accept that authorisation of its sale and transfer, and control of its transfer and use, falls not under the IPPC system but under provisions in Regulation EC/1069/2009 and S.I 610 of 2010, respectively.

The omission from the text of the Inspector's Report of any reference to poultry manure (or even livestock manure in general terms) in the context of Regulation EC/1069/2009 is a serious deficiency in the Inspector's Report because it denies the existence and relevance of an important part of the legislation under which the transfer and use of manure of farmed animals is governed. It is a fact that poultry manure and litter, (indeed livestock manure generally), is animal by-product (Category 2) that may be placed on the market and sold or supplied to others for use as fertiliser under Regulation EC/1069/2009. In the case of manure, it may be sold or supplied as fertiliser to any person who wants it for use, and /or it may be sold or supplied and transferred for use in a composting plant authorised under Regulation EC/1069/2009 to process that class of animal by-product.

Both transfer and use of manure as fertiliser are lawful, are not licensable activity, and do not require any prior permission or specific authorisation either prior to movement, or prior to use, as fertiliser.

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 for sale or supply and transfer as fertiliser has been in place since the implementation of Regulation EC/1774/2002. The status of manure as Animal By-product authorised for use, and as fertiliser has been further enhanced in Ireland by the Nitrates Regulations (currently S.I 610 of 2010) and the 2011 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. (See Article 4 in S.I. 126 of 2011).

The above matters need to be recognised and respected in the conditions of the licence when granted, so as to recognise and respect the by-product status of poultry litter (in common with other livestock manures) and the rights of farmers (both producers and users) to trade and use manure as the fertiliser that litter / manure is in law.

The full text of the paragraph under the heading "**Nitrates Directive (91/676/EEC)**" on page 7 of the Inspector's Report (IR) 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 further such pollution, with the primary emphasis being on the management of livestock manures and other fertilisers. The Directive has been transposed into Irish legislation by the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 (S.I. No. 610 of 2010). The RD specifies the minimum slurry/manure storage requirements for the installation (26 weeks). The RD requires that where manure is landspread such practice shall be undertaken in accordance with nutrient management plans or Nitrogen and Phosphorus Statements issued by the Department of Agriculture, Food and the Marine and the conditions of the RD"

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 the Recommended Determination. That in itself is quite all right. In any case, for all practical purposes that requirement is in separate governing legislation in the Nitrates Regulations.

The sentence "*The RD requires that where slurry/manure is landspread such practice shall be undertaken in accordance with nutrient management plans or Nitrogen and Phosphorus Statements issued by the Department of Agriculture, Food and the Marine and the conditions of the RD*" wrongly implies that the "*landspreading*" referred to must be within the scope of the licence when granted, and so must be by the licensee or under his control and be in the installation. That is wrong because there is no proposal to do any "*landspreading*" in the

installation, and there is no scope or possibility for the applicant/licensee to do any "landspreading" in the installation that is within the scope of the licence.

That also implies that the use of manure is to be controlled under the licence and by the licensee to whom the licence speaks, when in fact manure will be sold or supplied and transferred from the installation to customers / users, whose acquisition and/or use of the acquired manure is not subject to the licence or any of its conditions, because their use of the manure is separately required to be "*in accordance with the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2010 (S.I. No.610 of 2010)*", but it is not for either alternative or supplemental control under any conditions of the licence.

The licensee who is also a lawful manure/fertiliser producer and supplier has no function, and cannot take on any function, in ensuring customers' compliance with statutory standards binding on them in relation to their management of manure acquired by them and in their possession. The customers' / users' use of litter/manure, and their management of use of that manure in their holdings is required to comply with the relevant statutory standards in legislation that is separate from the IPPC legislation, Inspection of their holdings and enforcement of statutory standards on their holdings are not at all matters for the licensee / manure (fertiliser) supplier. They are matters for the relevant competent authority in relation to the customers' holdings, but they are not matters for the licensee or to be the subject of conditions of the licence when granted.

The above differences and distinctions are similarly important to both licensee and the licensee's customers for manure. They, and the legislation from which they come, need to be considered in detail and be fully understood and respected by the Agency's Technical Committee and be recognised and reflected in the licence when granted.

The statutory inclusion of livestock manure in the definition of "organic fertiliser" and in the definition of "fertiliser" (Article 3 of the Nitrates Regulations) is ignored in the IR. The assignment of statutory responsibility in relation to nutrient management (including soil sampling / testing, where appropriate) (Article 16) 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 by Agency staff or by the Agency, and cannot be ignored by the licensee. They are understood and accepted by farmer customers.

Manure use (whether by "*application to land*" or by "*landspreading*") is all outside the installation that is the subject of the Proposed Determination, and that use is the statutory responsibility of Occupiers of the Holdings on which it is used. Accordingly, the Inspector's Report is wrong and misinformed, misguided and misleading where it states that "*Slurry/manure generated on the installation shall be sent to mushroom composting facilities or recovered to land as fertiliser in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 (S.I. No. 610 of 2010) and the conditions of the RD*"

It would be appropriate and factual if that text was changed to recognise and state instead that:

Litter/ manure produced in the installation shall be sold or supplied and transferred from the installation to customers for their use and benefit as fertiliser, or to a composting plant authorised under the Animal By-Products Regulation

(EC/1069/2009) in accordance with terms and requirements contained in The Animal By-Products Regulations and all transfers shall be recorded as is required by Article 23(1)(g) of the Nitrates Regulations.

Use of the manure by customers is beyond the scope of the IPPC licence but it is separately required to be in compliance with statutory terms and standard, limits and prohibitions contained in the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2010 (S.I. No.610 of 2010, which are binding on all users.

The text in the IR wrongly expects or intends that the licensee, contrary to the relevant governing legislation including Articles 16 and 22 of S.I 610 of 2010, can be and has to be the person responsible for the use or the planning of use of fertilisers on customers' lands, when in fact the licensee cannot be that responsible person.

All conditions based on those recommendations in relation to manure use in the Inspector's Report must be flawed and wrong, and need to be deleted from the licence.

Fertiliser suppliers, including suppliers of manure for use on land, are not and cannot be expected or presumed to be in any way responsible for any aspect of nutrient planning or fertiliser use on customers' lands. That fact 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 on users farms is assigned in the Nitrates Regulations; not in a poultry rearer's or fertiliser/ litter producer's IPPC licence.

Based on the seriously deficient consideration in the Inspector's Report 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 conditions which are themselves seriously flawed and are not practical.

They are impractical and inappropriate in a licence addressed to the licensee who does not propose to use any manure in the installation and who cannot manage N and P nutrients in the installation or on customers' holdings, and they irreconcilably conflict with relevant governing legislation in relation to responsibility and entitlement to trade lawful fertiliser.

Accordingly, certain proposed conditions, especially condition 8.13 and Schedule C.4 (part of) and Schedule C.6.1, and also condition 8.12, need to be deleted as they contain little, if anything, relevant to and applicable in the installation, and refer to matters that are the statutory responsibility of persons other than the Licensee, all of whom are persons entitled to choose litter/manure for use including use to satisfy some or all of their requirement for fertiliser N and P nutrients from the installation or other fertiliser sources of their choice.

With regard to BAT and what represents BAT in relation to management of litter manure in the installation, it is necessary to consider some text in the Inspector's Report. Under the heading "IPPC Directive (2008/1/EC" on page 6 of the Inspector's Report it is stated that:

"BAT is represented by guidance given in the IPPC Reference Document on BAT for the Intensive Rearing of Poultry and Pigs. The version / date of that document is omitted. We believe that document was published in July 2003, is often referred to as the BREF Document, and is currently undergoing revision.

Under the heading "**Best Available Techniques (BAT)**" on page 8 of the Inspector's Report the following is stated:

"I have examined and assessed the application documentation and I am satisfied that the site, technologies and techniques specified in the application and as confirmed, modified or specified in the attached RD comply with the requirements and principles of BAT."

It is necessary to note now and recognise in the licence when granted that Conditions or parts of conditions which relate to the transfer and use of manure (8.13, Schedules C.4 (part) and C.6.1 and 812) to which we object here in this submission, are not based on or grounded in the "*IPPC Reference Document on BAT for the Intensive Rearing of Poultry and Pigs*" (edition of July 2003) as claimed in the Inspector's Report. Those conditions based on that claim are obviously flawed and need to be deleted.

We believe and maintain that the conditions and parts of conditions and schedules in the PD that refer to manure transfer from the installation and/or to manure use (referred to by the Agency as "recovery") on customers' lands that are not part of the installation are not based on or derived from guidance given in the "*IPPC reference document on BAT for intensive Rearing of Poultry and Pigs*", as claimed. A poultry rearer / licensee can supervise works within the installation only, and does not use manure or engage in landspreading in the installation, and is not the person responsible for any "landspreading" or "nutrient management" on customers' holdings.

It is very important to note and to accept the important very relevant qualifying text from the BREF Document (pages xxxix and xl):

"For the scope of this work, the TWG included some techniques that they considered relevant but that are not always applied on installations covered by IPPC. For example, landspreading of manure is considered in great detail, although it is acknowledged that landspreading is often carried out by contractors and often not on land belonging to the farm where the manure has been generated.

*The following relevant **farm activities** are described, although it is acknowledged that not a// of the activities will be found on every farm:*

- *farm management (including maintenance and cleaning of equipment)*
- *feeding strategy (and feed preparation)*
- *rearing of animals*
- *collection and storage of manure*
- *on-site treatment of manure*
- ***landspreading of manure***
- *waste water treatment. "*

The use of the word "farm" above is not appropriate in relation to an IPPC licensable activity, as the place where the activity is carried on is an "installation" for the purpose of the IPPC legislation. An installation may be a farm in some circumstances but it is usually only a small part of a farm. Landspreading or use of litter / manure is not done in or proposed for the installation in this case.

Even if the above quoted text did not occur in the BREF document, EU and Irish legislation prescribes that the only person who has responsibility for, or can take responsibility under the legislation for the deposition on land of any fertiliser (whether chemical or organic fertiliser (including chicken litter) from any source) is the Occupier of the Holding on which it is deposited on land.

Conditions 6.8, 8.7, 8.13 and probably 8.121, as well as Schedules C.4, C.6.1 and the second item listed in Schedule D (required by Condition 11.7) need to be deleted from the licence when granted or be drastically changed to make it clear that they do not seek to impose a non-statutory burden on manure users / customers for manure, and do not seek to make the licensee pretend that he can confirm customers requirements for N and P nutrients and/or provide and maintain fertiliser plans in relation to customers holdings, and /or ensure that customers use of fertilisers on their holdings will be in compliance with the Nitrates Regulations when in fact it is not his function or responsibility as a lawful fertiliser supplier to do any of those things.

Objection to Condition 8.12.

Condition 8.12 refers and applies only to the litter/manure proposed to be transferred from the installation for composting. As the litter/manure produced in the installation is animal by-product (ABP) (Category 2), transfer is required to be to a composting plant authorised under Regulation EC/1069/2009. Such composting plant is not a "disposal" facility, as disposal of a Category 2 animal by-product (in the limited circumstances where it may occur) is required to be by incineration or by burial in a landfill authorised for that purpose. (See Article 13 in Regulation EC/1069/2009). By reference to the same Regulation, the Agency ought to reconsider also the use of the word "recover" in relation to manure transfers to an authorised ABP composting plant. Is the applicant / licensee not entitled to transfer litter to any authorised composting plant, subject to the requirement in Article 23(1)(g) of S.I 610 of 2009 to record details of all such transfers?

Condition 8.12 should be deleted or greatly reduced / modified to recognise and respect the separate legislation under which the transfer and the use of litter / manure from the installation to customers / users is governed (The ABP Regulation and the Nitrates Regulations)..

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 poultry litter or any slurry/manure in the installation and cannot do so on any customer's holding. The applicant can sell or supply litter/manure to others for use in fertilising land on the terms provided for in Regulation EC/1069/2009. As the applicant (or licensee when the licence is granted) is not the person responsible for the use of fertiliser it may supply to customers, all of 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 litter or 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 when granted.

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 imposes a non-statutory and unenforceable burden on customers which 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 and is lawful fertiliser under S.I 610 of 2010. The burden referred to is the requirement for the customers to provide a document or documents to the licensee as a pre-condition of the sale or supply of fertiliser to the customer, even though the customer may not have such documents available and even though such documents if made available to the licensee probably would be without meaning for the licensee or the customer at the time of the manure transaction / transfer.

That condition imposes an unacceptable non-statutory burden on customers who are not party to the licence and who are not subject to the licence or any of its conditions and 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 8.12 should not be in the licence. For example, the customer data sought in Condition 8.12.1 (ii) would not be known to many customer farmers themselves by 1 March any year, and would not be reliably known to a lot of customers before mid April. Also, the equating in condition 8.12.3 of a customer's nutrient management plan with his/her N & P Statement is an absurdity, and the statement that nutrient management plans may be based on N & P Statements is contrary to governing legislation and is also absurd.

Those conditions that refer so much to customers who are not party to the application and will not be subject to any conditions of the licence and to customers' documents that are of no value to the applicant / licensee have no place in the licence and so should be deleted.

Objection to Conditions 6.8 and 8.7 and to Schedule "C.4 Waste & Manure monitoring"

Condition 6.8 is

Monitoring of available storage capacity for slurry/manure shall be undertaken as outlined in Schedule C.4 Waste and Manure Monitoring of this licence. Results shall be retained on-site and records 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

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

Reference in 8.7 to manure for "*recovery*" implies that the Agency still wrongly considers slurry/manure to be "waste" and not to be animal by-product".
Schedule C.4 refers to "*Waste and Manure Monitoring*".

It is fact that poultry litter 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 6.8 and 8.7 and Schedule C.4, wrongly describes and/or labels poultry litter produced in the installation as "waste" when in fact manure is not and will not be discarded in or from the installation, and when in fact livestock manure (including poultry litter) 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).

Conditions 6.8 and 8.7 and Schedule "C.4 considered together with the meaning "*Any site or premises used for the purpose of the recovery or disposal of waste*" attributed to the word "*Facility*" in the Glossary of Terms on page 2 of the licence, imply that any customers land that may be fertilised with litter/ manure from the activity /installation would be a "facility" with the meaning attributed in the licence to that word. That would be wrong, and so that "facility" word as well as Conditions 6.8 and 8.7 and Schedule C.4 and Schedule c 6.1 need to be deleted from the licence. A Customer's field fertilised with fertiliser from the installation is not and cannot be described in any way as a waste recovery site or a "facility" for the use or benefit of the licensee, or for the purpose of the licence when granted.

We request and expect that poultry litter or the use of it 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 is required to be managed as the animal by-product that it is, and as the fertiliser that it is. Instead, it should be dealt with as the by-product fertiliser that it is, and so recognise that it is to be placed on the market to sell or supply and transfer to customers for their use and benefit, as is authorised in legislation, under Regulation EC/1069/2009 and as is recognised in S.I 610 of 2010.

Use of the litter/manure / fertiliser produced in the installation really is not and cannot be in the installation by the licensee. Use by the new farmer owner outside the installation 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 the statutory standards applicable to the new owner / user in relation to his/her holding (mostly as contained in the Nitrates Regulations).

That must be recognised in the licence, ideally by deleting Conditions 6.8 and 8.7 and the reference to manure in Schedule C.4, and Schedule C.6.1 needs to be deleted as the licensee as it refers to application of fertiliser to land which is the statutory responsibility of persons other than the applicant /licensee.

Specific 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 Ambient Monitoring, C.6.2 Land used for Landspreading, of this licence where nutrient

management plan, required under Condition 8.12.3, 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 8.12.3 above.

Schedule C.6.1 refers to "*Ambient Monitoring*" and "*Land used for Landspreading*" and to a "*landbank*" that is to be some kind of "impossible responsibility" of the licensee.

In relation to the licensee and 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 litter 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 litter 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 which, for the time being, is in his Holding. Other than that, farmers do not have a "landbank" of other persons' lands under their control for either fertilising or for any 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 applicant did not propose to use any land for landspreading and as farmers or farm advisers, we know farmers do not and cannot not use any land for "*landspreading*", that customers' lands are not part of the "installation" and are beyond the scope of the licence, and that the licensee can never use customer lands under the terms or conditions of the licence when granted. Intensive Agriculture Licensees do not use customers' lands for anything.

A licensee cannot engage in "*landspreading*" of poultry litter on customers' lands. A licensee can only supply litter/ manure in response to a customer's request, and 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 it 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 not engage in any "landspreading" of poultry litter or any other manure or material on any land that is subject to conditions of an IPPC licence, and cannot engage in "landspreading" on any other persons' lands, where the responsible person is the Occupier of the Holding on which the "landspreading" is done..

Accordingly, Condition 8.13.4 and to Schedule "C.6.1 Ambient Monitoring Land used for Landspreading" should be deleted from the licence when granted.

Objection to part of Condition 11.7 and to 2 items in Schedule D: 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 11.10. 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.

Schedule D needs to be revised to delete the second item, i.e "Organic fertiliser register" from Schedule D of the licence when granted. .

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 whom the licensable business relies for customer demand for the by-product manure / lawful organic fertiliser produced in the installation.

It is a fact that poultry manure (indeed livestock manure generally), is animal by-product (Category 2) by law in Regulation EC/1069/2009, by-product that may be placed on the market and sold or supplied for use as fertiliser by others. In the case of manure, it may be sold or supplied as fertiliser to any person who wants it for use. 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 in fertilising land. Those matters need to be recognised in the licence when granted. All manure /organic fertiliser movements/ transfers on and off holdings are required to be recorded under Article 23(1)(g) of the Nitrates Regulations. All farmers including the applicant for an IPPC licence and the independent customer farmers upon

whom the applicant / licensee relies for customer demand for manure / fertiliser are obliged and required by law separate from the IPPC system /legislation to maintain such records and to make the records available for inspection by authorised inspectors. In such circumstances there is no requirement for or purpose served by propose IPPC licence conditions in relation to manure transfer and the use of transferred manure by others outside the installation, which proposed conditions ignore and/or conflict with the legislation under which manure / fertiliser transfer and use are governed separate from the IPPC system.

The proposed conditions objected to (including in particular 8.13, Schedules C.4 (part of) and Schedule C.6.1 and 8.13 and any other related proposed conditions) seem to relate to the management and transfer of manure / lawful organic fertiliser from the installation for "recovery" as "waste" when in fact it is not discarded and is not waste. 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 by 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 litter (and of livestock manures generally) and the general entitlement of farmers to trade manure as the fertiliser it is, needs to be recognised and respected in the licence when granted.


The inclusion of livestock manure in the statutory definitions of "organic fertiliser" and "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. It is a basic fact that fertiliser suppliers, including suppliers of litter/ manure for use on land, are not and cannot be held in any way responsible under licence conditions for any aspect of nutrient management planning or fertiliser use on customers' lands. That fact needs to be unequivocally recognised in the licence when granted, with no ambiguity in that regard.

The proposed reference to the "Organic Fertiliser Register" in Schedule D needs to be deleted. The Register would contain personal information of customers for fertiliser in circumstances where neither the licensee nor any other fertiliser supplier would have the necessary Data Protection Act protection or the necessary consent of customers to submit that record to the EPA (except when requested for a specific reason) but not to public file as in the AER.

We respectfully ask that the EPA respond to the issues raised in this submission by deleting and/ or changing the conditions referred to.

Signed:

Irish Organic Fertiliser Producers.



Edward O'Connor. Chairman.