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Objection No. 2

Peter J W Brittain
Newcastle House
Kilmainhamwood
Kells
County Meath

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

29th October 2013

Re: Submission in respect of an application by Padraig Thornton Waste Disposal Limited for a review of a waste licence for a facility at Kilmainhamwood Compost, Ballynalurgan, Kells, County Meath.

I, Peter Brittain, of Newcastle House, Kilmainhamwood, Kells, County Meath, hereby **object** to a proposed decision on the application for a review of a waste licence, which application has been received from Padraig Thornton Waste Disposal Limited, in respect of facility at Kilmainhamwood, Ballynalurgan, Kells, County Meath. The notification of the proposed decision on the application for a review is dated the 1st October 2013 and has been accorded Register No. W0195-02 with a CRO number 72366, and the totality of the decision is comprised within a document entitled *'Notification of a Proposed Decision on a Review of a Waste Licence in Accordance with Section 42(2) of the Waste Management Acts, 1996 – 2013'*, and the entire decision is comprised in a document which extends to 38 no. pages which includes a number of schedules and comprises in total 12 no. conditions.

I enclose a fee €300 made up of €200 for the submission and €100 for an oral hearing. I request an oral hearing so that the Agency can carry out the Environmental Impact Assessment in a form and manner required under the Environmental Impact Assessment Directive because of the matters raised in my submission

While the decision is recorded as having been made on the 1st day of October 2012, I am aware that there already has been correspondence between the Environmental Protection Agency and/or

officers employed by the Environmental Protection Agency and the applicant for the waste licence whereby the applicant, Padraig Thornton Waste Disposal Limited, was informed in early 2013 that the area of the existing licence and in particular the layout and configuration of the building could be modified and this decision under W0195-01 was issued on the 18th January 2013. This in effect permitted an alteration to the licence area and to the licensing activities or at least in part thereof and notwithstanding that I was a party to the review which was required to be conducted in a fair and impartial manner, I was never informed of this decision, I was never informed that an official of the Agency, Eamonn Merriman, authorised works to be carried out which had not been formally sanctioned by the Agency, which were the subject matter of a review, a decision on which is only now purported to have been made on the 1st October 2013 and I find it inexplicable that the Agency should have authorised the making of a decision of a type recorded on the 18th January 2013 not only in the manner that they did but without ever notifying me of this decision and I remained in ignorance of that decision and the decision would never have been known to me but fortuitously I became aware of it prior to the preparation of this submission. It appears that there has been correspondence with the Agency, and in particular a submission from Thorntons to Mr. Dara Lynott, a director of the Agency, which complained that Thorntons were on target to exceed its licenced capacity of 2800 tonnes in 2012 and request a meeting to discuss the likely decision date and which letter was signed by Paul Thornton again correspondence that was never circulated to me but clearly which was correspondence which had a significant effect on the Agency as it appears to have directly led to the decision of the 18th January 2013 and none of this correspondence was ever communicated to me, which I believe I am entitled to as a participant in the review process and am not to be excluded from correspondence with the applicant to the Agency, particularly in view of the quasi-judicial functions exercised by the Agency and which approach, as reflected in the decision making process, is contrary to all fair procedures and to natural and to constitutional justice. I now further discover that there was a response formally from the Agency from a Mr. Frank Clinton which in addition to the informal approval of the review of the licence by Mr. Merriman, undertook to complete the review and accorded in that letter of the 15th January 2013 a priority to the application and concluded the letter by undertaking to "endeavour to complete the process at the earliest possible time. I can only interpret that letter, together with the letter from Mr. Merriman, as confirmatory of the fact that the decision in respect of this review had been made long before the 1st October 2013 and was made in a context that I had never been made aware of

and indeed the only correspondence that I have had from the Agency is a notification of the proposed determination dated the 1st October 2013.

I am very concerned about the extent to which the Agency is a detached, independent body, who affords equal weight and equal importance to me as a participant in the review process and to the developer and the process to date was fundamentally unfair to me, was contrary to my rights to fair procedures and to natural and constitutional justice, and therefore I do not consider that the proposed determination has been made in any way other than contrary to those rights which the Agency has a duty to protect under the statutory provisions of the Environmental Protection Agency Acts.

However, the defect in the procedures of the Agency is far more fundamental than that. I note that the Agency appointed an inspector, Mr. Michael Owens, to advise the Agency on the technical matters relating to the review and I have discovered within the documentation produced by the Agency subsequent to the decision, a report of that inspector dated the 17th July 2013. I am very concerned that this inspector, who is required to determine these matters at arm's length from the parties, appears to have been in direct communication with Thorntons recycling, and indeed I have discovered a submission from Thorntons of the 29th March 2013 addressed directly to Mr. Owens, both in the address on the face of the response and identifies Mr. Owens personally in the response. I find the approach that has been adopted disturbing, not least because it does not reflect the statutory basis of the request made under Article 13 which must have been made by the Agency and not by any employee of the Agency and therefore properly the response should have been made to the Agency and it can hardly be appropriate or justified in any way that the individual dealing with the application is corresponding directly with the applicant for the review. No reasonable person faced with this type of relationship could ever consider that the level of independence and judicial detachment that is necessary for this type of determination could exist in such circumstances and there appears to be a relationship between the Agency and the applicant for review, which seems to me to be entirely inappropriate in the light of the type of quasi-judicial functions that the Agency is required to determine and the degree to which the process has been personalised, not just with Mr. Owens but with correspondence emanating from Mr. Clinton and to Mr. Lynott and to Mr. Merriman, all suggest a relationship that does not contain the levels of detachment and objectivity that is

fundamental to a fair and balanced view of the type of concerns that I sought to have raised and which I had understood would be objectively determined.

I make this observation in circumstances where I, together with my wife, Margaret, have been consistently ~~been~~ raising the most serious concerns in respect of the operation of this plant. There has been, since the use of this facility commenced, a strong and pungent odour which renders any reasonable use and enjoyment of our lands impossible and which even permeates into our dwelling house and which, apart from being distasteful and objectionable, causes physical symptoms like a dry mouth, watering and stinging of the eyes, as well as nausea and on occasion breathing difficulties. In addition the psychological effects of these odour events are very significant and cause great distress and anxiety, such that both myself and my wife are on medication and I have already furnished correspondence in this regard and I do so again as an appendix to this letter but to date, despite these complaints on a regular basis, we have never received the type of response that such an impact would warrant and the relationship it would appear that exists between myself and my wife and the Agency as compared to that which exists between the Agency and Padraig Thornton Recycling Limited, is very different and certainly very different in respect of the degree of engagement in respect of our concerns raised. I would have thought that given that this Agency is responsible for monitoring and enforcing environmental conditions and indeed enforcing the terms of its own licence, that this type of persistent breaches would be a matter of the gravest concern but as the Agency is aware from the frequency of the complaints, our concerns have been largely ignored and indeed such is the relationship of the developer and the Agency, that our concerns when raised with Thornton Recycling Limited are treated with contempt and derision and it is now clear that Thorntons have a particular relationship with the Agency which has instilled a confidence that they can operate this plant in whatever way they believe is conducive to their operations and that the Agency will facilitate such activities in the manner that they have by the decision of January 2013 and by virtue of the tone and content of their correspondence, including their decision, of the 1st October 2013.

It is unnecessary and inappropriate that the officials directly engaged in the processing of this application should be made known to the Agency, that the developer has a direct contact with these persons and that I am excluded from all of these communications and of course am seriously prejudiced by virtue of the relationship that inevitably develops between parties when

one is able to directly engage with the persons who ultimately make the recommendations and insofar as this practice is a practice that is exercised the Agency's decision making process, it is fundamentally unfair, partial and inappropriate. It has the effect in this instance of fundamentally undermining my faith in the decision making process as being objective and detached and it is no answer to say that the persons who will conduct the review will be different, as the communications from Thornton is being made directly with the most senior officials of the Agency including Mr. Lynott who is a director of the Agency, Mr. Merriman who is in the office of Environmental Enforcement, Mr. Clinton who is Program Manager for the Environmental Protection Agency and all of these persons are at the most senior level of the Agency and will be persons ultimately to which any review of this licence will be directed to. There may indeed be other persons with whom informal contact either by telephone, email or meetings have taken place and I can never be reassured as to the full extent of the communication or the nature of the relationship between the parties that has existed or to what extent this has ultimately affected the decision and this can never be a reasonable or appropriate basis to ground a decision of a type the subject matter of this review.

In all of those circumstances it seems to me that there must be an immediate root and branch analysis of the entirety of this application for a review, that the decision of January 2013 made by Mr. Merriman with, it is to be presumed, the full approval of the Board of the Agency (as Mr. Merriman could not make this decision without such authority), and a full investigation of the impacts of this operation and any review of the process would be pointless without such an undertaking. It is for this reason it seems to me fundamental that the Board must convene an oral hearing, must appoint a person who has never had any contact with, or any knowledge of, or any familiarity with the developer, either formally or informally, and who will come to the process with a degree of objectivity and detachment that is fundamental and critical to any appropriate analysis of this proposal.

The review of this licence cannot take place by way of a written submission in circumstances where that process has now been fundamentally undermined by a series of parallel correspondences with various officials of the Agency to which I have not been party, to which I have not been made aware, and where the level of detachment and isolation necessary to make a considered determination can only be achieved through the process which the statute provides for. If an oral hearing is not provided then I cannot participate further in the review process

because I have no confidence that the level of objectivity and detachment which is fundamental will be present and I say that there are so many unanswered questions in respect of the nature and operation of this activity, that it would be impossible in any event to participate in the licence review procedure given the level of information that has been afforded.

However the position is far more serious than that, because it now appears from the report prepared by Mr. Owens that this is a size and scale of development that requires to be the subject matter of an Environmental Impact Assessment, having regard to Council Directive 85/337 EEC, as amended by Council Directive 97/11 and 2003/35. Mr. Owens, at page 9 of his report, under the heading of 'Environmental Impact Statement' refers to an Environmental Impact Statement dated May 2010 which was prepared in support of a planning application reference KA901007 as fulfilling the obligations under those Directives for the giving of appropriate information. In accepting that Environmental Impact Statement is complying with the obligations under the Directive, the Agency has made a fundamental error of law and has failed to have any or any adequate regard to the requirements of the Environmental Impact Assessment Directives as referred to earlier. The Environmental Impact Assessment Directive requires that before any decision is made in this case, before any decision on a proposed review of the licence, the Agency must conduct an Environmental Impact Assessment and the Directive requires that appropriate information to comply with their obligations must be submitted by the developer which, under Irish domestic law is referred to as the Environmental Impact Statement. It is clear therefore from the requirements of the Directive and indeed from Irish domestic law, that the Environmental Impact Statement must have as its basis, and must direct the information submitted to the decision to be made by the competent authority and it is entirely inappropriate to rely on a statutory process conducted under entirely separate legislation by an entirely separate body which has regard to very different considerations and in adopting this approach the Agency has acted in fundamental breach of the Environmental Impact Assessment Directive. Such a Statement may have been adequate or appropriate to have been submitted to An Bord Pleanála to have exercised its planning functions, but the Board exercises a very different jurisdiction, has regard to very different matters and requires an entirely different range of information than the Agency does in carrying out its functions and it is simply outrageous and perverse to suggest that a Statement containing information relevant to the making of a decision by An Bord Pleanála under the terms of its functions could simply be applied to comply with the Agency's obligations and meet the type of information the Agency is required to have before it when deciding on a

review of the licence under the Environmental Protection Agency Acts. The application therefore is fundamentally invalid and void in its failure to comply with the relevant provisions of the Environmental Impact Assessment Directives and the relevant legislation transposing those obligations into Irish domestic law.

Those sections of the Inspector's report dealing with the Environmental Impact Statement are curiously worded and refer to the date of the Environmental Impact Statement but does not identify when the Statement was in fact submitted formally to the Agency and it appears that no reference to the carrying out of an Environmental Impact Assessment by the Agency appears in the public notices, and this is a fundamental obligation of European Community law as expressed in those Directives as the right of the public to participate and be aware of the carrying out of an Environmental Impact Assessment is fundamental to the entire process. Indeed Council Directive 2003/35 EEC enshrines the right of the public to be consulted at the earliest stage and for my part I was entirely unaware that the Agency was conducting an Environmental Impact Assessment, that I was entitled to participate in that Environmental Impact Assessment and raise those types of issues which any such Assessment is required to consider at any time during my participation in the process. The default in this regard arose from the failure of the Agency to require that an appropriate notice be published of the obligation to submit an Environmental Impact Statement and of the statutory obligation on the Agency to carry out an Environmental Impact Assessment and on the right of the public to participate in that process. This failure is in such circumstances a fundamental breach of the Agency's obligations and renders in any event the totality of their decision the subject matter of this review, invalid.

I note in the subsequent paragraph the inspector refers to other material which he considered, including the planning permission and the planning inspector's report and concludes in an absolutely bizarre manner that the likely significant direct and indirect effects of the activity have been identified, described and assessed in an appropriate manner as required by Article 3, and in accordance with Articles 4 to 11 of the EIA Directive. This is a truly absurd finding in circumstances where in carrying out the Environmental Impact Assessment, the only issues that could have been considered is the effect of the licence review on the receiving environment and the effect of a decision to permit the increase previously authorised and in particularly its likely significant effects. That is a matter that could never have been determined either by the planning authority or by An Bord Pleanála as their jurisdiction was entirely different and indeed could

never have been in a position to second guess what the Agency might have done in any review of this licence. And that paragraph reflects graphically the extent to which Mr. Owens failed to understand his obligations under the Environmental Impact Assessment Directive and I say that the level of confusion which permeates the entirety of the inspector's report is clear from his reference under the heading of Environmental Impact Statement to his characterisation of the Board having analysed the likely significant direct and indirect effects of the activity, as opposed to the development, which latter term is the issue that the Board and the planning authority would consider and which former term, namely the activity, is a matter exclusively within the jurisdiction of the Agency.

If it is the intention of the Agency to proceed, generally on the basis of the approach of Mr. Owens and if the Agency, as they have done in the past, ignored or failed to have any appropriate regard to the submissions that have been made by me and if they consider that the approach adopted by Mr. Owens in that section of his report dealing with the Environmental Impact Assessment insofar as they are concerned are sufficient to ground the proposed determination, then I would ask that they would indicate this as in such circumstances I intend to proceed to take appropriate proceedings to question the validity of this decision insofar as it purports to comply with the Environmental Impact Assessment Directive.

It is unnecessary to deal with the manner in which the Agency, and in particular Mr. Owens, has sought to carry out the Environmental Impact Assessment, and appears again to misunderstand the appropriate steps that must be taken which as the Courts have identified on numerous occasions as a process which is conducted in accordance with the general review of the licence. The procedural steps required are set out in the Directive and require for example a description of the proposed development including information on the site, the design and size of the proposed development. The Environmental Impact Statement was prepared, as the inspector records, for An Bord Pleanála, and is directed to the functions of the Board and is not concerned with the activity, or more specifically the alterations to the activity, which all parties to that process accepted was a function to be exercised by the Agency.

It appears that the issue of whether a mandatory Environmental Impact Assessment was still an issue being considered by the Agency in March 2013 when at question no. 2 Thorntons were asked whether the preparation of an Environmental Impact Statement was considered mandatory.

by the planning authority, which question ought to have read more properly, whether the carrying out of an Environmental Impact *Assessment* was required, as the preparation of an EIS was irrelevant when the fundamental issue at stake was the carrying out of an Assessment. But more significantly arising from that letter of the 29th March 2013, was the extent of information which was sought by the Agency which does not appear in the Environmental Impact Statement and for example the following information was not contained in the Environmental Impact Statement:

1. The waste types listed on pages 42 and 43 of a submission to the Board arising out of a notice of the 19th August 2011;
2. Whether animal by-product and non-animal by-product and feed stocks were stored and processed separately;
3. The status of the site relative to approval by the Department of Agriculture, Food and the Marine in respect of the operation of a composting facility in accordance with the Animal By-Products Regulations;
4. The details of the odour abatement system, and in particular the addition of an acid scrubber, appears to have been installed subsequent to the making of the application,

– and to that extent the plans and particulars lodged may not have reflected the nature of the operation at the date in which the proposed determination was made.

There clearly was little or no information available to the Agency in respect of the nature and the proposed standard that the compost to be created would comply with, the nature of the odours that would exist in respect of the disposal of the compost, the odour impact and the impact the Odour Impact Assessment Report appears to have been entirely missing, the nature and operation of the odour abatement process, the disposal of wastewater, the disposal of surface water – all of which matters it was necessary to raise particulars from the applicant and all of which information was necessary because it was not included within the information before the Board but, most importantly, was not contained in the Environmental Impact Statement. How in such circumstances could the Agency ever have concluded that the requirements of the Directive in respect of the information to be contained in the Environmental Impact Statement could ever have been considered adequate, and of course it is no surprise given that the information that was prepared and relied upon had been prepared for an entirely different process. Even in this most

fundamental of issues the Agency made a fundamental mistake and this entirely invalidates the entire process.

The information that was sought in the letter of the 29th March 2013 and which deals with the most fundamental of issues, was never circulated to me notwithstanding that it deals with the processes involved in the generation of the compost which create many of the effects that have caused such devastation to me and to my wife Margaret and to the dwelling and lands which we own and occupy and which have destroyed our use and enjoyment of those lands. Even more fundamentally it appears the Agency, having considered this application for a period of, at that time, almost three years, did not have before it any information on odours arising from the disposal of the compost but even more fundamentally odours arising from the activity itself and in particular the odour impact assessment report and the extent to which that had been implemented at the facility. How could the Agency review the impact of an activity without being aware of the nature of what had been installed and did not even question when the entirety of, for example, the Odour Impact Assessment Report would be implemented and purported to give a consent for the review of the activity and increase the extent of that activity by one hundred per cent without any assurances being given in respect of this issue which has been so fundamental so our concerns in respect of the nature of the operation. This is so fundamental that I cannot conceive of any competent Agency being charged as the competent authority to carry out an Environmental Impact Assessment of the likely significant effects, in making that determination in the light of the information that it received and the very raising of the questions in that letter of the 29th March 2013 in the context of an Environmental Impact Statement which must as a matter of law contain this very information, is an admission of the inadequacy of that Statement which was considered adequate by the inspector and which determination was implicitly approved by the Board.

The responses to these fundamental questions which, if any level of respect was being accorded by the developer to the process, should have contained detailed and systematic technical responses but fundamental and complex questions were answered in a single paragraph and the only conclusion that can be reached is that these issues which I had raised and which the Agency must have been aware and certainly Thorntons are aware, are being treated with contempt and the Agency has been complicit in that by the manner in which it has dealt with this application.

To add insult to injury they have then proceeded through its inspector Mr. Owens, to purport to carry out an Environmental Impact Assessment without even knowing the nature and extent of the development which they were required to assess. They then proceed to describe the effects in tabular form but one could not discern what these effects are from the conclusions reached at pages 10 to 13 of Mr. Owens' report. What for example is the significant effect of traffic and its associated emissions, risks and disamenity effects, that is a category of issues to be considered but nowhere are the effects of these matters even identified.

The position becomes even more bizarre when one considers the category of impact on air quality and the description of the effect is the emissions of dust, odour, bio-filter off-gases and bio-aerosols which again does not describe any of the effects but merely records that such emissions occur. It is presumed that these are identified as significant adverse effects but the mitigation measures are that licensed activities are carried on indoors as if that is a complete answer to, for example, the creation of dust or odours or the emissions of off-gases and bio-aerosols which could never be contained within the building. It appears that the submissions that have been made have been entirely ignored in terms of the mitigation measures because the odour impact modelling according to this summary does not predict an impact on the locality although this is so vague that it is useless and is not the type of analysis that the Directive requires. Had the inspector even considered the submissions that I made he would have been aware of the extent of air emissions on the amenities, on my house, on my land, on my farm animals, but most importantly on the health and wellbeing of myself and my wife Margaret. The Agency was aware that they initiated a criminal investigation and had furnished them copies of consultants' report identifying emissions from this facility as causing a serious public health impact upon my wife Margaret but this is not even identified as an effect nor is it even recorded as it having occurred – indeed it is not even mentioned in the Environmental Impact Assessment. The Environmental Impact Assessment is a nonsense and an Assessment carried out in the manner which Mr. Owens purported to do is objectively fundamentally in non-compliance with the requirements of the Directive. It is abundantly clear that this inspector has never carried out an Environmental Impact Assessment, has never been and is not familiar with the obligations under the Directive and simply does not understand or refuses to engage with the obligations in the Directive and the entirety of this approach reduces the obligations which are a matter of mandatory compliance to that of a farce and I cannot comprehend how anybody with even the most fundamental and basic knowledge of the requirements of an Environmental Impact

Assessment could consider this anything remotely complying with the obligations under the Directive.

The entire process therefore is, as a matter of law and as a matter of practice, fundamentally invalid and this could never stand as a proposed determination for this or for any other activity which was subject to the requirements of Council Directive 85/337 EEC (As amended). I consider it inexplicable that these most fundamental questions raised by the Agency in its letter of the 5th March and to which a rather summary reply was received on the 29th March, was not forwarded to me and why should the absence of such fundamental information not have been disclosed and why a response of a type that identified the inadequacy of the documentation before the Board not have been revealed, I find both incredible and inexplicable.

The only way in which any degree of clarity and transparency can be brought to this process is by allowing this issue to be the subject matter of an oral hearing, which hearing can form part of any Environmental Impact Assessment and which the Courts have indicated can fill gaps in the process by the disclosure of information through that process. It is impossible to logically or realistically proceed on this basis and I reserve my right to take whatever action is considered appropriate in respect of a decision not to convene a hearing and to proceed on the basis that the decision of the 1st October 2013 is a valid determination for the purposes of Irish domestic law and European Community. I would require and indeed would appreciate if the Board were disposed to convene an oral hearing, to be informed of that fact but equally it is important that if you decide not to convene an oral hearing, that I be informed of that decision as I would wish immediately to take whatever steps as may be advised to protect and vindicate my rights both under Irish domestic law, under European Community law and my constitutional rights to fair procedures and natural justice and to protect my rights including my rights under Article 40.5 to the inviolability of my dwelling. The Agency has a duty and a responsibility to ensure effective implementation of the requirements of the Directive and has been assigned the competent authority for this purposes and cannot and must not frustrate me, as a participant in the process, from my rights to fully participate within the process and in those circumstances the Agency will understand the importance and urgency of the issues that are now raised.

SIGNED:

Peter J W Brittain

Encl 1

DR. E. BRUCE MITCHELL

MD. FRCPC. FRCPI.

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Dr Catherine Wann
The Nobber Medical Practice
Nobber
Co Meath

Our Ref:15330
11/01/2010

Re:Ms Margaret Brittain, Newcastle House Kilmainham Wood Kells Co Meath
DOB: 06/12/37

Dear Catherine,

Thank you for asking me to see Margaret Britton.

This lady developed symptoms of eye irritation, often in the afternoon and she describes it at strange times. While she has always recognised slight hay fever type symptoms, rhinitis type problems are more marked now. Her suspicion is that the symptoms seem to coincide with an odour associated with a damp/wet vapour on her face, presumed to be associated with the local composting plant.

She lives approximately one kilometre from the compost plant, she is on higher ground. Composting appears to primarily relate to brown bin contents, primarily washings from the catering industry and sewage sludge from county council effluent. Obviously it is a highly regulated industry, however she states that she has reason to believe that the biofilter is not working properly.

Note that Margaret lives on a farm herself and has done so without adverse problems in the past.

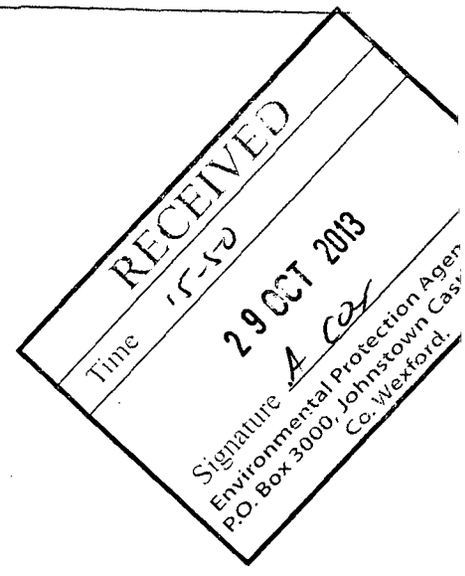
We arranged for generalised skin testing and CAP RAST to environmental and dietary antigens and patch testing to standard European battery plus food additives likewise is negative. The results of these investigations are entirely negative.

Clearly, we have no reason to believe that IgE mediated mechanisms are involved in her symptomatology, her total IgE is 41.2 IU/ml. We also checked her for specific IgE antibody to wasp venom and this likewise was negative.

The nature of the possible exposures from the composting plant need to be determined prior to being able to draw any conclusion relating to cause and effect. Where her history of slight hay fever in the past is concerned, it is noteworthy that as one gets older IgE production diminishes and in the eighth decade IgE production has often ceased altogether. This may be the case here.

Cont/d...

Looking at her symptoms I do not believe that simple explanation such as IgE mediated pollen, dust, mould, animal reactions are likely to explain what is underway. Rather it is more likely that she is correct in her assumption relating her symptoms to effluent from the plant.



With kind regards,
Yours sincerely,

E.B. Mitchell MD.

Copy: Mrs. Brittain