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## M E M O R A N D U M

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**DATE:** 14 October 1999  
**TO:** Board of Directors  
**FROM:** Technical Committee  
**RE:** Objections to Proposed Determination for Mr. Donal Brady for a pig unit at Carrickboy, Edgeworthstown, Co. Longford

Application Details	
Proposed Determination issued:	27 May 1999
Third Party Objections received (three):	16 June 1999
Applicant Objection received:	23 June 1999
Notable correspondence:	28 June 1999, 22 July 1999
Applicant submissions on Third Party Objections received (three):	20 July 1999
Article 32 request from Technical Committee:	23 July 1999
Response to Article 32 request:	13 August 1999
Third Party Submission on Article 32 Response (three):	16 September 1999

### **Consideration of the Objections and Submissions**

The Technical Committee (Dr. Vera Power, Chairperson, Mr. Marc Kierans and Ms. Breege Rooney) met on 2 July 1999, 8 October 1999, 11 October 1999 and 12 October 1999 to consider the Objections and Submissions on the Proposed Determination issued to Mr. Donal Brady for a pig unit at Carrickboy, Edgeworthstown, Co. Longford, Reg. No. 408. Ms. Elaine Farrell, licensing inspector for the activity was invited to present her comments on the Objections and Submissions to the Technical Committee.

In the text below, direct quotes from Objections or Submissions, are identified by *italics*.

### **Applicant Objection**

#### **General Comments**

Mr. Vincent Flynn writing on behalf of the Applicant states that having taken legal advice he considers that some of the proposed conditions included in the Proposed Determination are *ultra vires* the powers of the Agency. The objections are discussed in detail below.

Applicant Objection:

*Several Conditions in the Proposed Determination No. 408 would be particularly onerous and difficult for the Applicant to comply with in practice. Some of them would seek to impose obligations on the Applicant which he would not be empowered to comply with in the sense that compliance on his part would be dependent on receiving information voluntarily from other farmers about their own private farming activities. The Applicant does not believe that he would have the power to requisition the information that the EPA would seek to require under some of the proposed conditions.*

**Comment:**

Under the responsibilities conferred on the Agency by the Environmental Protection Agency Act (1992) the Agency is required to regulate the environmental aspects of intensive agriculture, including pig production. An inevitable aspect of pig production is the fact that a large volume of waste in the form of slurry or farm-yard manure is produced. Thus, a key issue in ensuring environmental protection in relation to pig units is to ensure that there is environmentally safe disposal of pig slurry. The most usual route for pig producers to dispose of this material is to apply it to land where it has a beneficial value to recipient farmers. Thus, in the absence of alternative proposals to land disposal, the Agency, in order to satisfy its responsibilities under Section 83(3) of the Act, must ensure that there is adequate and appropriate land available to a producing unit (either through direct ownership or *via* agreement with other landowners) to ensure appropriate disposal of the slurry.

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

**Applicant Objection:**

*There is reference in some proposed conditions and frequent reference in Schedules in Proposed Determination 408 to the term "waste" where it seems to us the material being referred to would be more correctly and more appropriately described by terms like "pig slurry" or "animal manure". Having taken legal advice, we believe that the Agency is wrong as a matter of law in attempting to describe animal manure as "waste". The pig slurry generated within the facility to be licensed is not "waste".*

**Comment:**

The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*"the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization."*

Therefore the slurry remains classified as a waste even though the piggery may charge “customers” for the use of it.

The intent of the conditions included in the Proposed Determination is to ensure that slurry is only applied to lands where its use is appropriate and where there is no risk of significant environmental pollution.

**Applicant Objection:**

*The Applicant considers that he should not be required, as he would be required by some proposed conditions, to act in a manner he believes would endanger either his business in the local community, the jobs and livelihoods of his employees or the freedom of his farmer customers to acquire fertiliser from whatever source they may choose by trying to force local farmers to submit to him in a manner that would serve no function except to permit him to better comply with seemingly unnecessary and excessive, if not ridiculous (in some cases), proposed conditions. In our opinion, compliance with the relevant proposed conditions, even if the Applicant could comply with them, would add nothing of known significance to the protection of any aspect of the local environment. In our opinion, compliance with those proposed conditions would serve no particular environmental protection function that could not be well and properly addressed and controlled by other proposed conditions. We believe that appropriately worded other conditions could properly address and control all that the offensive proposed conditions seek to control in a vindictive, if not illegal, manner.*

**Comment:**

Under the responsibilities conferred on the Agency by the Environmental Protection Agency Act (1992), the Agency is required to regulate the environmental aspects of intensive agriculture, including pig production. An inevitable aspect of pig production is the fact that a large volume of waste in the form of slurry or farm-yard manure is produced. Thus a key issue in ensuring environmental protection in relation to pig units is to ensure that there is environmentally safe disposal of pig slurry. The most usual route for pig producers to dispose of this material is to apply it to land where it has a beneficial use to recipient farmers. Thus in the absence of alternative proposals to land disposal the Agency in order to satisfy its responsibilities under Section 83(3) of the Act must ensure that there is adequate and appropriate land available to a producing unit (either through direct ownership or *via* agreement with other landowners) to ensure appropriate disposal of the slurry.

The Agency does not seek to force farmers to accept slurry from this unit. Farmers have the opportunity to withdraw from the landbank available to the unit at any time. The Agency seeks to ensure satisfactory disposal of pig slurry from this activity. In order to achieve satisfactory disposal the Agency by way of the Proposed Determination seeks to control the activities of the waste producer. This intent was highlighted to Applicants in the BATNEEC note produced for the Pig Production Sector which states:

*“The management of the manure produced is the sole responsibility of the owner of the pig unit.”*

In the current application, the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in

the application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

It has been documented that disposal of slurry can lead to a deterioration in water quality if not undertaken in a proper manner. The Proposed Determination seeks to ensure that any slurry requiring disposal from this unit is landspread in a proper manner. The Applicant has offered no alternatives to landspreading for slurry disposal.

**Applicant Objection:**

*Further, we believe that the practical and acceptable conditions together with those that would require little modification to make them practical and more workable in farm practice would produce an IPC licence format that would be more appropriate to, and have a more beneficial effect on a primary agriculture enterprise. We believe that conditions in an IPC licence should, in so far as it may be possible, and having regard to the primary objectives of the Agency within the law, be adapted to accommodate the existing sound routines in the industry or enterprise to which it would apply. That is not at all to say that wrong or sub-standard work practices or routines should be accommodated, but if any such are found to exist they should be pointed out or otherwise identified to the Applicant. In saying this here we want it to be fully understood that we readily recognise that these are matters for the EPA.*

**Comment:**

The Proposed Determination for this activity is developed with reference to the BATNEEC document produced for the pig production sector. The BATNEEC document for the sector was developed after wide consultation with the industry.

**Applicant Objection:**

*Compliance with some of the proposed conditions would require that the Applicant enter on to lands owned and farmed by others and there engage in activities (e.g. dig holes in fields, check tanks, collect farm records) that farmers as part of their normal farming activities are not required by law to do. By some of the proposed conditions, the Agency seeks to regulate land and activities on land and activities of persons who are not under the Applicant's control. Our legal advice is that any condition that would seek to enforce such regulation would be ultra vires the powers of the Agency.*

**Comment:**

The Agency does not seek to force farmers to accept slurry from this unit. Farmers have the opportunity to withdraw from the landbank available to the unit at any time. The Agency seeks to ensure satisfactory disposal of pig slurry from this activity. In order to achieve satisfactory disposal the Agency by way of the Proposed Determination seeks to control the activities of the waste producer. In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

**Applicant Objection:**

*It is not necessary that we are objecting to some or all of the proposed conditions on grounds that they would cause difficulty for the Applicant. The Applicant is concerned that an attempt on his part to comply with some of the proposed conditions could give rise to legal challenges that the Applicant could be drawn into, thus exposing himself to unreasonable, unnecessary and excessive risk.*

Comment:

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution. The nature of the relationship between the pig producer and farms in the landbank is a matter for the signatories of any agreement in place. (The Agency simply requires that any such agreements do not conflict with any conditions of the Proposed Determination).

Applicant Objection:

*This is an existing, significant rural enterprise (a major one of its kind) in a rural area. We believe that there are excellent facilities and systems of working in place, and we believe it is obviously not engaging in practices that are detrimental to or out of place in the Irish rural environment. Accordingly, we do believe sincerely that it would be wrong for the EPA to issue to this enterprise a licence containing many conditions which could either be impossible to comply with in practice, or which could be complied with only if existing and proven working and business relationships with neighbouring farmers are changed in a way that would not benefit either the neighbouring farmers or any aspect of the local environment. We fail to understand how some of the proposed conditions could be justifiably suggested without study of existing practices in the Applicant's enterprise or without significant technical discussion of whether the proposed requirements could be satisfied.*

Comment:

The Agency has assessed the current application, visited the site of the activity, undertaken written correspondence and telephone contact with the Applicant, and considered submissions submitted in relation to the application. Based on these, and considering all other information available to the Agency, the Proposed Determination has been prepared. The conditions included in the Proposed Determination are designed to ensure protection of the environment.

Applicant Objection:

*The ridiculously short and non-specific reasons given in the Proposed Determination for the various excessive and impractical proposed conditions are completely inadequate, in no way seek to properly justify most of the proposed conditions. In some instances, they are inconsistent, or are contradictory. We contend that the Agency is obliged to be reasonably specific in the reasons it may cite in support of proposed conditions or conditions.*

Comment:

The Proposed Determination includes a 'Reason for the Decision':

“The Agency is satisfied....that subject to compliance with the conditions of this licence any emissions from this activity will comply with and not contravene any of the requirements of Section 83(3) of the Environmental Protection Agency Act, 1992”.

The Agency seeks to give reasons (11) for particular conditions in the Determination. Where reasons given are unclear the Applicant has opportunity to object in this objection process. In addition any member of the public can seek clarification from the Agency at any stage up to the receipt of a formal objection by the Agency.

**Applicant Objection:**

*The Applicant has always worked hard and invested heavily and unsparingly to ensure that facilities and work practices in and associated with his pig production enterprise are fully up to date in terms of design and construction and management of the facility and the inter-relationships with the surrounding local community, so that it would be an efficient facility in terms of containing animal manure and protecting environmental parameters, as well as efficient in the production of pigs.*

**Comment:**

The Agency notes the Applicants commitment to good environmental management.

**Applicant Objection:**

*The Applicant has in vain analysed all the proposed conditions that would be difficult or impossible for him to comply with, in the hope of finding a way in which he could adapt his management and control system in order to facilitate the conditions. The combination of existing sound business relationships and working relationships and existing good management and control systems in this enterprise or facility have evolved and improved continually over the years and have delivered sound environmental performance for many years. Against this background the Applicant expected that any alterations to our existing systems that might be required in order to accommodate the monitoring and recording requirements of the Agency would be well within our capability, and having regard to the monitoring of the facility and of activities within the facility, we acknowledge that, in general, they are. Further, the Applicant expected that any alterations to management and control systems as they relate to his existing business and working relationships with other farmers would be modest. However, we find that in order to even try to comply with some proposed conditions that would impact heavily on those relationships, we would have to completely change arrangements with local farmers in a most unreasonable and unnecessary manner. Such changes would be unfair to our farmer customers. In our opinion, such impacts would be excessive and unreasonable and they would have no significant or predictably beneficial effect on environmental protection.*

**Comment:**

The Applicant has acknowledged that in general monitoring of the facility and the activity imposed by the Agency is well within his capability. The Applicant’s concern relates to landspreading of slurry. In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency’s role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

**Applicant Objection:**

*Having seriously examined and analysed the Proposed Determination and tried to fully understand reasons for the various conditions and tried also to visualise the detail of how the various proposed conditions could or might be complied with, we have to say that we have failed to find valid reason or reasonable justification for many clauses in some conditions. Apart from that fact, and having taken legal advice, we have to conclude that for various reasons, including, we believe, legal reasons, there are several clauses with which it would be quite impossible for the Applicant to comply. The presence of such clauses in conditions in Proposed Determination No 408 makes it imperative that the Applicant object in the strongest possible terms to the licence as proposed, and in particular to certain proposed conditions that are to be treated separately and individually later in this document.*

**Comment:**

The Applicant has a statutory right to object to any conditions included in the Proposed Determination. The Applicants concerns with regard to individual conditions are discussed below.

**Applicant Objection:**

*Lest there be any misunderstanding, the Applicant wants it to be known that he does not at all object to the principle of IPC licensing in the pig sector. Further, he has no principled objection to the conditions or the clauses in conditions within Proposed Determination 408 which are justifiable and meaningful in relation to his enterprise, but he contends, that as 'package' the Proposed Determination is wrong.*

**Comment:**

The Agency notes the Applicants embrace of IPC licensing and recognises that the Applicant has a statutory right to object to any conditions included in the Proposed Determination.

**Applicant Objection:**

*The EPA knows from the application and from field inspections that the great majority of lands in the Applicant's land bank are not in his ownership or under his control. Having regard to land owned and farmed by himself, he could comply with a proposed condition requiring him to dig a hole in the ground if, having considered that matter, he would be satisfied that the Agency is empowered to require him to do so. Many of the conditions with which the Applicant would have serious difficulty and with which he would not be able to comply, are a problem for him when considered in particular with regard to those lands not owned and farmed by himself. We believe it would be reasonable or proper or appropriate to expect the EPA to understand this fact and its practical significance in the farming sector before drafting several of the proposed conditions, and to give this matter further consideration before finalising the IPC licence conditions for this Applicant.*

**Comment:**

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency's role is to ensure that slurry

produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

It appears that in the objection the Applicant takes particular exception to having to provide information on overburden depths at these farms. It should be noted that information on soil depths has been submitted as part of the response to an Article 32 request.

**Applicant Objection:**

*The major problems that would be encountered by the Applicant in trying to comply with conditions in the Proposed Determination would be concentrated in proposed conditions 5 and 7. A significant number of these clauses would require the entry on to private property for the purpose of assessing soil or tank parameters that are of no immediate concern or obvious immediate benefit to the owner, and with the utilisation of animal manure as a source of fertiliser at locations off the site, by farmers who choose to spread it or control the spreading of it themselves.*

**Comment:**

The Agency does not seek to force farmers to accept slurry from this unit. Farmers have the opportunity to withdraw from the landbank available to the unit at any time. The Agency seeks to ensure satisfactory disposal of pig slurry from this activity. In order to achieve satisfactory disposal the Agency by way of the Proposed Determination seeks to control the activities of the waste producer. The onus is on the Applicant to ensure that farmers who have agreed to take slurry are aware of the controls that will be placed on the Applicant. In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

Copies of the agreements between the pig producer and recipient landowners which have been included as part of the IPC application already suggest that arrangements are in place to facilitate implementation of the licence requirements e.g. soil testing.

**Applicant Objection:**

*We believe that it is not right or fair or reasonable or necessary or legal for the EPA to treat the responsible use of pig slurry as fertiliser in agriculture as if it was a "waste" with no value and which might, in the absence of the attempted controls be consigned to some class of dump site. Manure from this facility was never treated as waste and was never dumped anywhere, and will not be in the future. Similarly, no part of the proposed spreadlands are a dumping ground or a dumpsite or are anything remotely like a recovery facility or a recycling facility in the ordinary meaning of those terms.*

*Having taken legal advice, the Applicant takes exception to, and objects strongly to the use of the term 'waste' (or 'wastes') in all contexts within proposed conditions and Schedules or Schedule titles in which it could be construed as referring to or meaning slurry or manure, and requests that the Proposed Determination be amended accordingly. The term is acceptable in proposed conditions 5.1 to 5.4.6 but is not*



*acceptable in proposed conditions 5.5.9 and 5.5.12, where product description should be as in the other relevant proposed conditions between 5.5.1 and 5.5.18. Neither is the term waste acceptable in Schedule 3(v) so long as animal slurry / manure is listed there nor is it acceptable in the title of Schedules 3(iii) to 3(vi).*

Comment:

The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*“the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.”*

Therefore the slurry remains classified as a waste even though the piggery may charge “customers” for the use of it.

The intent of the conditions included in the Proposed Determination is to ensure that slurry is only applied to lands where its use is appropriate and where there is no risk of significant environmental pollution.

Applicant Objection:

*The Applicant has no principled objection to the EPA being satisfied that the manure is being accumulated and stored in a proper and responsible manner on the facility that is the subject of the licence application and is the facility to which the proposed conditions refers, as defined in Proposed Conditions 1.4 and 1.5.*

Comment:

The endorsement of the Agency’s approach with regard to proper management and storage at the facility is welcomed.

Applicant Objection:

*The Applicant is extremely concerned and genuinely worried that many of the Proposed Conditions seek to require him to exercise powers and authority over other private farmers or farms or farmlands or farming, or to assume ‘responsibilities’ or ‘authority’ that he does not have, will not have and does not want. He also feels certain that the farmers who ask him for pig slurry for their land would not accept or tolerate or accept any attempt by him to exercise control over any of their farming activities. Having taken legal advice we believe that any attempt to force the Applicant to impose unreasonable requirements that are not provided for in law would be ultra vires the powers of the Agency.*

Comment:

A range of treatment options are available for slurry: composting, digestion etc. Such treatment has the potential to create alternative uses for the end product. Landspreading is the treatment option chosen by the Applicant. The Applicant has

volunteered in the application (with the permission of the landowners) lands where slurry may be disposed

**Applicant Objection:**

*The Applicant does not believe that he could either require or force any of the farmers who seek and receive slurry from his farm to report to him details of exactly when they spread it and the prevailing soil and weather conditions at the time they spread it, or to report to him any evidence that they consulted a weather forecasting service 48 hours before the land spreading and were satisfied that “significant” rain was not then forecast. Yet, proposed conditions seek to impose such a burden on the Applicant. This is considered to be totally unnecessary, or excessive or unjustifiable on either farming or environmental grounds having regard to the fact that all farmers have freedom and responsibility to farm their own lands, within the law, and in their own interest, and ideally, having regard to an appropriate version of a Code of Good Practice.*

**Comment:**

The reporting requirements included in the Proposed Determination are requirements for the Applicant, not the recipient farmers, to fulfil. The Applicant has proposed to manage the wastes produced in accordance with a Nutrient Management Plan. The Agency simply seeks that the Applicant demonstrate that wastes are applied in accordance with such a plan and in appropriate weather conditions.

**Applicant Objection:**

*The Applicant believes that it must be relevant that he has never had to solicit farmers to take slurry from him for any reason including the purpose of relieving pressure on storage or on this pig production programme or plans. He produces a by-product that has a good and predictable value, and on that basis alone, it is sought by farmers in the area for use on their own land. What he supplies is not a “waste” and none of it is consigned to a dump site of any kind. The destination at which farmers use the slurry is never a dumpsite of any kind and is not anything that would normally be regarded as a recovery facility or a recycling facility.*

**Comment:**

While slurry is described in the Proposed Determination as a waste, it is fully acknowledged that used properly it is beneficial as a fertiliser.

**Applicant Objection:**

*It suits some of recipient farmers sometimes to have the Applicant deliver pig slurry and spread it directly on their land. The Applicant has no difficulty in complying with the reporting of spreading date in respect of those deliveries as spreading date and despatch date from the facility would be one and the same. The Applicant does not have difficulty in taking responsibility to the farmer for the quality of landspreading when and where he actually does the spreading direct from his farm to the recipients farmland, but he would be obliged to observe such buffer zones as the land owner / farmer may require. Accordingly, the Applicant may not be free to comply with, for example, the 10 m buffer zone to some road which a proposed condition would seek to impose even though it is only a clause in the EPA Code of Practice.*

Comment:

As the Applicant has not indicated in the application that he intends to use off site storage, the Agency assumes that the despatch date for slurry will be the same as the application date. Schedules 3(v) and 3 (vi) of the Proposed Determination describe controls relating to landspreading to ensure protection of the surface waters, ground waters and amenities. The schedules are based on details included in the BATNEEC note for this sector which was developed after wide consultation throughout the industry.

Applicant Objection:

*In the majority of Applicant-farmer relationships relevant to this application, the Applicant delivers slurry by road tanker to a reception tank on the recipient's farm, or provides loading facilities from which the farmer or his farm contractor can take slurry. In those cases the recipient arranges the landspreading at a time convenient to him. Further, any such pig slurry spread can be in conjunction with other fertiliser, and to impose conditions on actions which are no part of the Applicant's operation would be unfair and unreasonable and in that sense the conditions regarding spreading are unreasonable and unfair. Any forced deviation from this system or from these working relationships that have worked very satisfactorily to date, would be an unreasonable and unjustifiable interference with the business of the Applicant and the business of many other farmers. Having taken legal advice, the Applicant believes that any proposed conditions that would seek to force, through the Applicant, interference or control over farmers who are not subject to IPC licensing would be ultra vires the powers of the Agency.*

Comment:

The Applicant has not indicated in the IPC application that he intends to use off site storage. Should the Applicant require to use such off-site storage facilities prior approval by the Agency is required in line with Conditions 5.5.3 and 5.5.10 of the Proposed Determination.

The Applicant has proposed to spread the slurry in accordance with a Nutrient Management Plan which takes account of all nutrients spread on the recipient farmland. The Proposed Determination seeks to control application of slurry on the basis of a Nutrient Management Plan to ensure environmental protection.

Applicant Objection:

*The two contractors identified in the application are contractors that transport slurry from the piggery to certain of the farms, are the only contractors that work for the Applicant. One of them transports in a lorry / tanker from the piggery to a reception tank nominated by the recipient farmer. That is all that contractor does with that slurry. The recipient farmer, at a time that suits his farming practice and work schedule, either spreads it himself or arranges for his own farm contractor to spread it for him. (The farmer's agricultural contractor may vary from one occasion to another. The Applicant has no authority or control over the farmer or his choice of agricultural contractor for any farm function, including the spreading of either the 'home produced' slurry or the slurry 'imported' or otherwise bought into the farm. In the agreements between farmers and the Applicant, farmers agree that any slurry sourced from the Applicant's pig farm will be applied in accordance with a Nutrient*

*Management Plan and in accordance with a Code of Practice for slurry use and spreading operations. Some farmers who take slurry from the facility are in the Rural Environment Protection Scheme (REPS). Those farmers work to a Code of Practice in which the buffer zones are significantly different to the buffer zones proposed in the Code of Practice suggested in this Proposed Determination. Such farmers will choose the REPS code in preference to the EPA code and the Applicant cannot have power or control over that choice. Having taken legal advice, we contend that any attempt to enforce any of the proposed conditions on such farms or on any other third party through the Applicant, or hold the Applicant responsible for any failure by a farmer / third party to observe a proposed condition or recommended Code of Practice on the third party's land or to penalise the Applicant on that account would be ultra vires the powers of the Agency.*

**Comment:**

In the application the Applicant has not indicated that any of the farmers included in the landbank are involved in the REPS Scheme. Normal procedure when licensing is to ask for copies of REPS plans for any farmers who are identified as being in the scheme. This procedure is followed to ensure that slurry is not allocated to the farm at a greater rate than is authorised under the REPS scheme.

**Recommendation:**

Insert a condition after 5.5.13 as follows:

The Applicant shall provide a copy of REPS plans for all farms identified in the landbank who are included in the REPS scheme, to the Agency within six months of the date of grant of the licence.

It is recognised that a range of contractors/agents may be used to spread slurry from the unit. Obtaining prior approval for all contractors/agents may be unduly cumbersome. The training of such contractors/agents required under Condition 2.2.2 of the Proposed Determination should be adequate to provide environmental protection.

The obligation rests with the Applicant to ensure that all contractors and agents spread slurry in accordance with the Code of Practice included within the Proposed Determination. Where the Agency considers that farmers do not adhere to the licence conditions the licensee may be excluded from supplying slurry to farms in the landbank as part of the annual approval of the Nutrient Management Plan.

**Recommendation:**

Delete Condition 5.5.8

**Applicant Objection:**

*The pig slurry distributed from this facility is not 'waste'. It appears to us that many of the most onerous and intrusive problems that would be created for the Applicant by the proposed conditions that we regard as 'excessive' arise because the Agency either appears to either presume or imply that the pig slurry / manure is 'waste, which it is not.*

Comment:

The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*“the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.”*

Therefore the slurry remains classified as a waste even though the piggery may charge “customers” for the use of it.

The intent of the conditions included in the Proposed Determination is to ensure that slurry from the licensed activity is only applied to lands where its use is appropriate and where there is no risk of significant environmental pollution.

Applicant Objection:

*In the agreement between the Applicant and farmers having lands in the landbank, farmers agree to follow a Code of Good Practice with regard to the use of pig slurry from the Applicant’s facility. However the Applicant does not accept any responsibility or liability whatsoever for any failure of a recipient farmer or his agricultural contractor to observe the Code of Practice. The Applicant will supply a copy of the Code to all recipient farmers and encourage that it be observed. It has to be recognised (by both Applicant and Agency) that farmers in general are in receipt of other Codes from other State Agencies, and they can be confused. The Applicant does accept the principle that all land spreading activities be conducted in such manner as to avoid contamination of surface and ground waters and so as to moderate as much as possible the risk of odour nuisance from the activity, but in the latter case having regard to the fact that landspreading of animal manures is a part of normal farming activity and an integral part of rural practice and experience.*

Comment:

The Applicant accepts the principle that all landspreading activities be conducted in such a manner as to avoid contamination of surface and ground waters and so as to moderate the risk of odour nuisance from the activity. The intent of the Proposed Determination is to ensure that slurry generated from this facility does not lead to environmental pollution. Condition 2.2.2 of the Proposed Determination requires that adequate training be provided to all agents/contractors spreading such wastes from the facility.

Applicant Objection:

*In relation to Nutrient Management Plans, the Applicant does not accept that it is reasonable or proper or justifiable on technical or scientific grounds, to have to refrain from applying any phosphorus fertiliser from any source (including slurry) to soils in all cases where the Morgan’s P test result (sampled to a depth of 10 cm) indicates P in excess of 15 mg/l. Further, it is considered inappropriate and*

*unreasonable and unjustifiable for the EPA to take recommendations from Teagasc to Irish farmers, which recommendations were traditionally, and are, stated in terms of minimum requirement to support a normal crop in most circumstances, and re-interpret or mis-interpret or otherwise restate or require to be restated that the figures be maximum permitted inputs in all circumstances. Having said this, we now state that we recognise the current politics of this issue and so this matter will not be the subject of formal objection. We contend that guidance regarding the input of plant nutrients for crops properly belongs in a Code of Practice if it is not specified in law. As with other proposed conditions, any condition that would seek to enforce through the Applicant this P guideline or requirement would be ultra vires the powers of the Agency.*

Comment:

Recent research has demonstrated a relationship between rising soil P levels and P loss to water. The Proposed Determination seeks to control application of slurry to land on the basis of a Nutrient Management Plan to ensure that excessive accumulation of P does not occur.

Applicant Objection:

*In addition to the application, the responses to requests for further information and the informal discussions with the Inspector during the 2 or 3 visits to the site and the area that includes the spreadgrounds, there was casual description but no formal technical discussion of any of the matters that are the subject of the proposed conditions / clauses that are here described as excessive, or unreasonable or unfair or difficult or impossible for the Applicant to comply with.*

Comment:

Repeated opportunities were available to the Applicant for discussion/clarification at site visits and by telephone contact. However it should be noted that the IPC licensing process is a fully transparent process where all members of the public can have opportunity to provide input.

Applicant Objection:

*Many of the proposed conditions / clauses that are the subject of objection are closely related to each other. Most of them refer to some aspect of slurry/manure management and landspreading and to the recording thereof. Accordingly, we request that this text and the text of all objections (Appendix I and Appendix II) be considered in detail, and in particular that the obvious inter-relationships be taken into account, in amending or otherwise modifying any of conditions of the licence.*

Comment:

This has been done.

Applicant Objection:

*We respectfully request that in reviewing the conditions to be attached to this licence, full consideration be given to all the proposed conditions against the background of all the issues referred to here, and that any amendments not necessarily be confined to the proposed conditions which are the subject of specific objection.*

Comment:

This has been done.

Applicant Objection:

*Having regard to the large number of conditions/clauses that are quite unsatisfactory or impractical or excessive in relation to their objective and/or, in our opinion, their potential benefit to environmental protection, and as the powers of the Agency in relation to the regulation of normal farming activities is unclear, we request that the Agency exercise its power to grant an Oral Hearing at which the contentious issues and matters of gravest concern to both parties would be presented and discussed in proper technical manner, with full professional inputs from relevant disciplines, with a view to identifying solutions that would be reasonable and acceptable to both parties and would be practical and workable by the Applicant, so that the Agency might be better able, in the interest of achieving its Statutory objectives, to draft conditions more appropriate to a primary agriculture enterprise, and also to establish the legal parameters within which the licence can operate.*

Comment:

The Applicant was notified on 27 August 1999 that his request for an Oral Hearing was denied.

## **Applicant Objections on Individual Conditions**

### **Objection to Condition 1.5**

The Applicant objects to the restriction on the maximum capacity at the facility as listed in Schedule 1(i). He suggests inserting an addendum to the list with a note allowing a variation of +/- 10% and removal of the word “maximum” from Condition 1.5. Alternatively he suggests that the Agency reproduce the footnote as provided in the table of figures submitted by the Applicant with a qualification that might seek to limit variation to 10%.

Comment:

Condition 1.5 and Schedule 1(i) are standard in licences for the control of the amount of waste arising from the facility for this sector. The piggery has provided details relating to a 1995 integrated sow unit. Some flexibility is permitted provided the overall number of units remains unchanged (see Note 2 of Schedule 1(i)).

The Agency specifies the maximum number of animals to be housed on site because of the relationship between animal numbers and the volume of slurry generated. The assessment of the potential for environmental impact has been made on the basis of the numbers provided.

It should also be noted that the Inspector emphasised by telephone to the Applicant’s representative, prior to sending the written request to the Applicant to complete the table for the number of animals housed on site, that the maximum figures should be supplied as these would be used to restrict the numbers at the piggery. No other figures had been supplied by the Applicant in the course of the application.

It should also be noted that there is no opportunity to increase animal number by +/- 10% as this would be a breach of the planning permission issued which limits the operation to 2,000 sows.

Section 92 of the Agency Act provides opportunity for a review of any licence issued by the Agency. Proposals to increase animal number at site could be considered at such a review.

### **Objection to Condition 2.2 - Awareness and training**

The Applicant objects to this condition the grounds that it is unclear. The Applicant agrees with training of personnel at the piggery but feels that he cannot be obliged to provide training to third party farmers or their agricultural contractors.

Comment:

The object of this condition is to ensure that all personnel working on the site and dealing with waste generated by the piggery, whose work may have an impact on the environment, are aware of the requirements of the IPC licence. This is an essential requirement of IPC licensees for this sector.

### **Objection to Condition 2.3 - Responsibilities and availability of person in charge**

The Applicant objects to the requirement that “the person in charge be available on-site to meet with authorised persons of the Agency at all reasonable times” and considers it



excessive and unreasonable. It is suggested that the condition be amended to include the words “on reasonable notice being given”.

Comment:

The requirement of this condition is that “a” person in charge is available to meet with authorised persons of the Agency at all reasonable times. This is usually a person nominated by the licensee and could be a supervisor or any other person who is aware of the IPC licence requirements and is in a position of authority with regard to the day to day running of the unit. The person in charge at one particular time may vary but the requirement remains that if an authorised person of the Agency arrives on site in response to an incident, a complaint or a routine site visit, a person in charge should be available to meet with them and assist with any queries/investigations which may be necessary.

**Objection to Condition 3.1.1 - Any unauthorised emission**

The Applicant objects to this condition on the grounds that the wording is minimal and subject of ambiguity and misrepresentation.

Comment:

It would seem clear that any emission arising from the unit other than those permitted in the licence should be notified to the Agency.

**Recommendation:**

Modify 3.1 as follows

3.1.1 Any unauthorised emission from the facility.

**Objection to Condition 4 - Emissions to atmosphere**

The Applicant objects to this condition (it appears to be particularly to Condition 4.1) on the grounds that the wording is minimal, vague, nebulous, ambiguous and open to serious misrepresentation. The Applicant also states that due to emissions of ammonia and carbon dioxide from live animals this condition could not be complied with.

Comment:

There appears to be a level of duplication between Conditions 4.1 and 4.2. Adequate environmental protection should be provided by Condition 4.2 alone.

**Recommendation:**

Delete Condition 4.1

**Objection to Condition 5.5.1 and Schedule 3(iii) - Weekly monitoring of slurry storage capacity and monthly reporting of that record.**

The Applicant objects to the monitoring and reporting requirements of this condition and schedule on the grounds that it is unnecessary and would be an excessive burden of paper work and bureaucracy for this facility. The Applicant requests a change to once every six months or at most once every four months due the on-site storage capacity of approximately 12 months. He also points out that a daily visual check is

carried out and recorded on site. The Applicant also wished that his commitment to environmental awareness and his recognition of his environmental responsibilities and knowledge of the capacity of structures be reflected in the wording of this condition.

Comment:

It should be noted that while the Applicant is currently undertaking a visual assessment of the slurry storage capacity on a daily basis, this Condition only requires weekly monitoring and recording, and reporting of such to the Agency, on a monthly basis.

This condition has been included in licences for this sector to control and monitor waste production and to anticipate and avoid any storage or disposal problems which may arise. Such monitoring is intended to ensure that the available storage capacity is effectively managed. Although there is a large storage capacity on site, this level of monitoring is considered necessary. However Condition 8.2 allows for the frequency, methods and scope of monitoring to be amended with the written agreement of the Agency following evaluation of results.

**Objection to Condition 5.5.4 Prohibition of landspreading of slurry from this facility on specified blocks of farmland.**

The Applicant objects to the exclusion of the lands listed in Schedule 3(iv) on the grounds that these are lands have been farmed for generations and are being farmed in a manner which is not linked to any specific pollution incident or to any specific adverse effect on the environment. The Applicant considers that the reason for exclusion of these lands from the list of lands on which slurry may be spread in accordance with a Nutrient Management Plan and an acceptable and practical Code of Good practice is not justified. The Applicant believes that exclusion of the lands would indirectly interfere with the freedom otherwise enjoyed by landowners/farmers concerned to acquire from sources of their own choice the plant nutrients required to support their farming enterprises. The Applicant states that these farms are subject to regulations requiring them to conduct operations in such a way as to prevent incidents of significant nuisance, air pollution or water pollution and the Applicant believes that the relevant facilities and operations on the site are adequate for this. Finally the Applicant states that (since the issue of the Proposed Determination) he has surveyed these lands to determine the depth of overburden. He maintains that depth of overburden is not an acceptable or reasonable justification for the exclusion of these lands.

(It should be noted that paragraph (i) of Mr. John Mulqueen's accompanying report was withdrawn).

Comment:

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the IPC application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

There was not sufficient evidence presented in the IPC application to suggest that there was sufficient overburden to provide protection of ground waters. The Guidance note *Groundwater Protection Schemes*” (DoELG/EPA/GSI 1999) indicates the Agency approach with regard to protection of groundwaters from landspreading activities. This guidance note was prepared after widespread consultation.

The lands excluded were those which from the evidence presented by the Applicant, appeared to have insufficient overburden depth (less than 1 m) for the protection of the underlying aquifers based on the document “*Groundwater Protection Schemes*”. Note 1 of Schedule 3(iv) allows amendment by the Agency as further environmental information becomes available.

An Article 32 request was issued to the applicant to provide details of the additional field testing undertaken.

**Article 32 Information:**

Additional information on the five excluded land parcels was submitted to the Agency. These results indicate that there is sufficient overburden depth in all these areas apart from W05.3 and one field of L50 namely L50.3. All the other land parcels:- L16, L67, L50.1, L50.2 and W12 can now be reinstated as suitable for landspreading with regard to groundwater vulnerability.

**Recommendation:**

Modify Schedule 3(iv) as follows -

Replace ‘Land areas identified in the IPC Application as : W05.3, W12, L16, L50, L67’ with ‘Land areas identified in the IPC Application as : W05.3, L50.3’

**Objection to Condition 5.5.5 - Assessment of groundwater vulnerability**

The Applicant objects to the requirement to carry out a comprehensive assessment of groundwater vulnerability for all the spreadlands. He states that to carry out such a study over an area of about 2,300 ha spread over 107 farms within a geographic area covering approximately 100 km<sup>2</sup> is unreasonable. He also states that any requirement for a comprehensive groundwater vulnerability assessment in the area has nothing to do with the existence of the piggery and the use of slurry from the piggery on these lands in preference to other fertilisers. As there are many other farms in the area not directly involved with the licensable activity and not receiving waste from the licensable activity, the Applicant believes that it is not reasonable or just to attribute to the Applicant and his pig farm any requirement there might be for an assessment of groundwater vulnerability for all the proposed spreadlands. He refers to a comment attributed to Mr. John Mulqueen that the assessment is “an excessively costly and burdensome obligation” and suggests that the spreadlands could be characterised into representative blocks according to their topography and geomorphology and taking into account their soils and geohydrological conditions”.

**Comment:**

The study was required as the Applicant had not supplied a vulnerability assessment for the proposed spreadlands. However, with reference to the bedrock map for the area indicating the location of locally and regionally important aquifers with regard to

the proposed landspread areas together with the depth to bedrock data which has now been supplied following an Article 32 request, the necessity for this comprehensive study does not now exist.

**Recommendation:**

Delete Condition 5.5.5

**Objection to Condition 5.5.6 - Requirement to satisfy the Agency that there is at least 2 m overburden on certain specified lands.**

The Applicant states as follows:

- 1. All the lands specified in the text of this Condition are lands which have been farmland for generations and are being farmed in a manner which is not linked to any specific pollution incident or to any specific adverse effect on the ambient environment.*
- 2. The reason for the restriction on the use of those lands provided by the Agency, that is "To provide for the disposal of waste and the protection of the environment" is neither appropriate nor meaningful and is not sufficient to justify the restriction that slurry from the Applicant's piggery may not be spread on them in accordance with a nutrient management plan and an acceptable and practical Code of Good Practice for the Landspreading of Animal Manures until such time as the Agency is satisfied that at least 2m overburden exists. Such restriction does not apply to any other fertiliser distribution practice on the same and similar lands.*
- 3. The proposed restriction on the delivery for use on the listed lands of slurry and plant nutrients from the Applicant's piggery would be an unnecessary and unreasonable interference with established farm practices which have not been shown to have an environmental problem associated with them on these lands. The proposed restriction, in the absence of the Agency being satisfied regarding the 2 m overburden, would indirectly interfere with the freedom otherwise enjoyed by the landowners/farmers concerned to acquire from sources of their own choice (including the Applicant's piggery) the plant nutrients required to support their farming enterprises, even though they are not themselves subject to EPA control or subject to IPC licensing, and even though they do not have to satisfy the Authority regarding the depth of overburden on their lands before landspreading on those same fields either slurry from their own sources or plant nutrients imported in dry chemical form from any other source of their choice. The proposed restriction is clearly inequitable.*
- 4. The farming activities involving the landspreading of fertiliser products on those lands is already subject to Regulations that require the farmers to conduct operations in a manner that does not result in incidents of significant nuisance, air pollution or water pollution. We are confident that the relevant facilities and operations on all of the farms concerned with these lands are adequate and appropriate for those purposes. Alternative wording: No Authority has ever sought to regulate on any of those lands any of the farming activities which involve landspreading of fertiliser products, either those produced on the farm as a by-product of the farmers' own animal enterprise or imported on to the farm as chemical fertilisers, other than through the general requirement that the conduct*

*those activities in a manner that does not result in any significant incident of nuisance, air pollution or water pollution.*

5. *The Applicant has incurred the expense and trouble of probing the listed blocks of land to estimate the depth of overburden on the lands concerned. The overburden of soil was found to be in excess of 2m at 16 of the 28 sites checked on 7 farms and was found to be in excess of 1m at the remaining 12 sites checked. Depth of overburden on lands traditionally farmed cannot be an acceptable or reasonable justification for even the temporary exclusion of those lands from the lands from which the Applicant may supply pig slurry from his site. The Applicant has assessed the depth of overburden on those lands by arrangement with the owners only because he feels pressurised to do so by the Agency, because he wants to preserve the existing good business relationship which exists between himself and the farmers concerned by being free to satisfy their demand for slurry from his piggery, but not because he believes it was something that it was either useful or necessary in the circumstances.*
6. *Farmers do not except that there is in force any Regulation requiring that land actively farmed for generations, may continue to be actively farmed only if some particular minimum depth (and/or some other descriptive parameter) of overburden can be shown to exist.*
7. *The paragraph headed “Condition No. 5.5.4, 5.5.6 and 5.5.7” in Appendix 11 prepared by Mr. John Mulqueen BAgSc MS, is to be read as an integral part of the grounds for this objection.*

Comment:

The following lands which are located over Regionally Important Aquifers: L32, L33.4, L41.3, L57.1, L60 and L66 (amounting to 166 ha usable land) were listed in Condition 5.5.6. In compliance with the guidance document the “*Groundwater Protection Schemes*” these areas require at least two metres of overburden in order to protect groundwater. It was therefore required that landspreading from the activity should not take place on these lands until the Agency is satisfied that there is at least 2 m of overburden on these sites.

Article 32 Information:

Following a request for information under Article 32, data relating to overburden depths was submitted by the Applicant. Following examination of the data, lands labelled L32, L33.4, L41.3, L57.1, 64, 66.1, 66.5, 66.6 are suitable for inclusion having sufficient overburden for groundwater protection. The following lands 60, 66.2, 66.3 and 66.4 (total area 63.6 ha usable land) should continue to be excluded as there is insufficient overburden in these areas.

**Recommendation:**

Delete Condition 5.5.6

Modify Schedule 3(iv) to include: 60, 66.2, 66.3, 66.4

**Objection to Condition 5.5.7 - requirement that the Agency is satisfied that there is at least 1 m overburden on certain specified lands.**

The Applicant states as follows:

1. All the lands specified in the text of this Condition are lands which have been farmland for generations and are being farmed in a manner which is not linked to any specific pollution incident or to any specific adverse effect on the ambient environment.
2. The reason for the restriction on the use of those lands provided by the Agency, that is “To provide for the disposal of waste and the protection of the environment” is neither appropriate nor meaningful and is not sufficient to justify the restriction that slurry from the Applicant’s piggery may not be spread on them in accordance with a nutrient management plan and an acceptable and practical Code of Good Practice for the Landspreading of Animal Manures until such time as the Agency is satisfied that at least 1m overburden exists. Such restriction does not apply to any other fertiliser distribution practice on the same and similar lands.
3. The proposed restriction on the delivery for use on the listed lands of slurry and plant nutrients from the Applicant’s piggery would be an unnecessary and unreasonable interference with established farm practices which have not been shown to have an environmental problem associated with them on these lands. The proposed restriction, in the absence of the Agency being satisfied regarding the 1 m overburden, would indirectly interfere with the freedom otherwise enjoyed by the landowners/farmers concerned to acquire from sources of their own choice (including the Applicant’s piggery) the plant nutrients required to support their farming enterprises, even though they are not themselves subject to EPA control or subject to IPC licensing, and even though they do not have to satisfy the Authority regarding the depth of overburden on their lands before landspreading on those same fields either slurry from their own sources or plant nutrients imported in dry chemical form from any other source of their choice. The proposed restriction is clearly inequitable.
4. The farming activities involving the landspreading of fertiliser products on those lands is already subject to Regulations that require the farmers to conduct operations in a manner that does not result in incidents of significant nuisance, air pollution or water pollution. We are confident that the relevant facilities and operations on all of the farms concerned with these lands are adequate and appropriate for those purposes. Alternative wording: No Authority has ever sought to regulate on any of those lands any of the farming activities which involve landspreading of fertiliser products, either those produced on the farm as a by-product of the farmers’ own animal enterprise or imported on to the farm as chemical fertilisers, other than through the general requirement that the conduct those activities in a manner that does not result in any significant incident of nuisance, air pollution or water pollution.
5. The Applicant has incurred the expense and trouble of probing the listed blocks of land to estimate the depth of overburden on the lands concerned. The overburden of soil was found to be in excess of 1m at 248 of the 250 sites checked. Depth of overburden on lands traditionally farmed cannot be an acceptable or reasonable justification for even the temporary exclusion of those lands from the lands from which the Applicant may supply pig slurry from his site. The Applicant has assessed the depth of overburden on those lands by arrangement with the owners only because he feels pressurised to do so by the Agency, because he wants to do so by the Agency, because he wants to preserve the existing good business relationship which exists between himself and the farmers concerned by being free to satisfy

- their demand for slurry from his piggery, but not because he believes it was something that it was either useful or necessary in the circumstances.
6. Farmers do not expect that there is in force any Regulation requiring that land actively farmed for generations, may continue to be actively farmed only if some particular minimum depth (and/or some other descriptive parameter) of overburden can be shown to exist.
  7. *The paragraph headed “Condition No. 5.5.4, 5.5.6 and 5.5.7” in Appendix 11 prepared by Mr. John Mulqueen BAgSc MS, is to be read as an integral part of the grounds for this objection.*

**Comment:**

The following lands which are located over Locally Important Aquifers:- L01, L02, L03, L04, L05, L06, L08, L10, L11, L12, L13, L14, L15, L17, L18, L19, L20, L21, L22, L24, L26, L27, L28, L29, L30 L34, L35, L36, L37, L38, L41.1, L41.2, L42, L43, L44, L46, L47, L48, L49, L52, L53, L54, L55, L56, L57.2, L59, L61, L63, L64.2, L64.3, L65, L69, L70, L71, L72, L73, L74, L75, L78, L79, L80, L81.1, L81.2, L81.3, L81.4, L81.5, L81.6, L82.3, L84, L85, L86, L87, L88, L89, L91, W01, W02, W03, W04, W06, W08, W09, W10, W11, W13, W14, W16, W17 (amounting to approximately 1,550 ha usable land) were listed in Condition 5.5.6. In compliance with the guidance document “*Groundwater Protection Schemes*” these areas require at least one metre of overburden in order to protect the groundwater. It was therefore required that landspreading of material from the Applicant’s activity should not take place on these lands until the Agency is satisfied that there is at least one metre of overburden on these sites.

**Article 32 Information:**

Following a request for information under Article 32 data relating to overburden depths was submitted by the Applicant. Following examination of the data, lands labelled L01, L02, L03, L04, L05, L06, L08, L10, L11, L12, L13, L14, L15, L17, L18, L19, L20, L21, L22, L24, L26, L27, L28, L29, L30 L34, L35, L36, L37, L38, L41.1, L41.2, L42, L43, L44, L46, L47, L48, L49, L52, L53, L54, L55, L56, L59, L61, L63, L64.2, L64.3, L65, L69, L70, L71, L72, L73, L74, L75, L78, L79, L80, L81.1, L81.2, L81.3, L81.4, L81.5, L81.6, L82.3, L84, L85, L86, L87, L88, L89, L91, W01.1, W01.2, W01.3, W01.4, W01.5, W02.2, W03, W04, W06, W08, W09, W10, W11, W13, W14, W16, W17 are suitable for inclusion having sufficient overburden for groundwater protection. The following lands L57.2, W01.6 W02.1 (total area 22.6 ha usable land) should continue to be excluded as there appears to be insufficient overburden in these areas.

**Recommendation:**

Delete Condition 5.5.7

Modify Schedule 3(iv) to include: L57.2, W01.6, W02.1

**Objection to Condition 5.5.8 - Identification of all contractors and agents undertaking landspreading.**

The Applicant states that all contractors who may actually spread slurry that originates in the Applicant’s piggery would not be known to the Applicant. He states that he thinks that knowledge of such matters as the name of the contractor, date of spreading, time of spreading, or weather/ground conditions prevailing on the spreadgrounds at the

time of spreading are matters for the landowner/farmer and not for the Applicant and that the Applicant has neither reason nor right to exercise control in this matter over a farmer who chooses pig slurry as his choice of fertiliser. He states that similar to Conditions 5.5.6 and 5.5.7 this condition would require an “invasion of private farmers property to check on something he himself uses and for which the farmer himself carries full responsibility under existing laws”. He also states that any requirement that the Applicant spread all the slurry he or his agent may deliver to any customer/recipient would be unacceptable and unreasonable as it would impose a substantial increase in the equipment and personnel required to do all the work involved. The Applicant says however that an agreement to notify and agree with the Agency, contractors or agents involved in the transport and delivery of slurry from the piggery to the recipient farms could be accommodated. However he reiterates that any requirement that “*the Applicant have the same knowledge of agricultural contractors that spread slurry on customers farms as he would have in respect of the operators who may spread slurry or any other manure or fertiliser on his own farmland would be impractical, unnecessary and impossible to operate or deliver*”.

**Comment:**

It is recognised that a range of contractors/agents may be used to spread slurry from the unit. Obtaining prior approval for all contractors/agents may be unduly cumbersome. The training of such contractors/agents required under Condition 2.2.2 of the Proposed Determination should be adequate to provide environmental protection.

The obligation remains with the Applicant to ensure that all contractors and agents spread slurry from this activity in accordance with the Code of Practice included within the Proposed Determination. Where the Agency considers that farmers do not adhere to the licence conditions the licensee may be excluded from supplying slurry to farms in the landbank as part of the annual approval of the Nutrient Management Plan.

**Recommendation:**

Delete Condition 5.5.8

**Objection to Condition 5.5.9 - to seek to confine landspreading of pig slurry to the lands described in the IPC application and to require that landbank be agreed in advance.**

The Applicant once again raises the issue of the use of the term “waste” to describe the slurry produced at the piggery and states that it should be described as pig slurry/manure. He says that the proposed condition would unnecessarily and unreasonably restrict or otherwise interfere with existing working and business relationships which exist between the Applicant and local farmers. The system which the Applicant has in place is that “*an initial supply of pig slurry is supplied on demand to new farmers/customers on their ordering of the product for the first time*”. If and when they indicate that they would probably return and order repeat deliveries, the land on which they would use slurry would be surveyed and tested to provide the basis on which to calculate a Nutrient Management Plan for that land to indicate the volume of slurry they could continue to acquire from the facility. The Applicant states that to “*curtail this established working relationship between the Applicant and local farmers*



*would be a serious interference with the rights and freedom of both parties and any attempt to force change could be ultra vires the powers of the Agency”.*

The Applicant states that any requirement for an advance notice and agreement would jeopardise the landbank in the longer term as the ability of any business to deliver product to the customer when the customer wants it is the basic objective of any business and a basic expectation of any customer. He contends that the Agency’s monitoring of the landspreading activities should recognise important facts of this nature, on the understanding that the procedure for notifying alterations/additions to the landbank could be notified to the Agency in the manner described or implied in the first line in Schedule 4(iv).

Comment:

The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*“the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.”*

Therefore the slurry remains classified as a waste even though the piggery may charge “customers” for the use of it.

It has been documented that disposal of slurry can lead to a deterioration in water quality if not undertaken in a proper manner. The Proposed Determination seeks to ensure that any slurry requiring disposal from this unit is landspread in a proper manner. The Applicant has offered no alternatives to landspreading for slurry disposal. The intent of the conditions included in the Proposed Determination is to ensure that slurry is only applied to lands where its use is appropriate and where there is no risk of significant environmental pollution. It is essential, for the purposes of environmental protection, that prior to the application of any slurry from the piggery on any lands not outlined in the IPC licence application, that details of any new lands are submitted to the Agency for review and agreement.

#### **Objection to 5.5.10 - Certification of tanks on recipient farms.**

The Applicant states that he has no control and no access to tanks located on the recipient farms which are on private property. The Applicant believes that he cannot assume responsibility for these tanks as the integrity, security and safety of these tanks are the legal responsibility of the owners/farmers.

Comment:

This condition arose as a result of incidences reported whereby deliveries of pig slurry from the piggery were placed in large holes dug into the ground close to the entrance

to landspreading fields rather than in a secure container/receiving tank. This condition ensures that there is no reoccurrence of such an incident.

In addition the Committee considers that the holding facilities should be adequate whether the storage is on a temporary or long-term basis.

**Recommendation:**

Modify 5.5.10 as follows -

The licensee shall ensure that in cases where there is transfer of slurry/manure from a road tanker to farm facilities, that it is contained in a purpose built holding structure, certified by an appropriately qualified engineer as adequate for the protection of groundwater and surface water.

**Objection to Condition 5.5.11 - Requirement for Licensee to ensure that no waste not included in the Nutrient Management Plan be applied to land in the landbank other than by agreement with the Agency.**

The Applicant states that he can only accept this condition in terms of lands owned and farmed by himself and that the implementation of a Nutrient Management Plan is the sole responsibility of the farmer. He states that he cannot attempt to comply with this condition regarding third party lands and that he believes that any attempt by the agency to compel the Applicant to comply with this proposed condition would be *ultra vires* the powers of the Agency.

**Comment:**

In the IPC application the Applicant has indicated that the proposed spreadlands receive all nutrient requirements from the pig slurry from this facility and do not use artificial fertiliser or on-farm manure on these specified lands. The Nutrient Management plan is based on these facts and if additional manure etc. was to be applied, it is possible that over application of nutrients could occur, potentially leading to pollution of waters. The Applicant who produces the waste has the responsibility to ensure that this does not occur by incorporating any additional nutrient sources in the Nutrient Management Plan.

**Objection to Condition 5.5.12 - Requirement that farmer agreements and proposed conditions not be in conflict.**

The Applicant objects to this condition on two grounds. One is the use of the term “wastes” to describe slurry/manure and secondly on the basis that copies of the agreements with farmers with lands in the landbank have long been in the possession of the EPA. He assumes the EPA understands that there is no conflict between these agreements and any of the proposed conditions included in the Proposed Determination. He contends that in the circumstances the proposed condition is superfluous or meaningless and accordingly should be deleted.

**Comment:**

The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*“the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.”*

Therefore the slurry remains classified as a waste even though the piggery may charge “customers” for the use of it.

This condition is included to ensure that all agreements, past or future, ensure that the disposal of the slurry generated is carried out in compliance with the IPC licence.

**Objection to Condition 5.5.13 - Requirement that Nutrient Management Plan be agreed in advance.**

While the Applicant states that he accepts the sentiment and general aspiration of the proposed condition, he states that it could not be complied with in principle. He states that the objection is to submission of the Nutrient Management Plan in advance having specific regard for new lands entering the landbank. He mentions circumstances where the Applicant and the farmer agree that they want to do business despite the reservations or objection by the Agency.

Comment:

The Agency’s role is to safeguard the environment including the control and disposal of waste arising from activities listed under the first schedule of the Agency Act. This includes assessment of Nutrient Management Plans for lands on which it is proposed to spread waste slurry from a pig unit such as the one under consideration. It would be irresponsible to allow spreading of slurry without ascertaining the nutrient requirements of the land. The purpose of this Nutrient Management Plan is to control the application of nutrients so as to avoid pollution. Hence it is essential that a Nutrient Management Plan is agreed in advance with the Agency

**Objection to Condition 5.5.14 - Buffer Zones in Schedule 3(v) and Code of Practice Schedule 3(vi).**

The Applicants states grounds for objection as follows:

1. *Code of Practice and associated buffer zones are generally acceptable in principle but the wording and values for some sub-sections are unreasonable or impractical or unnecessary or excessive.*
2. *Having regard to Schedule 3(vi) Code of Practice*
  - a. *that the title of the Code of Practice refer properly to the product that goes from the Applicant’s facility for landspreading, i.e. that the product is be named as it is named in the text of the majority of the proposed conditions in which reference is made to it.*
  - b. *That appropriate buffer zones as set out in the Agri-environment Specifications for the Rural Environment Protection Scheme (REPS) (Department of Agriculture and Food) be included as recommendations.*
  - c. *That the word ‘shall’ is not appropriate in a Code of Practice which would be voluntary*
  - d. *That it is an absurdity for the words ‘shall’ and ‘guidelines’ and ‘no’ appear*

- together in the same phrase or section in the proposed Code.
- e. *That the bold statement that there by no landspreading on holidays, etc is not enforceable and should be deleted or re-worded in a manner appropriate to a voluntary Code.*
  3. *Farmers would be confused by treating Buffer zones separately from the Code of Practice of which buffer zones should be an integral part.*
  4. *It should be recognised that Buffer zones and Code of Practice are ‘voluntary’ and should be encouraged rather than be apparently ‘forced’ without necessarily having the force of law behind them.*
  5. *Recipient farmers and farmers / landowners in general, including the Applicant, would not feel compelled or required by law to methodically observe all the buffer zone values laid out in the Schedule, particularly the 10 m to roads and all small watercourses, the 20 m to all lakes and all main rivers and the 100 m to all dwellings. We believe that the figures assigned to those headings should be amended or corrected or otherwise adjusted to be consistent with the values in the Agri-environment Specifications for the Rural Environment Protection Scheme (Department of Agriculture and Food). Requiring observance of all the buffer zones listed in all cases would be excessive.*
  6. *Any attempt to imply that the Code of Practice, including buffer zones, is legally enforceable on farms using slurry from the facility would be construed by landowners as an indirect attempt to restrict or otherwise diminish their property rights, and could be counter productive.*
  7. *The use of the word “minimise” in the term ‘minimise odour nuisance from the activity’ would, in the context of this proposed condition be unacceptable or unreasonable or unjustifiable or unrealistic as it could be interpreted by some as indicating ‘no odour’ and on that basis it could unreasonably encourage even the rural area, complaints that could be unreasonable or unjustifiable or vexatious.*
  8. *As the objectives of the second sentence in this proposed condition are fully covered by the references to the two Schedules, its inclusion would be superfluous or excessive or confusing, and as such could be open to misinterpretation and accordingly, it should be removed.*
  9. *The Code of Practice in the Agri-environment Specifications for the Rural Environment Protection Scheme (REPS) (Department of Agriculture and Food) are now widely known and understood among farmers. We contend that the variations by the EPA from standards and values in that version of a Code of Practice for a version that is also to be adopted voluntarily by farmers should be reasonable and fully justifiable on environment protection grounds, but we believe that the variations in the EPA code are not reasonable or justifiable. We also contend that it is relevant to this objection to note that in return for observance of the REPS Code of Practice (among other things) farmers participating in that Scheme are paid a consideration.*
  10. *We contend that any proposed condition referring to a code of practice (including buffer zones) worded in a manner that does not acknowledge that the terms are voluntary but highly recommended in the interest of protecting the environment and protecting good relationships between farmers and neighbours and the Responsible Authorities, is possibly dictatorial or vindictive or unreasonable if not irrelevant or illegal.*
  11. *Having regard to ‘Note 2 in relation to buffer zones’ , particularly in respect of small watercourses and roads, the term “increased if gradient is greater than 6% (1:17)” is unnecessary, totally unreasonable and unjustifiable where adjoining*

*ground is 'trafficable' (as it need be for landspreading to be carried on) and unacceptable as it is non-specific or ambiguous or open to misinterpretation or abuse.*

Comment:

(1) The content of Schedule 3(v) Buffer Zones for Landspreading of Organic Waste and Schedule 3(vi) Code of Practice for Landspreading Organic Waste were included in the BATNEEC note for the Pig Production Sector. This BATNEEC note was adopted by the Agency after wide consultation with Government and non-Government organisations and the farming sector. Following such consultation these schedules were adopted by the Agency as reasonable, practicable and necessary in order to protect the environment.

(2(a)) The use of the word 'waste' in Schedule 3(vi) is appropriate. The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

*"the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization."*

(2 (b)) These Buffer Zones have been previously outlined in the BATNEEC document for the pig production sector which was adopted by the Agency after widespread consultation. The Buffer Zones outlined in the REPS documentation have reduced requirements in terms of the distances from sensitive buildings and dwellings (50 m). The distances specified in the Proposed Determination are considered sufficient to minimise the risk of odour nuisance at odour sensitive locations when appropriate spreading technology is utilised.

(2 (c)) Schedule 3(vi) forms part of a licence and is a legally binding document. Hence a licensee must legally comply with all requirements, conditions and schedules of a licence.

(2 (d)) Schedule 3(vi) forms part of a licence and is a legally binding document. 'Guidelines' are principles put forward to set standards and determine a course of action. In this Schedule (3(iv)) guidelines are stipulated to ensure that no actions are taken that would result in a deterioration in environmental standards.

(2 (e)) Schedule 3(vi) forms part of a licence and is a legally binding document. It is essential that it is ensured that landspreading of organic waste does not occur on Sundays or public holidays when the risk of causing odour nuisance to the public is greatest. The Proposed Determination requires that the Applicant provides appropriate training of all personnel whose work can have a significant effect on the environment.

(3) The Proposed Determination requires that the Applicant provides appropriate training of all personnel whose work can have a significant effect on the environment (Condition 2.2.2). Hence the Applicant must ensure that the relevant sections of the Proposed Determination in relation to treatment and disposal of organic waste are understood by all personnel/contractors/agents involved in same.

(4) Schedules 3(v) and 3(vi) form part of a licence which is a legally binding document. A licensee must legally comply with all requirements, conditions and schedules of a licence.

(5) Schedule 3(v) forms part of a licence which is a legally binding document. A licensee must legally comply with all requirements, conditions and schedules of a licence.

(6) The IPC licence regulates the facility which produces the waste and not the farms accepting this waste for landspreading.

(7) The Condition does not use the words 'no odour' as it is accepted that there will be a certain generation of odour from this type of activity. However it is essential that odours do not result in significant impairment of, or interference with, amenities.

(8) The purpose of Schedules 3(v) and 3(vi) is to ensure that landspreading activities are carried out in such a manner as to avoid contamination of surface waters and groundwater, and so as to minimise odour nuisance. The second sentence of Condition 5.5.14 clarifies this intent.

(9) The content of Schedule 3(v) Buffer Zones for landspreading of organic Waste and Schedule 3(vi) Code of Practice for Landspreading Organic Waste where included in the BATNEEC note for the Pig Production Sector. This BATNEEC note was adopted by the Agency after wide consultation with Government and non-Government organisations and the farming sector. Following such consultation these schedules were adopted by the Agency as reasonable, practicable and necessary in order to protect the environment. It should be noted that Schedules 3(v) and 3(vi) form part of a licence and is a legally binding document. Hence a licensee must legally comply with all requirements, conditions and schedules of a licence.

(10) The IPC licence regulates the facility which produces the waste and not the farms accepting this waste for landspreading. Schedules 3(v) and 3(vi) form part of a licence which is a legally binding document. Hence a licensee must legally comply with all requirements, conditions and schedules of a licence.

(11) If the gradient is greater than 6% there is an increased likelihood of runoff which could lead to a deterioration of surface or ground waters and impairment of the use of amenities. Hence it is essential that in such cases increased buffer zones are applied. The content of Schedule 3(v) Buffer Zones for Landspreading of Organic Waste is included in the BATNEEC note for the Pig Production Sector. This BATNEEC note was adopted by the Agency after wide consultation with Government and non-Government organisations and the farming sector. Following such consultation these

schedules were adopted by the Agency as reasonable, practicable and necessary in order to protect the environment.

**Objection to Condition 5.5.16 - Requirement for feasibility study of different methods for landspreading.**

The Applicant contends that a condition requiring a feasibility study to be carried out regarding the different methods of landspreading is not justifiable or appropriate or properly enforceable in an IPC licence. He states that he has significant involvement in and knowledge of equipment available for landspreading of animal manures and that he knows of the historical and continuing technical and practical problems associated with both bandspreading and soil injection methods. Accordingly he contends that the pumped stream and low trajectory splash plate method is the only practical method available and recommended for widespread use in landspreading. He lists the practical difficulties he considers are associated with bandspreading and soil injection.

Comment:

The Applicant in his objection has given an assessment of the bandspreading and soil injection methods as he sees them and given his reasons for continuing with the use of a low trajectory splash plate system. This consideration satisfies the condition as inserted.

**Recommendation:**

Delete Condition 5.5.16

**Objection to Condition 5.5.17 - Requirement to maintain a slurry/manure register.**

The Applicant states that he accepts the requirement to keep a slurry/manure register and accepts indent (iv) (this refers to nutrient requirements for individual fields/plots) but contends that indents (i) (date of slurry/manure spreading), (ii) (contractor/agent spreading slurry/manure) (iii) (weather and ground conditions at time of spreading and weather forecast for the subsequent 48 hours) and (v) (volumes of slurry/manure applied to individual fields/plots) are unreasonable, impractical and unnecessarily specific in their reference to “spreading” details instead of details with reference to “*despatch date from the facility*”. He continues by giving reasons why he believes that it is not within the ability or capacity of the Applicant to comply with four of the “slurry register” requirements as proposed, including:

- (1) That the Applicant can keep the information specified only in respect of any slurry spread directly from the facility on his behalf or by his own contractor(s). He states that he cannot reasonably be expected to record the dates of slurry spreading activities on farms over which he has and can have no control. He states that the only date that is meaningful to the facility is the date of despatch from the facility which can and will be recorded.
- (2) He also states that the agricultural contractors employed by the recipient farmers are often not known to the Applicant.
- (3) The Applicant states as he has no authority, responsibility or obligation in respect of farmers to whom he supplies slurry, he would be unable to record the weather conditions or ground conditions prevailing at either the time of spreading all slurry or during the subsequent 48 hours and could only record the volumes of slurry

despatched to individual fields or plots only in respect of those recipient farms that have only one plot nominated to receive pig slurry.

He finishes by accepting that it is desirable that the Applicant and the recipient farmers should note weather forecasts and take them into consideration when planning farming operations, including slurry spreading operations. However he states that the EPA should accept that such recognition is part of a Code of Good Practice and that however desirable it may be, it is voluntary but observed in practice. He believes that enforcement of such a code should not be a binding condition of an IPC licence.

Comment:

Landspreading is one of the primary impacts a piggery may have on the environment. In order to protect surface waters, ground water and the use of amenities it is essential that the landspreading of organic wastes is monitored and recorded. Such monitoring and recording will allow the Agency to ensure that landspreading is carried out in an environmentally acceptable manner. The onus is on the Applicant to ensure that he collects the relevant information from the agents/contractors involved in landspreading regarding the disposal of the waste produced at his facility.

This Condition forms part of a licence which is a legally binding document. Hence a licensee must legally comply with all requirements, conditions and schedules of a licence.

**Objection to Condition 7.1.5 - Requirement for monitoring programme for surface waters which bisect the spreadlands.**

The Applicant states that this requirement would be unreasonable, unjustifiable and any information gathered, whether positive or negative, could not be reliably attributed in any way to the facility or to manure from that facility. He then refers to a paragraph headed "Condition 7.1.5" in Appendix II which contains a report by Mr. John Mulqueen. In this report Mr. Mulqueen recommends that this condition be appealed as "*it is impossible to assign cause and source for contamination of surface waters to a specific farm except in the express case of a point source discharge from such farm and where this is clearly available. It is the nature of the Gaussian Plume dispersion that contamination is dispersed and attenuated downstream and small multi-point sources confound*".

Comment:

Monitoring information is required to determine the quality of the surface water in areas used by the Applicant for landspreading in order to avoid spreading on potentially sensitive areas.

**Objection to Condition 7.2.1 - Requirement for groundwater monitoring programme for wells within the landspreading areas.**

The Applicant states that the condition would impose a routine and a workload and a cost which would yield "data" that would not be capable of being reliably related in any way to the Applicant facility or to slurry from the Applicant 's facility. He also says that it is quite unlikely that there are any wells actually located within any landspread area.



He also states that in general wells which may be adjacent to a landsread area are usually in or near a domestic septic tank or farmyard and are known to be frequently contaminated from such point sources (yard effluent, septic tank effluent). Consequently, the Applicant considers that any changes in water quality that may be found in such wells are highly unlikely to be due to landsreading of slurry sources from either the home farm or the facility to be licensed. He further states that sampling of any well on a recipient farmers property would properly be a matter for the owner/farmer himself. He says that the Applicant would have no right to enter the farmer's property to take a sample and the farmer could not be obliged to permit the Applicant to take a sample.

Comment:

Monitoring information is required to determine the quality of the groundwater in areas used by the Applicant for landsreading in order to avoid spreading on potentially sensitive areas.

**Objection to Condition 7.3.1 - Requirement for 6 month storage capacity.**

The Applicant states that he takes exception to the inclusion of this proposed condition on the grounds that the Agency knows from the application and from site inspections that there is already storage on the site of the facility for 12 months slurry production.

Comment:

The Agency appreciates that there is more than the six months slurry storage capacity normally required at the site. It is anticipated that this storage capacity will be in excess of twelve months when the site is fully operational.

**Objection to Condition 7.3.4 - Requirement for programme for assessment of tanks and pipelines in the facility.**

The Applicant believes that the requirement in this proposed condition is excessive as all tanks have been constructed to a standard specification S108 or S123 (Dept. Of Agriculture and Food) or better and are highly unlikely to be defective.

The Applicant states that water quality in the deep well in the farmyard would be a reliable index of groundwater quality under and near the tanks in the facility. He states that in the event of significant detectable leakage from a tank or channel it is reasonable to expect that well water quality would be adversely affected. He states that the well has been monitored for several years and has never been found to have elevated levels of N or P or any faecal coliforms or any other contaminant. He contends that the monitoring programme for the existing well as specified in Schedule 4 (iii) of the Proposed Determination will provide an annual assessment of tank integrity and believes that the proposed condition should be deleted as superfluous and excessive.

Comment:

This condition is in place to ensure that any tank leakage is prevented and that pollution does not occur. It has not been demonstrated that this well would give representative results for the entire site.

### **Applicant Response to Article 32 Request**

It was apparent to the Technical Committee from the Applicant Objection that additional soil/subsoil investigations had been undertaken subsequent to submission of the IPC licence application. Therefore the Agency requested (under Article 32) the Applicant to clarify any site investigations undertaken in relation to the lands listed in Schedule 3(iv), and Conditions 5.5.6 and 5.5.7 of the Proposed Determination.

The text of the response is quoted in full below:

*Following receipt of Proposed Determination 408, (the PD) additional work on the description of land blocks referred to in the PD was undertaken between 9/6/'99 and 18/6/'99. All the blocks of farmland referred to in clauses 5.5.4, 5.5.6 and 5.5.7 of the PD and in your letter of 23/7/'99 were visited again for the purpose of better assessing the depth of soil on the lands. It should be noted and fully understood that ownership and farming of all those lands is independent of the Applicant, and the lands are completely outside of his control, (as is the case in all similar relationships between pig farmers and other farmers).*

*The main factors affecting the potential of any of the land blocks listed in the PD to use plant nutrients in pig manure are the current fertility of the soil (P status), and the requirement of the crop for nutrients. Soil samples have been tested and guidelines have been calculated so that the occupiers of the various land blocks may 'optimise their use of fertiliser (including pig manure as they consider appropriate) on those lands. The system works safely and satisfactorily. The requirement of the crops on the various land blocks for fertiliser nutrients contained in pig manure has been demonstrated. That is the way that pig farmers and other farmers inter-relate safely and responsibly with each other in rural Ireland. Any attempt to impose any requirement for further checking and reporting by one farmer on other farmers would be grossly unreasonable and would involve the Applicant in invidious discrimination between his customers for pig manure.*

*The feasibility of excavating test pits at locations distributed throughout the listed lands for the purpose of checking soil depth was considered but was ruled out for a variety of serious reasons. Those reasons are set out below. Some of those reasons have been discussed in the Applicant's document of 22/6/'99 objecting to various conditions I clauses of conditions of the PD.*

*Many farmers would not permit the excavation of holes in their lands. Many farmers would have to be 'prevailed upon to agree to permit excavation as they fear such testing would damage their property rights and their future freedom to farm their own land. Both landowners and the Applicant are concerned about the safety of such excavations and about the consequential risk of damage to livestock or to farm machinery that can sometimes follow such excavations Irrespective of the result of any excavation or other soil depth measurement or estimation exercise, the landowners concerned would be free to continue to farm those lands in the way they farmed them in the past and/or the way they intended to farm them now and into the future. Accordingly, the potential for any net change in the farming environment or in the environment on or under those lands following the expense and risks involved in the requested excavations probably would be nil.*

*The cost of excavating and logging the number of sites involved would have been*

*unreasonably high and more than the Applicant's enterprise could afford. It should be noted that County Councils pay landowners as much as £75 per hole to enter land to conduct similar excavations (e.g. along the line of proposed roads). In addition to that cost, other costs which would have to be paid include: the costs of excavation, assessment and recording, reinstatement of the land surface, (which would require at least a second visit to each site) and the risk of a farming accident on the land following the excavation. We estimate that those other costs would be at least £50 per hole and could be £75 per hole, making the total potential cost between £125 and £150 per hole. At an average £135 per hole the potential cost of the requested exercise for about 296 test holes could be  $£135 \times 296 = £39,960$ . Commitment of such a sum to the requested field excavation exercise which would have little, if any, effect on any aspect of the environment, seemed most unreasonable to us.*

*Against all of the background described above, and wishing to comply with the request from the Agency in so far as it was possible for the Applicant to so comply, a programme of 'non-destructive' and 'non-invasive' field work was undertaken to check soil depth on the listed lands. The procedure chosen involved driving a steel pin into the ground at locations within each land block and recording whether the pin could be readily driven to the depth sought (either 1 m or 2m) for that particular block. The approximate National Grid Reference for each test site was noted using a hand-held GPS unit. For tests in those land blocks on which 2m overburden was sought the result of the probe test is indicated as > 2m or >1 m or <1 m, as appropriate. For those land blocks on which 1 m overburden was sought the result of the probe test is indicated as >1 m or < 1m, as appropriate.*

*The results of the fieldwork undertaken between 9/6/99 and 18/6/99 are contained in Appendix I, Appendix II and Appendix III attached hereto. Results were summarised in the Applicant's document of 22/6/'99 and that summary is repeated below.*

*Regarding the lands referred to in Condition 5.5.4, the depth of overburden of soil was found to be in excess of 2 m at 11 of the 18 sites checked within the 5 blocks of land. It was found to be in excess of 1 m at 5 of the remaining sites. (Appendix I).*

*Regarding the lands referred to in Condition 5.5.6, the overburden of soil was found to be in excess of 2m at 16 of the 28 sites checked on 7 farms, and was found to be in excess of 1 m at the remaining 12 sites checked. (Appendix II).*

*Regarding the lands referred to in Condition 5.5.7, the depth of overburden was found to be in excess of 1 m at 248 of the 250 sites checked. (Appendix III).*

*The overburden depth estimated by this method may be conservative at some locations at which 2m was sought and for which "<1 m" depth is indicated, as the progress of the pin into the ground may in some cases have been arrested by boulders rather than by bedrock. However, it is virtually certain that the indicated overburden depth exists at all those locations for which depth is indicated as either ">2m" or ">1 m".*

*In the circumstances, the Applicant has done more than he can reasonably be expected or required to do. He has demonstrated that there is at least 2 m overburden on at least 25 of the 46 sites on which 2 m was sought. He has demonstrated that there is at least 1 m overburden on at least 293 of the 296 sites checked with the steel*

*probe. Neither we nor the land owners (nor an authority like Mr John Mulqueen, BAgSc MS, - see Appendix II attached to Applicant's objection of 22 June 99) know any reason why the Agency might reasonably seek to limit or to restrict the farming practices of any farmers unless the existence of 2m of overburden depth can be demonstrated. We regard such requirement as unreasonable and as an attempt to interfere with landowners property rights.*

*Depth of overburden on lands traditionally farmed cannot alone be an acceptable or reasonable justification for the prohibition of a normal farm practice (like the spreading of fertiliser, including animal manure), or for even the temporary exclusion of those lands from the lands for which the Applicant may supply pig slurry from his site. To the best of our knowledge, all the occupiers of all of the lands listed in the PD are free within the law to fertilise crops on all of those lands with fertiliser from any legal source. We believe that animal manure from either the occupier's farmyard or pig manure from the Applicant's pig farm are legal sources of fertiliser for any and all of those lands. The Applicant has assessed the depth of overburden on those lands only because he feels pressurised to do so by the Agency, because he wants to preserve the existing good business relationship which exists between himself and the farmers concerned by being free to satisfy their demand for slurry from his piggery, but not because he believes it was something that it was either useful or necessary in the circumstances for him to do.*

*We note from the Inspector's report of 26/5/99 to the Board of Directors that "The spreadlands were visited during the site inspections and the landbank appeared to be suitable and adequate." Against that background, we are at a loss to know why the Agency wishes to inflict on the Applicant a requirement to engage in significant work incurring significant cost for no known or stated reason. We note that the same document implies that pig manure is a 'major waste'. We reject absolutely and wish to contest any assumption that animal manure is a 'waste'. If this, and the suitability of farmland for continued farming are serious issues for the Agency, then we respectfully suggest that the requested Oral Hearing might be the appropriate forum in which to discuss these and related matters with a view to properly resolving them.*

*Farmers and landowners in general do not accept that there is in force any Regulation requiring that land actively farmed for generations, may continue to be actively farmed only if some particular minimum depth (and/or some other descriptive parameter) of overburden can be shown to exist. To the best of our knowledge, all of the lands referred to in this document are lands which have been farmland for generations, and are being farmed in a manner which is not linked to any specific pollution incident or to any specific adverse effect on the ambient environment.*

*We consider that the reason given by the Agency for the proposed exclusion of the listed lands from lands which may receive manure from the Applicant's piggery, that Is "To provide for the disposal of waste and the protection of the environment", is excessively vague and is neither appropriate nor meaningful in the circumstances and is not sufficient to justify their exclusion from the list of lands on which pig manure may be spread in accordance with a nutrient management plan and an acceptable and practical Code of Practice for the Landspreading of Animal Manures.*

*The proposed exclusion of those lands (either temporary or permanent) from the list of lands to which the Applicant may supply pig slurry would indirectly interfere with*

*the freedom otherwise enjoyed by the landowners / farmers concerned to acquire from sources of their choice (including the Applicant's piggery) the plant nutrients required to support their farming enterprises, even though they are not themselves subject to EPA control or subject to IPC Licensing. We believe that any attempt by the Agency to exercise such controls over 'Third Party' farmlands is unnecessary and is unjust. Having taken legal advice, we believe that any such attempt by the Agency would be ultra vires the powers of the Agency. The Applicant is further concerned that he may be used by the Agency as a medium through which the Agency may seek to exercise controls over other farmers and farming activities that are not subject to IPC Licensing.*

*The farming activities involving the landspreading of fertiliser products on those listed farms is subject to Regulations that require them to conduct operations in a manner that does not result in incidents of significant nuisance, air pollution or water pollution. We are confident that the relevant facilities and operations on all of those farms are adequate and appropriate for those purposes. However, we believe that compliance with all kinds of pollution control regulations on those farms is primarily the responsibility of the landowners or occupiers or their agents. We believe that the Board will be aware that under the Water Pollution Act it is the occupier of the land that is responsible for any pollution that might occur in or from that land. Indeed, any attempt by the Agency to hold the Applicant responsible for a pollution incident on another persons land, whether such incident involved pig slurry / manure from the Applicant's farm or not, would be grossly unreasonable and unfair. It would be like attempting to hold a fertiliser company (like IFI) responsible for an incident in which the company's product might have leaked and polluted groundwater or surface water.*

*No Authority has ever sought to regulate on any of those lands any of the farming activities which involve the landspreading of fertiliser products, either those produced on the farm as a by-product of the farmers' own animal enterprise or imported on to the farm as chemical fertilisers, other than through the general requirement that they conduct those activities in a manner that does not result in any significant incident of nuisance, air pollution or water pollution. Any attempt to impose additional and parallel controls on those farms just because they choose to acquire some of their requirement for fertiliser nutrients in pig manure / slurry from this facility is definitely prejudicial to the maintenance of the good and sound business / working relationship that has evolved and developed between this farm and those farms over the past 18 years. The proposed unnecessary interference introduces a risk that the relationship might be damaged and the Applicant cannot afford to allow that to happen.*

*The continued existence and continued viability of this business has exactly the same requirements as any other business for prudence and good management in relation to all operations and commercial dealings. The Applicant is committed to safe and sound working practices and conditions in all spheres of activity associated with his enterprise, including all activities that have a potential to impact negatively on any aspect of the environment. The Applicant would like the Agency to understand and appreciate that as a pig farmer he has pigs and pig manure to sell and that he has to reserve the right and the freedom to sell both products to the best buyers, whoever they may be, within the law.*

*We wish to again draw The Agency's attention to our concern and our reservations*

*about the legality of our right or authority to seek from other farmers information sought by the Agency about their farms and their farming activities, and our concern about the authority of the Agency to require us to seek and provide to the Agency information about soils and farming activities on lands that are not within the scope of the Licence and are neither answerable to nor under the control of either the Agency or the Licence Applicant.*

*We note from your letter of 23/7/99 that the Agency is of the opinion that additional information is necessary for the purposes of considering the Applicant's objection to PD 408. We note that your letter does not refer to the Applicants request for an Oral Hearing at which the various issues of concern to both the Agency and the Applicant could be discussed freely and openly with a view to fully satisfying the Agency's legitimate requirements without unduly damaging the Applicant's business or unnecessarily interfering with his long established and sound business relationships with other farmers. It may well be that sufficient additional information has been provided here. However, we are concerned that in the absence of any person to person dialogue many very important questions may neither be asked nor answered, on both sides. Accordingly, we are concerned that in the absence of proper discussion, the Agency may issue of a Licence that may be as unreasonable and as impractical and as unworkable as the Proposed Determination.*

*We do hope that the information provided in this letter resolves satisfactorily any outstanding queries the Agency may have. However, any other matters may be clarified at the requested Oral Hearing. Please give reasonable notice of the date of the Hearing should you decide to grant it.*

**Comment:**

The information provided in response to this request which relates to specific landbanks has been discussed as part of the Applicant's objection detailed above. Issues have been raised which have already been considered as part of the the Applicant' Objection. However a number of points need to be emphasised (below).

It should be noted that it is the responsibility of the producer of waste to ensure that it is disposed of in an environmentally friendly manner. This Proposed Determination is in respect of an activity and any emission which includes waste produced by the activity. The Proposed Determination controls the waste produced by the activity and not the individual farmers who accept this waste.

The Applicant volunteered information on a number of lands whose owners have signed agreements to accept waste from the activity. In order to ensure that the landspreading proposals were environmentally satisfactory to receive waste from this facility it was necessary for the Applicant to provide information on the lands submitted. These details include: maps identifying land areas, streams, wells, residences, soil sampling information, crop information, Nutrient Management Plans, notices of acceptance of waste.

The use of the word 'waste' in Schedule 3(vi) is considered appropriate. The slurry produced by the piggery is listed as a waste in the European Waste Catalogue:

*020106 animal faeces, urine and manure (including spoiled straw) effluent, collected separately and treated off-site.*

Under the first schedule of the Waste Management Act a residue of an industrial process is defined as a waste. This definition can be applied in this case. A judgement by the Court of Justice (Case No. 206/88, 207/88) on 28 March 1990 found that:

“the concept of waste within the meaning of Article 1 of Council Directive 75/442 and Article 1 of Council directive 78/319 is not to be understood as excluding substances and objects which are capable of economic reutilization.”

The Proposed Determination includes a ‘Reason for the Decision’:

“The Agency is satisfied....that subject to compliance with the conditions of this licence any emissions from this activity will comply with and not contravene any of the requirements of Section 83(3) of the Environmental Protection Agency Act, 1992”.

The Agency seeks to give reasons (11) for particular conditions in the Determination. Where reasons given are unclear the Applicant has opportunity to object in this objection process. In addition any member of the public can seek clarification from the Agency at any stage up to the receipt of a formal objection by the Agency.

The onus is on the Applicant to ensure that he collects the relevant information from the agents/contractors involved in landspreading regarding the disposal of the waste produced at his facility. A licence is a legally binding document. Hence a licensee must legally comply with all requirements, conditions and schedules of a licence.

As stated previously the decision not to hold an Oral Hearing has already been communicated to the Applicant.

The Agency has assessed the current application, visited the site of the activity, undertaken written correspondence and telephone contact with the Applicant, and considered submissions submitted in relation to the application. Based on these, and considering all other information available to the Agency, the Proposed Determination has been prepared. The conditions included in the Proposed Determination are designed to ensure protection of the environment.

### **Third Party's Submission on Applicants Article 32 Response**

Mr. Michael O'Farrell made a submission on the Applicant's Article 32 response. He states that he has no problem at all with anything contained in Mr. Brady's response. He confirms that he has discussed with the Applicant matters relating to the checking and testing of his lands and to the supply of pig slurry from Mr. Brady in the past. He says that he has an agreement with him in relation to such supply and that he reluctantly permitted some depth probing on his lands. He says that the results are of no interest to him and will not necessarily influence future fertiliser spreading activities or practices on his lands. He states that as a farmer he believes that he has the right to apply fertilisers to his lands to support normal crop growth, irrespective of the source of the fertiliser within the law. He states that if the Agency has a legitimate interest in his land and has questions or problems about this land, he should be communicated with directly and not through a fellow farmer. He believes that in the interest of justice the Agency must not make any comment on or reference to any of his farmland, traditionally farmed land, in any IPC licence for which he is not the Applicant.

Mr. James J. Farrell made a submission on the Applicant's Article 32 response. He states that he totally and fully supports everything set out in the letter which has any bearing on either his farmland or on his commercial trading relationship with Mr. Brady. He wishes to record his amazement that the EPA should even think of interfering in any of his normal farming activities on his own land and his total opposition to any attempt by the EPA to prevent him continuing to use pig slurry from Mr. Brady's farm as part of the fertiliser input into his farm. He states that he has acquired product (slurry) from there at a competitive price frequently in the past and that he intends and expects to continue to do so. He says that he expects that in the interests of justice that the Agency make some attempt to explain their powers and authority to him and show him cause and justification before seeking to apply to him through the medium of another farmer, a "power" that would purport to extinguish all his rights to apply fertiliser in a responsible way to any and all parts of his farmland, and his right to acquire the fertiliser product from the commercial source of his choice. He does not accept that the EPA has any power or right to make any reference whatever to his land in any correspondence with any other farmer or to list it, or otherwise identify it in any licence it may issue to any third party. He confirms that he received pig slurry from Mr. Brady in the past and intends to do so in the future also. He confirms that he discussed with Mr. Brady and his agent the digging of holes in his land to assess soil depth over his fields by the EPA. He states he saw that check as a precondition of permission to continue farming his land in his traditional way. He does not accept that the EPA has the authority or need to treat him or his farm in that manner. Accordingly he was not pleased to receive the request for permission to dig holes on his land and he was not happy to permit it. He noted the various references to and comment on soil depth in farmland in Mr. Brady's submission which he says reflects his own views and beliefs on the matter and he says he fully supports them.

Mr. Patrick Molihan made a submission on the Applicant's Article 32 response. He states that he has no problem with anything contained in it. He confirms that he has discussed matters relating to the supply of pig slurry as fertiliser for his lands and to the checking and testing of his lands. He says that he has acquired supplies of pig slurry from Mr. Brady in the past and that he intends to acquire supplies from his farm in the future and that he has a form of agreement with him in relation to such supply. He



confirms that he reluctantly permitted some depth probing of lands as a favour to a neighbouring farmer but he states that the results are of no interest to him and will not be a significant factor influencing future farming practices on his land. He confirms his belief that neither the Agency nor Mr. Brady have any authority to force him to permit the digging of holes on his land, or to force him to permit any classification of his land with respect to whether or not he may apply fertiliser to the land, irrespective of the source of the fertiliser. He says that he has permitted the sampling of soils only because the results are useful to him and he confirms his belief that he has a right to apply fertiliser responsibly to support the growth of crops on any and all of his farmland, and that he have a right to acquire that fertiliser from any source of his choosing and he says that he knows that many farmers believe and feel exactly the same way as he does regarding these matters. He believes that it is not proper for the Agency to use a fellow farmers application for an IPC Licence as its basis for seeking information about his land and making comment about his land. He believes that it is neither necessary nor just for the Agency to make reference to any of his lands in any IPC licence. He says that any such comment could have an influence on the value of his property. He says that he respectfully requires that the Agency justifies its action to him before making any reference to his land in any IPC licence for which he is not the Applicant.

Comment:

The three Third Party Objections are considered together as the issues are common to the three Objections.

The Agency does not seek to force farmers to accept slurry from this unit. Farmers have the opportunity to withdraw from the landbank available to the unit at any time. The Agency seeks to ensure satisfactory disposal of pig slurry from this activity. In order to achieve satisfactory disposal the Agency by way of the Proposed Determination seeks to control the activities of the waste producer. This intent was highlighted to Applicants in the BATNEEC note produced for the Pig Production Sector which states:

“The management of the manure produced is the sole responsibility of the owner of the pig unit.”

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency’s role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

It has been documented that disposal of slurry can lead to a deterioration in water quality if not undertaken in a proper manner. The Proposed Determination seeks to ensure that any slurry requiring disposal from this unit is landspread in a proper manner.

The lands are identified in the IPC licence by the land codes assigned to them by the Applicant as part of the IPC application and not by the names of the particular landowners. Other issues with regard to the suitability of the lands for landspreading with regard to overburden depth are discussed in the other objections below.

It should be noted that Mr. M. Farrell was circulated with the Article response because of his interest as an Objector to the Proposed Determination. The Agency does not generally correspond with individual farmers listed as part of a landbank because any licence issued is binding on the Applicant and not the recipient farmer.

It should be noted that the Applicant has agreed with individual farmers that slurry will be spread in accordance with a Nutrient Management Plan.

**Recommendation:**

That the Agency write to the three Third Party Objectors clarifying the position of lands included as part of a landbank submitted as part of an IPC licence application.

### **Third Party Objections**

Third party objections were received from three persons: Mr. Pat Molihan, Mr. Michael O'Farrell and Mr. James J. Farrell.

#### **Third Party Objection (Mr. Patrick Molihan)**

This refers to Condition 5.5.4 (exclusion of lands).

*"I hereby object to the Proposed Determination, and in particular to Condition 5.5.4, as I have been in the habit of taking pig manure from Donal Brady's piggery for use on some of my farmlands. My name and address is Patrick Molihan, Deerpark, Ardagh, Co. Longford. The land code by which my land is identified in the Proposed Determination and in the application is L67.*

*My farm and farming would be adversely affected by the proposed Condition 5.5.4 in the Proposed Determination. It appears to me that the Condition would seek to prevent me benefiting from the access I have enjoyed to a supply of manure for that land from the Applicant's piggery."*

Mr. Molihan goes on to give the grounds for his objection as follows:

- "1. The condition would prevent the continuation of good and sound business relationship under which I have enjoyed and used a supply of fertiliser in the form of pig slurry from time to time over many years.*
- 2. The condition would interfere with my freedom and right to acquire fertiliser nutrients from whatever source I may wish to choose, including Brady's pig farm.*
- 3. My farm inputs cost base would be adversely affected if I am prevented from sourcing any/some of my requirement for fertiliser nutrients from Brady's piggery.*
- 4. I believe that the EPA has no authority over my farming activities, particularly when those farming activities are not actually associated with any pollution incident.*
- 5. The EPA has no valid reason, and in the circumstances, has no valid authority to seek to interfere unnecessarily and unacceptably in my farming business.*

*On the above grounds I demand from the EPA an assurance that my lands are not listed or otherwise identified in any schedule or text contained in Mr. Brady's IPC licence and that the Agency do nothing that might in any way undermine or otherwise interfere with my good and sound relationship with Mr. Brady, under which I have enjoyed a supply of pig manure for my farmland on competitive terms. I contend that any business relationship that may exist between me and the Applicant, Mr. Brady, is a matter for us and us alone, and are not matters which should attract either interest or interference from the EPA."*

Comment:

The land listed as L67 (P. Molihan) is located over a locally important aquifer and a poor aquifer. According to "Groundwater Protection Schemes" (DoELG/EPA/GSI joint publication 1999) in order to protect the groundwater these areas require at least one metre of overburden cover. The only vulnerability information supplied regarding this land was information contained in an EIS (1993) which was submitted as additional information as part of the IPC licence application. This information refers to

five investigations made on this land but did not specify how relevant these were to the current application. However as this was the only information which the Applicant submitted, it was taken to be representative of the lands L67. The five investigations had the following depths:- 70+ cm, 70+ cm, 80 + cm, 70+ cm and 55+ cm. There was a possibility that some of these depths may in fact be over one metre -equally the proposed lands could have as little as 55-60 cm overburden. Based on this information (the only information available at the time), this land was excluded.

It should be pointed out however that Schedule 3(iv) Lands where Landspreading of Organic Wastes from this Facility are Excluded is annotated as follows “ Note 1: This schedule may be amended by the Agency as further environmental information becomes available”. This could allow the use of at least some of the land for landspreading of this waste should further soil depth investigations prove that there was adequate overburden.

Mr. Brady has volunteered the lands as part of a landbank by agreement with Mr Molihan. If either of these parties wish to withdraw, the Agency should be notified.

Article 32 Information:

Following a request for information under Article 32 data relating to the overburden depths was submitted by the Applicant. Following examination of the data, lands labelled L67 are considered suitable for inclusion having sufficient overburden for groundwater protection.

### **Third Party Objection (Mr. Michael O’Farrell)**

This refers to Conditions 5.5.6 , 5.5.7 and 5.5.8

*“My name is Michael O’Farrell, Lisaquill, Colehill, Longford. The code by which some of my land is identified in the Proposed Determination No. 408 is L75. I have been in the habit of taking pig manure from Donal Brady’s piggery for use as fertiliser on some of my farmlands. I hereby object to the Proposed Determination, and in particular to Condition 5.5.7.*

*My farm and farming would be adversely affected by the proposed condition 5.5.6 in the Proposed Determination. It appears to me that the Condition would seek to prevent me benefiting from access I have enjoyed for years to a supply of manure for my own land from the Applicant’s piggery, until such time as I might permit the Applicant to enter onto my land and there to engage in the digging of holes or in other activity for the purpose of satisfying the Environmental Protection Agency that there is at least one meter of soil over the bedrock on my farmland. I recall expressing some time ago to his agent that in my opinion there probably is in excess of 2 metres of soil over most, if not all of my land. I had not been asked such a question before and no authority ever indicated to me that my land must have any particular depth of soil in order for me to continue to farm my land responsibly as I have always done.”*

He continues by giving his grounds for the objection as follows:-

1. *“The condition would wrongly or unreasonably or unfairly or unjustifiably seek to prevent the continuation of a good farm business relationship, under which I have enjoyed and used from time to time over several years a supply of fertiliser in the form of pig slurry from the Applicant’s piggery, until such time as I would permit the Applicant to enter on my land and dig holes or other wise examine my own land in a manner that would be of no benefit to me, and only for the purpose of satisfying (for whatever reason) the EPA that there is more than 1 meter soil on my land, and that as a pre-condition to continuing to benefit from a supply of fertiliser nutrients from the Applicant’s piggery. I consider that the Applicant has no right to seek such an entry and that I cannot be obliged by the EPA to accede to such a request. I further consider that my freedom to continue to farm my land as I wish, within the law, including the fertilising of my land with fertiliser acquired from sources of my own choice, including Brady’s piggery, cannot be undermined or set aside by either the EPA or the Applicant.*
2. *The condition would wrongly or unreasonably or unfairly or unjustifiably interfere with my freedom and right to acquire fertiliser nutrients from whatever source I wish to choose, including Brady’s pig farm, whenever I wish, in accordance with good farm practice, without having to bow to an unreasonable and unnecessary condition which would seek to compromise my rights over my land.*
3. *My farm inputs cost base would unreasonably or wrongly or unfairly be adversely affected if I am prevented or delayed from sourcing any/some of my requirement for fertiliser nutrients from Brady’s piggery.*
4. *The EPA has no authority over my farming activities, particularly when those farming activities are not actually associated with any pollution incident.*
5. *The EPA has no valid reason, and in the circumstances, has no valid authority to seek to interfere unnecessarily and/or unacceptably and/or unjustifiably in my farming business.*

*I am also concerned that Condition 5.5.8 might seek to require me to use the Applicant or his contractor as my agricultural contractor, or in place of the contractor of my own choice, to do my work of spreading fertiliser from any source on my land. That too would be an unreasonable or unjustifiable or unfair interference with the conduct of my farm business which I cannot reasonably be expected to accept. On the above grounds I require from the EPA an assurance that my lands are not listed or otherwise identified in any schedule or text contained in Mr.Brady’s IPC licence and that the Agency do nothing that might in any way undermine or otherwise interfere with the good and sound business relationship with Mr.Brady under which I have enjoyed a supply of pig manure for my farm at a good price. I contend that any sound and legal business relationship that may exist between me and Donal Brady, is a matter for us, and is not a matter which should attract either interest or interference from the EPA.”*

Comment:

The land labelled L75 is located over a locally important aquifer. The document “Groundwater Protection Schemes” (DoELG/EPA/GSI joint publication 1999)

indicates, this area requires at least one metre of overburden to protect the groundwater from landspreading activities.

Condition 5.5.7 requires that landspreading should not take place on L75 until such time as the Applicant satisfies the Agency that there is at least 1m of overburden in this area. Condition 5.5.6 applies to lands underlain by a regionally important aquifer and therefore is not relevant to L75. The Applicant did not supply adequate information as part of the IPC application in order to demonstrate that there was adequate overburden in this area and so therefore prior to any landspreading taking place this must be established. Any delays which affect the farmer are due to lack of information supplied during the application. The Agency does not seek to control the farming practices of Mr. O'Farrell but rather to protect the environment (in particular in this case groundwater) by regulating the disposal of organic waste resulting from Mr. Donal Brady's pig unit.

With regard to contractors and agents undertaking landspreading, it should be noted that a recommendation has been made to delete Condition 5.5.8.

Article 32 Information:

Following a request for information under Article 32 data relating to the overburden depths was submitted by the Applicant. Following examination of the data, it is considered that lands labelled L75 are suitable for inclusion having sufficient overburden for groundwater protection.

### **Third Party Objection (Mr. James J Farrell)**

This Objection refers to Condition 5.5.6.

*“My name is James. J Farrell, Trillickatemple, Moydow, Longford. The code by which some of my land is identified in the Proposed Determination No. 408 is L32 . I have been in the habit of taking pig manure from Donal Brady's piggery for use as fertiliser on some of my farmlands. I hereby object to the Proposed Determination, and in particular to Condition 5.5.6.*

*My farm and farming would be adversely affected by the proposed condition 5.5.6 in the Proposed Determination. It appears to me that the Condition would seek to prevent me benefiting from access I have enjoyed for years to a supply of manure for my own land from the Applicant's piggery, until such time as I might permit the Applicant to enter onto my land and there to engage in the digging of holes or in other activity for the purpose of satisfying the Environmental Protection Agency that there is at least 2 meters of soil over the bedrock on the land.”*

He continues by giving his grounds for the objection as follows:

- 1. The condition would wrongly or unreasonably or unfairly or unjustifiably seek to prevent the continuation of a good farm business relationship, under which I have enjoyed and used from time to time over several years a supply of fertiliser in the form of pig slurry from the Applicant's piggery, until such time as I would permit the Applicant to enter on my land and dig holes or other wise examine my own land in a manner that would be of no benefit to me, just to unreasonably satisfy the*

*EPA that there is 2 meters of soil on my own farmland, as a pre-condition to continuing to benefit from a supply of fertiliser nutrients from the Applicant's piggery. I consider that the Applicant has no right to seek such an entry and that I cannot be obliged by the EPA to accede to such a request. I further consider that my freedom to continue to farm my land as I wish, within the law, including the fertilising of my land with fertiliser acquired from sources of my own choice, including Brady's piggery, cannot be undermined or set aside by either the EPA or the Applicant.*

- 2. The condition would wrongly or unreasonably or unfairly or unjustifiably interfere with my freedom and right to acquire fertiliser nutrients from whatever source I wish to choose, including Brady's pig farm, whenever I wish, in accordance with good farm practice, without having to bow to an unreasonable and unnecessary condition which would seek to compromise my rights over my land.*
- 3. My farm inputs cost base would unreasonably or wrongly or unfairly be adversely affected if I am prevented or delayed from sourcing any/some of my requirement for fertiliser nutrients from Brady's piggery.*
- 4. The EPA has no authority over my farming activities, particularly when those farming activities are not actually associated with any pollution incident.*
- 5. The EPA has no valid reason, and in the circumstances, has no valid authority to seek to interfere unnecessarily and/or unacceptably and/or unjustifiably in my farming business.*

*I am also concerned that Condition 5.5.8 might seek to require me to use the Applicant or his contractor as my agricultural contractor, or in place of the contractor of my own choice, to do my work of spreading fertiliser from any source on my land. That too would be an unreasonable or unjustifiable or unfair interference with the conduct of my farm business which I cannot reasonably be expected to accept. On the above grounds I require from the EPA an assurance that my lands are not listed or otherwise identified in any schedule or text contained in Mr. Brady's IPC licence and that the Agency do nothing that might in any way undermine or otherwise interfere with the good and sound business relationship with Mr. Brady under which I have enjoyed a supply of pig manure for my farm at a good price. I contend that any sound and legal business relationship that may exist between me and Mr. Brady, is a matter for us, and is not a matter which should attract either interest or interference from the EPA."*

Comment:

The land labelled L32 is located over a regionally important aquifer. The document "Groundwater Protection Schemes" (DoELG/EPA/GSI joint publication 1999) indicates, this area requires at least two metres of overburden to protect the groundwater from landspreading activities.

Condition 5.5.6 requires that landspreading should not take place on L32 until such time as the Applicant satisfies the Agency that there is at least 2m of overburden in this area. The Applicant did not supply adequate information as part of the IPC application

in order to demonstrate that there was adequate overburden in this area and so therefore prior to any landspreading taking place this must be established. Any delays which affect the farmer are due to lack of information supplied during the application. The Agency does not seek to control the farming practices of Mr. Farrell but rather to protect the environment (in particular in this case groundwater) by regulating the disposal of organic waste from the IPC Applicant Mr. Brady's pig unit.

With regard to contractors and agents undertaking landspreading, it should be noted that a recommendation has been made to delete Condition 5.5.8.

Article 32 Information:

Following a request for information under Article 32 data relating to the overburden, depths were submitted by the Applicant. Following examination of the data, it is considered that lands labelled L32 are suitable for inclusion having sufficient overburden for groundwater protection.



### **Applicant Submissions on Third Party Objections (Three)**

The Applicant has made submissions on the Third Party Objections received from Mr. Michael O'Farrell, Mr. Patrick Molihan and Mr. James J. Farrell. While Submissions separately refer to Conditions 5.5.4, 5.5.6 and 5.5.7, the text of the Submission on each Objection is the same. Therefore the three Submissions are discussed together.

The Applicants notes the Third Party Objectors concern that Conditions 5.5.4, 5.5.6 or 5.5.7 of the Proposed Determination will interfere with their freedom to farm responsibly. The Applicant again details his concern that the Proposed Determination as issued will interfere with 'normal farmer to farmer' relationships.

The Applicant states that there should not be and need not be conflict between the interests, legal rights and legal responsibilities of either the Applicant, the farmers receiving slurry or the Agency. The Applicant states that the Agency must recognise good and safe practices within the pig production sector and take account of these in drawing up reasonable, objective, sensible and workable conditions for licences.

The Applicant states that both he, his technical staff and his consultants are available to discuss any aspects of conditions with the Agency with a view to identifying and describing effective controls and conditions more fair and appropriate to this enterprise and to the industry in general.

The Applicant states that because of the importance of both the farmer/farmer relationship and property rights which he feels are threatened by conditions of the Proposed Determination, he requires to be convinced of the legal basis for any requirement on his part to comply with Conditions 5.5.4, 5.5.6, or 5.5.7 or similar conditions. The Applicant further states that he cannot accept that compliance with the conditions as written is required or enforceable just because it is or it might be written as a Condition in an IPC licence.

#### **Comment:**

It has already been recommended that Conditions 5.5.6 and 5.5.7 be deleted and Schedule 3(iv) (to which Condition 5.5.4 relates) be modified in light of the information submitted by the Applicant on depth of overburden.

Under the responsibilities conferred on the Agency by the Environmental Protection Agency Act (1992) the Agency is required to regulate the environmental aspects of intensive agriculture, including pig production. An inevitable aspect of pig production is the fact that a large volume of waste in the form of slurry or farm-yard manure is produced. Thus a key issue in ensuring environmental protection in relation to pig units is to ensure that there is environmentally safe disposal of pig slurry. The most usual route for pig producers to dispose of this material is to apply it to land where it has a beneficial use to recipient farmers. Thus in the absence of alternative proposals to land disposal the Agency in order to satisfy its responsibilities under Section 83(3) of the Act must ensure that there is adequate and appropriate land available to a producing unit (either through direct ownership or *via* agreement with other landowners) to ensure appropriate disposal of the slurry.

In the current application the Applicant has volunteered (with the permission of the landowners) lands where slurry may be disposed. These lands have been detailed in the application submitted to the Agency. The Agency's role is to ensure that slurry produced from this pig unit can be applied to these lands for disposal without causing a risk of significant environmental pollution.

Repeated opportunities were available to the Applicant for discussion/clarification at site visits and by telephone contact. However it should be noted that the IPC licensing process is a fully transparent process and that the Agency must ensure that all members of the public can have opportunity to provide effective input.

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Vera Power  
Chairperson, Technical Committee