

MEMO

TO: Board of Directors	FROM: Brian Donlon
CC:	DATE: 15/10/02
SUBJECT : Organic Kompost Ltd. Technical Committee Report	

Application details

Application Details	
Applicant:	Organic Kompost Ltd.
Location of Activity:	Cloonfad, Co. Roscommon
Reg. No.:	159-1
Licensed Activities under Waste Management Act 1996:	Third Schedule: Class 13 Fourth Schedule: Classes 2, 13.
Proposed Decision issued on:	28/06/02 (reissued)
Objections received:	2 Third Party objections Cloonfad Concerned Citizens,c/o Peter Sweetman & Associates An Taisce
Submission on Objection	1 from applicant (prepared by TES consulting engineers)
Inspector that drafted PD:	Cormac MacGearailt

Objections received

A Technical Committee was established to consider the objections.

The Technical Committee included;

Brian Donlon, Chairperson
Kealan Reynolds, Inspector
Mary O'Hara, Inspector

This is the Technical Committee's report on the objection.

OBJECTIONS

The two objections received were very general and did not relate to specific conditions of the Proposed Decision. The Objections primarily focussed on National Implementation of EU Directives.

- 1. Objection lodged by Cloonfad Concerned Citizens,c/o Peter Sweetman & Associates**

- 1.1 This application was accompanied by an Environmental Impact Statement therefore the Agency must, in law, perform an assessment. There is no mention of the Environmental Impact Statement in the inspectors report.

Applicants Response

This is not an issue which specifically relates to the proposed development, rather a comment on the review of the submission by the EPA

Technical Committee Evaluation

Reference is made on bottom of page 1 of the Inspectors report to the EIS. This states that “an EIS was received with the application and was deemed to be valid in compliance with the EIS regulations on 7/3/02”.

Recommendation

No Change.

- 1.2 There is not even an assessment of the validity of the Environmental Impact Statement submitted.

Applicants Response

This is not an issued which specifically relates to the proposed development, rather a comment on the review of the submission by the EPA.

Technical Committee Evaluation

See TC evaluation on Section 1.1 above.

Recommendation

No Change.

- 1.3 As the planning authority is not permitted to consider matters of environmental pollution the onus is on the Agency to assess the interaction, this has not been done.

Applicants Response

The Planning Application to Roscommon County Council was accompanied with the same Environmental Impact Statement as that which accompanied the Waste Licence Application to the EPA. Roscommon County Council thoroughly reviewed the proposed design criteria for the biological treatment facility and were satisfied with the information contained within the EIS and based on subsequent information lodged to address requests for further information.

The EIS lodged and all subsequent information submitted to the EPA contained a detailed assessment of the existing setting and the possible impacts of the development on all aspects of the environment. With specific reference to environmental interactions, Section 4.10 of Volume II of the EIS considered

the anticipated interactions between the principle environmental headings as suggested in the EIA regulations.

It refers to the assessment of the application by the EPA, rather than a specific objection to the proposed development.

Technical Committee Evaluation

The Inspector made a detailed assessment of the all the application and supporting documentation (which included environmental interactions) from the applicant and all submissions received from other parties. The TC considers where the relevant conditions of the waste licence are complied with that any emissions from the activity will comply with and not contravene any of the requirements of Section 40(4) of the WMA 1996.

Recommendation

No Change.

- 1.4 The proposed decision is at odds with the Planning Application and the Environmental Impact Statement. There has been no reference to the Planning Application.

Applicants Response

The objection point raised is unclear as it does not indicate why the proposed decision is at odds with the Planning Application and the Environmental Impact Statement.

The proposed EPA decision is not at odds with the Planning Application and the Environmental Impact Statement.

The Waste Licence Application and the Planning Application are not in conflict with the Environmental Impact Statement.

Technical Committee Evaluation

The TC considers that the application was assessed as being valid. The TC also considers that where the relevant condition of the licence are complied with that any emissions from the activity will not contravene any of the requirements of Section 40(4) of the WMA 1996. The licensee is required to comply with all other statutory obligations (Condition 1.6). The Planning Authority and not the Agency consider matters relating to planning and compliance with the Planning and Development Act.

Recommendation

No Change.

- 1.5 There has been no assessment as required under the “Habitats and regulations”.

Applicants Response

There is a typographical error in this objection. If the objection refers to “Habitats and regulations” we respectfully submit that the Ecological study, contained in Section 3.7 and Section 4.6 of Volume II of the EIS, adequately characterises the setting of the site. They stated that if they have misinterpreted the objection due to the typographical error they request that the corrected point be forwarded to them to allow review and comment.

Technical Committee Evaluation

The TC considers that the reference was to Habitats Regulations. There are no designated habitats within the vicinity of the facility (c4km) and hence no assessment is required under the Habitat Regulations. The TC considers that the ecology of the area surrounding the facility was covered adequately in the EIS.

Recommendation

No Change.

- 1.6 The Proposed Decision is based on the presumption that there will be full compliance with the terms of the licence. They are not aware of any IPC licence which is in full compliance. For example the most recent ones we have looked at are Wythe, Newbridge and T&J Standish, Leap. No further comment.

Applicants Response

Organic Kompost Ltd is applying for a Waste Licence for a Biological Waste Treatment Facility at Cloonerkaun, Cloonfad, County Roscommon. An application for an IPC licence has not been submitted to the EPA.

The proposed biological treatment facility is in accordance with the targets set out in the governments policy statement “Changing our Ways” (1998) and the Waste Management Plan for the Connaught Region (1999-2004).

The proposed Waste Licence decision will bind Organic Kompost Ltd to operate the facility to best national and international practice. It is beyond the scope of the appeal to pre-judge the operation of the facility and as such TES respectfully submit that this is not an issue on which the proposed decision should be appealed.

Technical Committee Evaluation

An IPC licence is not required for this facility. Condition 1 addresses the scope of this Waste licence and sets out when a notice of non-compliance may be served. The TC considers that the Agency has legal powers under the WMA, 1996 to prosecute the licensee if the licence is not adhered to.

Recommendation

No Change.

2. Objection Lodged by An Taisce

2.1 *Issues Posed by EU Environmental Impact Assessment Directive*

Planning applications with EIS requiring separate lodging of IPC or Waste Licence to the EPA, are contrary to the legal provisions of the EU Environmental Impact Assessment Directive on the integrated determination of an application requiring an EIS.

Applicants Response

It is a legal point, which is outside the scope of Organic Kompost Ltd to comment upon.

Technical Committee Evaluation

The application including the accompanying EIS was assessed by the Inspector as being valid and that it complies with the requirements as specified in the licensing Regulations. The licensee is required to comply with all other statutory obligations.

Recommendation

No Change.

2.2 *Split Legal Status of Application*

The current Irish legislative procedure for determining applications for a range of waste and other processing facilities producing emissions subject to environmental impact assessment thresholds is currently separated between the relevant Planning Authority (and where appealed, to an Bord Pleanála) and the EPA. This applies to proposals requiring either Waste or IPC Licences.

In the course of the Reasoned Opinion from the European Commission dated 25 July 2001, it is found that Irish implementing legislation for the Impact Assessment Directive fails to comply with the terms of the Directive in respective projects requiring an IPC Licence (Section 3.2.4).

Section 3.2.5 of the Reasoned Opinion rules that there is no provision which ensures that the environmental impact assessment covers the interaction between the factors mentioned in the first and second indents of Article 3 of Directive 85/337 EEC before Amendment by Directive 97/11/EC or the interaction between factors in the first, second and third indents of Article 3 of Directive 85/337 EEC after amendment by Directive 97/11/EC.

The Irish Government sought to remedy this defect in Section 256 of the Planning and Development Act 2000, which allows planning authorities to take account of environmental considerations in the case of projects requiring an IPC licence. However Section 3.2.9 of the Reasoned Opinion rules that this provision does not “remedy the flawed procedures” which results from the

split of authority function. This principle also applies to projects with separate Waste Licence application rendering Section 257 of the Planning and Development Act 2000 similarly defective.

Applicants Response

TES respectively submit that this issue does not relate specifically the proposed development and is a legal point, which is outside the scope of Organic Kompost Ltd to commend upon.

Technical Committee Evaluation

The TC considers that the waste licence application was assessed as being a valid application in accordance with the waste licensing regulations. The TC notes that where the relevant conditions of the licence are complied with, that any emissions from the activity will comply with and not contravene any of the requirements of Section 40(4) of the WMA 1996. The licensee is required to comply with all other statutory obligations (Condition 1.6).

The Agency is charged with examining the application and EIS in so far as it relates to the risk of environmental pollution. It is the responsibility of the Planning Authority to consider all matters in accordance with the Planning and Development Act.

Recommendation

No Change.

2.3 Adequacy of EIS in complying with EIS EU Directive

A fundamental principle of the Directive is that any application subject to an EIS should consider alternative options and in the case of production facility, this would include alternative location and alternative production methods.

Alternative options, more accessible to a national primary road, less injurious to visual amenity, or an impact on residential property on the wider area, have not been addressed. Alternative production methods, obviating the need for the proposed facility, by integrating composting or organic substances including belly graft material in existing meat slaughtering plants as an integral part of processing, would eliminate the need for the long distance transport of odour and effluent problematic material, across wide distances around the region, to a centralised site.

Applicants Response

Section 1.7 of Volume II of the EIS provides details of Alternative Processes and Alternative Sites investigated as part of this study.

The Waste Management Plan for the Connaught Region identifies Sligo, Tuam and Galway as possible treatment locations for domestic organic waste. Due to the proximity of Cloonfad to Tuam, the proposed facility location constitutes a viable alternative site.

With regard to the selection of the proposed site as the most suitable, a number of factors were considered important, as detailed below:

- Availability of Organic Waste within reasonable haul distance;
- Low population density;
- Avoidance of high amenity areas;
- Accessibility; and
- Hydrogeological suitability.

The waste streams to be imported to the proposed facility are mentioned in the EU Working Document on Biowaste, Second Draft (February 2001), which specifies organic wastes that are technically suitable for biological treatment, ie, that can be converted successfully into a good quality compost. From a technical viewpoint, several reasons exist to promote mixing of various organic waste streams, to produce a better end-product.

The proposed facility will produce a better quality end product and a more usable commodity than single source compost. Odour and transport issues have been fully discussed in the information submitted to the EPA along with mitigation measures to reduce impact on the surrounding environment.

Technical Committee Evaluation

The comments of the objector and the applicant in response are noted. Details of Alternative Processes and Alternative Sites investigated as part of this study were included in Section 1.7 of Volume II of the EIS. The EIS was assessed as being valid and included the information required under the headings laid out in the EIS regulations

Recommendation

No Change.

2.4 Proposed animal waste incinerator in Cashel, South Tipperary (Tipperary South Riding Reference No. 01/976

A planning application for a processing facility involving incineration has been proposed for Rosegreen, Cashel, Co Tipperary. It has been appealed to An Bord Pleanala by forty eight separate applicants. It is the subject of judicial review proceedings initiated by horse trainer, Aidan O'Brien, on the grounds of the failure of the Irish State to comply with the EU EIA Directive and the splitting of the termination of an application with EIA between two statutory authorities. This application raises similar issues and the outcome of the Rosegreen legal challenge will be directly relevant to the case.

Applicants Response

This objection is the same issue raised in previous An Taisce objection above.

TES wish to point out that the Cloonerkaun Biological Treatment Facility is not an incinerator. Composting and anaerobic digestion of organic material will be the only activities to be undertaken within the facility.

Technical Committee Evaluation

The comments made by both the objector and the applicant in response are noted. The planning application for an incinerator in Cashel is not connected with this application.

Recommendation

No Change.

2.5 Relationship of Applicants to Illegal Waste Disposal Site at Flaskaghmore, Dunmore, County Galway

A site, which was the location for unauthorised dumping of animal waste, is jointly the subject of complaint to Galway County Council and the EPA is situated on lands in the ownership of Thomas Burke at Flaskaghmore, Dunmore, County Galway, but in an area where potential hydrological impacts of leachate could have a trans-county boundary impact on County Roscommon. A notice under Section 55 of the Waste Management Act, was issued to the landowners on 27 June 2002. A letter from Galway Co Co to them on this matter was attached. Clarification should be sought to establish whether the principles involved in this waste disposal site have any connection with the Organic Kompost proposal.

Applicants Response

Organic Kompost Ltd is a joint venture enterprise which is owned by Mr James Fitzgerald and Mr Martin Smyth. Organic Kompost Ltd was incorporated in March 2001. Organic Kompost Ltd was established solely for the purpose of establishing a biological treatment facility (composting and anaerobic digestion) to deal with organic material in the Connaught Region in accordance with the recommendations of the Connaught Waste Management Plan. Organic Kompost Ltd has no relationship or involvement with activities carried out at Flaskaghmore, Dunmore, Co Galway.

Evergreen Fields Ltd is a company of which Mr Martin Smyth is a director. Evergreen Fields Ltd have in the past had involvement with Mr Thomas Burke, Flaskaghmore, Dunmore, Co Galway. Organic material have in the past been stored, by agreement of Mr Thomas Burke, within said lands for the purpose of containing the waste for future landspreading during suitable meteorological conditions.

Evergreen Fields Ltd is currently in discussions with Galway County Council as to the above-mentioned site. A hydrogeological investigation is being undertaken to establish if waste stored within the site is having an adverse impact on the surrounding environment.

If the investigation shows an adverse impact, Evergreen Fields Ltd will undertake a programme of works to mitigate this impact and restore the lands to previous use.

This issue will be dealt with in full by the local authority and the hydrogeological assessment will be available for inspection by all interested parties when completed.

Technical Committee Evaluation

The Waste Management Act provides that the Agency shall not grant a waste licence unless it is satisfied that the applicant is a fit and proper person to hold a waste licence. Among the criteria for determining whether a person is a fit and proper person for the purposes of the Act is whether or not that person has been convicted of an offence prescribed under the Act. Based on the information provided in the application, the applicant has not been convicted under the Act of such an offence. All licensees are required to comply with the conditions of their licences.

Recommendation

No Change.

2.6 Recommendations by An Taisce

They advised the EPA to seek a reference to the European Court to address the compliance of the application with the EU EIA Directive.

Applicants Response

TES respectively submit that this issue does not relate specifically to the proposed development and is a legal point. However, we contend that the application as submitted is in compliant with EPA guidelines for EIA submissions, under current Irish laws.

Technical Committee Evaluation

The application was assessed as being compliant with the requirements as specified in the licensing Regulations. The Agency is satisfied that the application has been assessed in accordance with National Legislation which transposes EU Directives. It is not for the Agency to question the transposition of EU Directives into law. The Ministry has already vetted these issues. It is of course open to any person to challenge the validity of any piece of National Legislation.

Recommendation

No Change.
