

<b>MEMO</b>			
<b>TO:</b>	Board of Directors	<b>FROM:</b>	Brian Donlon
<b>CC:</b>		<b>DATE:</b>	18/06/03
<b>SUBJECT :</b> Neiphin Trading Ltd. Technical Committee Report			

Application Details	
Applicant:	Neiphin Trading Ltd.
Location of Activity:	Kerdiffstown, Co. Kildare
Reg. No.:	47-1
Proposed Decision issued on:	11 <sup>th</sup> October 2002
Licensed Activities under Waste Management Act 1996 as allowed under the Proposed Decision:	Third Schedule: Classes 1,4,5,13 Fourth Schedule: Classes 3,4,11,13
Objections received:	1
Inspector that drafted PD:	Mr Peter Carey

**Objections received**

A Technical Committee was established to consider one objection from Environmental & Resource Management Ltd. on behalf of the applicant (Neiphin Trading Ltd.).

**The Technical Committee included;**

Brian Donlon, Chairperson, Malcolm Doak, Inspector, Regina Campbell, Inspector  
This is the Technical Committee's report on the objection.

**General Comment**

The objector listed a number of concerns in relation to omissions in the Inspectors Report. These related to site infrastructure, the existence of a waste permit for the facility and the fact that the applicant is defending a case taken by the Agency in relation to unauthorised landfilling. They also claimed that no site inspection has occurred since February 2002. They advised that such an inspection should be carried out in order for the EPA to familiarise itself with the ongoing activities at the facility.

**Technical Committee Evaluation**

*The TC notes the comments listed by the objector. These do not appear to represent an objection against specific licence conditions. Section 2 of the Inspectors Report makes reference to a number of the infrastructural items proposed and/or in place at the facility. It should be noted that Agency staff carried out an inspection of the facility in January 2003.*

**Recommendation**

No change.
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**Ground 1: Condition 1.1**

**Part 1: Licensed Activities**

The objector noted that the constraints imposed on some of the classes, which are listed in Part 1: Activities Licensed if not amended in the waste licence, will result in internal conflicts within the licence and/or prevent the development of waste recovery activities.

**(a) Class 13 of the 3<sup>rd</sup> Schedule:** The description of this class does not include any storage of waste on-site, prior to disposal on-site once the lined landfill is developed, as was detailed in the licence application. The recovery of industrial/commercial waste for which a proposal is required under Condition 11.3(c), or indeed the recovery of other wastes on the facility, may result in the generation of a residue which is temporarily stored on the site prior to disposal in the on-site lined landfill. The class, as presently construed, would require all such residue to be exported off the facility for disposal elsewhere.

They object to this restriction and suggest that the description of Class 13 of the 3<sup>rd</sup> Schedule be amended to include "...and the storage of wastes on the facility prior to landfilling on the facility."

**(b) Class 4 of the 4<sup>th</sup> Schedule:** The description of this class precluded the recovery of commercial and industrial waste on the facility. Furthermore, as presently worded, the description is in conflict with Condition 1.4 of the PD which states that "Commercial Waste, Industrial Waste ..... maybe recovered and .....". The present wording is also in conflict with Condition 3.18.3 which states that "provide a building at the location ..... for the recovery of waste ..... and commercial/industrial waste.....". Furthermore it is possible to use the plant described in the licence application to process and recover commercial, industrial and construction and demolition wastes. They object to the wording for the above reasons and suggest that it should be amended to read "This activity is limited to the recovery of construction and demolition waste and commercial and industrial waste at the facility."

**(c) Class 13 of the 4<sup>th</sup> Schedule:** The description of this class would appear to exclude all the waste, which is currently stored on the facility prior to being recovered and also those processed wastes being stored on the facility prior to ultimate recovery on the facility or elsewhere. It would not be technically possible or economically feasible, to excavate all the waste currently stored on the facility, pending recovery, and place it in a building or on a hardstanding.

The process of excavating and recovering the in-situ wastes was described in the licence application. The facility, which covers some 28 hectares, is covered in waste, mainly C&D waste, which was deposited on the facility over a number of decades by a number of waste contractors. In earlier years this waste was being disposed of. However, since 1999, the intention of the operator has been to excavate this waste and process and recover it, regenerate the void, line it and create a modern landfill. These waste recovery activities and the intention to construct a lined landfill will be compromised if the current wording is not amended in the waste licence. There are, therefore, three waste streams that are, or will be, stored on the facility pending recovery. These include (i)The in-situ wastes currently stored on the facility pending excavation and recovery, (ii) wastes to be imported into the facility, after the licence has been granted, and stored pending recovery and (iii) wastes (such as stone, clay, metal, plastic and paper, etc) which have been processed and partially recovered and are, and will be, stored on the facility pending further processing and recovery.

They object to the wording for the above reasons and suggest the following amendment “The activity is limited to the storage of waste on the facility pending recovery”.

## **Part II: Activities Refused**

**Class 2 of the 4<sup>th</sup> Schedule:** They state that refusal of this class in the waste licence would make these waste recovery activities unauthorised and would have a negative impact on the recovery of C&D waste on the facility. Details were submitted in part of the EIS and the Article 14 response. Furthermore, refusal of this class in the waste licence will make it difficult to comply with the intention of Condition 11.3(a), which requires a proposal for a reduction in the quantity of biodegradable waste going to landfill. They suggest that the class be licensed. The description used could be “This activity is limited to the recovery of paper, cardboard, wood, timber and plastics in accordance with the requirements of this waste licence”.

### **Technical Committee Evaluation**

*The TC notes the comments of the objector. We consider that there may be merits in allowing the on-site storage of waste prior to disposal (Class 13 of the Third Schedule). However, we consider that waste arising from the recovery process destined for disposal must be stored on a hardstanding surface pending removal off-site or upon completion of construction of the landfill to provide for the protection of the environment. If a residue is generated then capacity is either required on site (landfilling) or the residue must be conveyed to another facility.*

*The TC considers that recovery of commercial and industrial waste should be allowed at the facility (Class 4 of the Fourth Schedule).*

*In relation to the waste recovery activity (Class 13 of the Fourth Schedule) the TC notes that the Proposed Decision permits the excavation of waste and the acceptance of waste for recovery subject to adequate processing plant capacity being available at the facility. The TC considers that all waste recovery operations should be carried out on hardstanding surfaces and that waste processing should occur within an enclosed building unless otherwise agreed with the Agency.*

*The TC notes that limited information was submitted in the EIS and in the Article 14 notice in relation to Waste Recovery Activity (Class 2 of the 4<sup>th</sup> Schedule WMA). We would encourage the recovery of waste and recommend the licensing of this waste recovery activity. However, we consider that additional details on the recovery processes proposed should be submitted prior to commencement of these activities and we note that the installation of waste recovery infrastructure is a Specified Engineering Work.*

### **Recommendation**

#### **Part I – Activities Licensed**

Amend Class 13 of the Third Schedule and Class 4 of the Fourth Schedule of the Waste Management Act, 1996. Add additional activity Class 2 of the Fourth Schedule. Other existing activities licensed should remain unchanged (i.e. Classes 1,4,5 of 3<sup>rd</sup> Schedule and Classes 3, 11,13 of the 4<sup>th</sup> Schedule).

Licensed Waste Disposal Activities, in accordance with the Third Schedule of the Waste Management Act 1996

<b>Class 13</b>	<b>Storage prior to submission to any activity referred to in a preceding paragraph of this Schedule, other than temporary storage, pending collection, on the premises</b>
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	<p><b>where the waste concerned is produced:</b></p> <p>This activity is limited to provision of a waste quarantine area and the temporary storage on-site of unacceptable waste prior to transport to another facility and <b>the temporary storage of wastes on a hardstanding surface at the facility prior to landfilling at the facility.</b></p>
Licensed Waste Recovery Activities, in accordance with the Fourth Schedule of the Waste Management Act 1996	
<b>Class 2</b>	<p><b>Recycling or reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes):</b></p> <p><b>This activity is limited to the recovery of paper, cardboard, wood, timber and plastics subject to the prior agreement of the Agency.</b></p>
<b>Class 4</b>	<p><b>Recycling or reclamation of other inorganic materials:</b></p> <p>This activity is limited to the recovery of construction and demolition waste such as concrete, soil, <b>commercial and industrial waste.</b></p>
<p><b><i>Amend Part II – Activities Refused</i></b></p> <p>Delete reference to Class 2 of the 4<sup>th</sup> Schedule.</p>	

***Ground 2: Condition 1.4***

The applicant objected to this condition as it places too stringent limits on the quantities of C&D waste, which may be accepted and recovered at the facility. The operator has invested considerable sums, over €5million, in recent years in recovery plant at the facility, and this plant now has a capacity for processing some 2,600 tonnes per day, amounting to in excess of 700,000 tonnes per annum. Some of the mobile plant is currently on site. In view of the delay in receiving the PD, national policy to recover at least 50% of C&D waste and in view of the national waste crisis, the authorisation of a greater annual input of waste to the facility would be appropriate. They suggest that Schedule A be amended such that “the quantity of C&D waste accepted at the facility be increased to 300,000 tonnes per annum, the quantity excavated to 400,000 tonnes per annum and the quantity of commercial and industrial waste accepted at the facility be increased to 200,000 tonnes per annum and the total be increased to 900,000 tonnes per annum”.

**Technical Committee Evaluation**

*The TC notes the comments of the objector. However, the TC are aware that the EIS, dated October 2001 outlined two scenarios relating to quantities of waste to be recovered and disposed of at the facility. The PD that issued allowed the larger quantities of waste to be recovered and disposed of at the facility (Scenario 1). The TC considers that the increase that is now proposed in this objection was not applied for or included in the EIS. These significant increases would require a review of the entire application. The TC notes that the original application (May 98) was for the acceptance of 250,000t/a of construction and demolition waste.*

**Recommendation**

No Change.
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***Ground 3: Condition 1.5.1***

It does not accurately reflect the wording of Article 53(4) of SI No. 336 of 2002. The regulations place a prohibition on the disposal of shredded used tyres, not shredded tyres as in the condition.

**Technical Committee Evaluation**

*The TC considers that tyres that are deemed unsuitable for use after manufacture need to be shredded prior to landfill.*

**Recommendation**

No change

**Ground 4: Condition 1.8.1**

Neiphin Trading Ltd. object to this condition on the grounds that it is vague in meaning, providing powers to the EPA which were not foreseen in the waste legislation and is probably therefore ultra vires and is too general in that it appears to suggest that the EPA could prevent any waste types being accepted at the facility in spite of the fact that unacceptable waste types have already been accepted at the facility. They suggest that this condition be deleted from the waste licence.

**Technical Committee Evaluation**

*The TC notes the comments of the objector. However, the TC considers that as this condition may be activated in the event of specific non-compliances occurring at the facility that there is sufficient reason to retain this condition to ensure that the activities being carried on do not cause environmental pollution.*

**Recommendation**

No Change.

**Ground 5: Condition 2.1.3**

Neiphin Trading Ltd. objects to this condition on the grounds that it cannot be complied with unless the current management of the facility is made redundant and new managers appointed. They suggest that a more appropriate, though still rigorous, time would be “two years from the date of grant of the licence or within two years of the date of appointment”.

**Technical Committee Evaluation**

*The TC notes the comments of the objector. It is essential that appropriate management personnel be appointed at the earliest possible date. The date in this condition is considered reasonable having regard to the type and scale of the operations, currently carried out and proposed to be carried out at the facility. The training course has been available for the past three years.*

**Recommendation**

No Change.

**Ground 6: Condition 2.3.1**

Neiphin Trading Ltd. objects to this condition on the grounds that it refers to having a proposal for an EMS established by 31<sup>st</sup> January 2003. It is possible that the licence will not be granted by that date. Experience has shown that it takes in the order of 18 months to 2 years after a waste licence has been granted to develop a proposal an EMS for the facility.

They suggest that the wording be changed to “Within two years of the grant of the licence, the licensee shall submit.....”

**Technical Committee Evaluation**

*The TC notes the comments of the objector. However, the TC also notes that EMS proposals and EMS systems have been established in a much shorter timescale than the applicant suggests. The TC is aware that the date set in the PD has passed. The TC considers that there may be merits in amending the timeframe for the submission of the EMS to a period of twelve months from the date of grant of this licence.*

**Recommendation**

Amend Condition 2.3.1  
The licensee shall establish and maintain an EMS. **Within twelve months from the date of grant of this licence**, the licensee shall submit to the Agency for its agreement.....

**Ground 7: Condition 3**

Neiphin Trading Ltd. is concerned about the fulfilment by the EPA of its obligations under Section 54(4) of the Waste Management Act 1996. “Section 54(4) specifies that where a planning permission exists, or a planning application exists in relation to development for the purposes of waste recovery or disposal, both are true in the case of the facility at Kerdiffstown, then the EPA shall consult with the appropriate planning authority in relation to any development which is necessary to give effect to any conditions of the waste licence and which is not subject to either an existing planning permission or an existing application for a planning permission. It is our opinion that the waste licence will require development, such as lining the landfill, which is neither subject to the existing planning permissions nor the existing application for planning permissions for the facility at Kerdiffstown”.

“However, there is no reference in the Inspectors Report to any consultations with the planning authorities. We therefore recommend that the planning authority be consulted in relation to those developments which are not provided for in the existing planning permissions and planning applications and which may be necessary to give effect to any conditions suggested by the planning authority be attached to the licence”.

**Technical Committee Evaluation**

*The TC notes the comments of the objector. The TC note that the application was notified to the Planning Authority in accordance with Section 9 of the Waste Licensing Regulations during the application process and that the Agency has been in regular correspondence with Kildare County Council in relation to this facility over the past number of years. Further, the Agency wrote to the Planning Authority on this matter on 19/5/03 and included a copy of the PD and the Inspectors Report.*

*In their reply (dated 5/6/03) the Planning Authority noted that the appeals against the planning permission which were highlighted in the Inspectors Report, had been withdrawn. The Planning Authority have read through Condition 3 (Site Infrastructure) of the PD against the approved drawings and decisions on the three planning applications listed (in the Inspectors Report). They are satisfied that Condition 3 of the PD can be carried out within the context of the existing planning permissions and the exemptions allowed for in Article 7(2) of the Planning Regulations (SI No. 600 of 2001).*

*The TC are satisfied, on the basis of the clarification received from the Planning Authority, that the site infrastructure provided in Condition 3 of the PD should be provided in accordance with the timescale outlined in the Condition.*

## ***Recommendation***

No Change.

### ***Ground 8: Condition 3.1***

The condition appears to suggest that the facility is a greenfield site and that the infrastructure should be developed before the commencement of any waste activities. These activities are authorised by way of waste permits from the local authority. The legal entity of the “existing facility” was introduced to enable certain waste activities, which had their applications for a waste licence, lodged before the relevant prescribed dates, to legally continue to operate until the EPA adjudicated on their applications. The definition of “existing facilities” does not attempt to distinguish between greenfield sites and non-greenfield sites but only in the authorised nature, under waste legislation only of the ongoing activities there. Of course, there is a second legal option (ie, in accordance with regulations made under Section 39(4) of the WMA 1996) available to facilities, which wish to be exempted from the requirements of Section 39(1). This option is to obtain either a waste permit from the local authority or a certification of registration from the appropriate authority. Facilities which are authorised by waste permits or certificates of registration exist in law (even though they do not fall within the definition of an “existing facility”). Such facilities are not greenfield sites and cannot, in law, be treated as such. The retention of such a condition in the licence would render the licence ultra vires.

Secondly, there is an issue of the constitutional rights of individuals to make a living. The waste activities at Kerdiffstown provide employment for up to 150 people, as well as providing the livelihood for the principles of the applicant company. Requiring the waste activities at Kerdiffstown to cease, for an unknown period of time, pending the construction of infrastructure and the agreement of reports and proposals, with the resulting loss of livelihood for a large number of people is unconstitutional and, if retained in the licence, would render the licence ultra vires.

Thirdly, there are no powers granted to the EPA under the waste legislation in Ireland which enable them to effectively close a waste facility where there are ongoing waste activities except, and only by, an application to the High Court. The inclusion of any conditions, which effectively close, or cause to close, the waste facility would render the licence ultra vires.

Fourthly, the expectation, which appears to be enshrined in this condition, that a company can close its doors, make its staff redundant, return any leased plant and equipment, destroy its marketplace reputation, and lose all customer goodwill, and then, several months or years later, open its doors again and recommence business, is definitely not based in commercial reality. Again, the retention of any conditions that would require such actions would seem to be unconstitutional and would render the licence ultra vires.

Fifthly, there is a national waste crisis due to the lack of waste infrastructure. Government policy is geared towards encouraging the provision of the necessary waste infrastructure. Conditions that effectively close facilities while additional infrastructure is being installed and reports agreed, contravening national waste policy.

Sixthly, national and EU policy encourages and requires the recovery of wastes and, as particularly relevant in this case, have established specific targets for the recovery of C&D waste. The inclusion of a condition such as this will effectively close the facility for a duration and may result in the recovery targets, set by the Government, not being achieved contrary to national and EU waste policy.

Seventhly, the existing waste activities are not causing and are not likely to cause environmental pollution. In fact the opposite is true, the excavation, processing, recovery and removal of wastes which have been deposited on the facility over a period extending back decades can only be positive in environmental terms. The inspector's report dated 4 September 2002 address environmental pollution. The objector summarised impacts from the existing waste activities on the various environmental media.

Eighthly, the ongoing waste activities are not breaching any emission standards.

Ninthly, the excavation and recovery of wastes which have been deposited for several decades must be considered to be both BATNEEC and BAT and, in fact, to set new standards in Ireland against which these must be compared in the future.

Tenthly, They refer the Agency to their concerns, expressed above, in relation to the omissions from the Inspectors Report.

Eleventhly, They are concerned with the reference in the Inspectors report to unauthorised disposal. The applicant strongly refutes this suggestion and points out that the Inspectors Report fails to record that Neiphin has defended the proceedings taken by the EPA. Therefore, it would appear that the Inspector has made an impermissible conclusion of fact. They are concerned that this impermissible conclusion has influenced the insertion of this condition.

Therefore, they recommend that this Condition 3.1 be deleted and removed from the waste licence.

### **Technical Committee Evaluation**

*The TC considers that the application by Neiphin Trading Limited relates to an operating but unauthorised integrated waste management facility.*

*The TC considers that the provision of specific infrastructure prior to the commencement of the associated disposal/recovery operations is required to provide for the protection of the environment. The TC does not consider that the intention of the Condition was to shut down the entire operation until the entire infrastructure required in the licence has been provided. For example, it is likely that it will take some time to provide the landfill-lining infrastructure at the facility. Waste arising at the facility could be sent off site for disposal (or recovery) elsewhere. Condition 5.8 of the PD already caters for this situation. In order to provide clarity on this matter it is proposed that the wording in Condition 3.1 be amended to clarify this matter. However, the provision and maintenance of various key facility infrastructure such as weighbridge, wheelwash, inspection/quarantine areas, waste recovery area is essential prior to commencement of any of the waste activities (see also Ground 15: Objection to Condition 5.1).*

*Notwithstanding the objector's intention to excavate and process waste at the facility, the TC has concerns regarding the possibility of environmental pollution (landfill gas) from the previous landfilling operations at the facility and the excavation and processing operations proposed. We note that the PD stipulates the submission of a landfill gas feasibility report and the provision of landfill perimeter boreholes at the facility within a specified timeframe(see also Ground 12 of this report ). The TC is satisfied that the activities licensed, if carried on in accordance with the requirements of the licence, will not cause environmental pollution. Regular environmental monitoring and reporting of the results will be required to be undertaken on a variety of environmental media to ensure compliance with the conditions of the licence.*

*The references to omissions in the Inspectors Report have been dealt with elsewhere. The matter of unauthorised disposal is currently before the courts.*



**Recommendation**

Amend Condition 3.1

The licensee shall establish and maintain all infrastructure referred to in this licence prior to the commencement of the licensed activities or as required by the conditions of this licence, **unless otherwise agreed with the Agency.**

**Ground 9: Condition 3.5.2**

Neiphin Trading Ltd. objects to this condition on the following grounds. Service roads within the facility are used for access to the working areas, including waste excavation, processing and storage. These roads are temporary in nature and their location varies on a regular basis due to the development work ongoing on the facility. It would be a significant waste of resources, materials as well as time, to develop macadam roads for these temporary uses.

They recommend the following wording “Internal access roads of a permanent, or long term usage, used for waste acceptance.....” Temporary service roads may be constructed of 500mm compacted hardcore/gravel”.

**Technical Committee Evaluation**

*The TC considers that permanent access roads and vehicular parking areas should be either hardstand or paved in accordance with the specification listed. Macadam surfacing is not required for service roads. We consider that service roads that are temporary in nature could be constructed of compacted hardcore/gravel. The condition should be amended to provide this clarification.*

**Recommendation**

Amend Condition 3.5.2

Internal access roads used for waste acceptance/removal and vehicle parking areas shall be either hardstanding or paved and shall at minimum consist of the following make-up or an equivalent

- (a) hardstanding areas shall be constructed to the following specification: 150mm concrete slab overlying 200mm mm Clause 804 granular fill; and
- (b) roads shall be constructed of 40mm wearing course of macadam, 60 mm base course of macadam and 200 mm Clause 804 granular fill.

**Temporary** service roads may be constructed of 500mm compacted hardcore/gravel subject to agreement with the Agency.

**Ground 10: Condition 3.13.4 (Formation Levels of Cells)**

Neiphin Trading Ltd. objects to this condition which requires that all waste shall be removed from beneath the formation level (1m above the groundwater table) of the liner to be developed. The requirement is unnecessary, given that some of the original base may have been backfilled by waste from the original quarry or by inert waste, imported into the facility. This condition is contrary to national and EU sustainable development policy, which requires the opposite.

**Technical Committee’s Evaluation**

*The removal of waste particularly if at or under the water table as required by the Proposed Decision may be necessary to prevent environmental pollution of the groundwater. However the Technical Committee considers that if the existing waste is inert there would be less scope for environmental pollution and this would reduce the need for excavation.*

*The applicant has not provided enough information to determine the volume, mass and types of waste deposited<sup>1</sup> at the base of the proposed lined landfill considering that some of the waste or material was emplaced onto a gravel floor and may have been in direct contact with the underlying groundwater. The TC consider it will be necessary to carry out a risk assessment to determine if any environmental pollution is ongoing. The risk assessment should recommend the remediation measures (if) necessary to avert any ongoing pollution arising from the activities and particularly have regard of the groundwater, which we consider to be the main receptor at this site. Agency agreement of the risk assessment and (any) necessary further actions should be conditioned prior to the Agency allowing landfill lining to go ahead.: These aspects are included as Condition 3.13.4 (amended) and new sub-conditions 3.13.5 and 3.13.6.*

### ***Recommendation***

Amend Condition 3.13.4

Formation levels of the cells shall be agreed with the Agency prior to cell development. The formation level of the base of the non-hazardous waste landfill liner (prior to placement of compacted clay or equivalent) shall be at least 1m above the groundwater table level.

Insert a new condition as Condition 3.13.5:

**Prior to the commencement of landfill lining at the facility, the licensee shall carry out investigations for the purposes of assessing the amounts and types of waste previously deposited at the facility, and to determine the impacts the waste is having on the receiving groundwater. This investigation shall be based on a systematic sampling and analysis regime to a defined grid pattern of sufficient density to ensure that the risks posed by waste can be characterised as required by Condition 3.13.6.**

Insert a new condition as Condition 3.13.6:

**A risk assessment to determine the impact the previously deposited waste is having on the receiving groundwater shall be completed, and the actions required shall be agreed with the Agency and implemented prior to the commencement of lining works.**

### **Ground 11: Condition 3.14.1 & 3.14.3 (Leachate Management Infrastructure)**

The applicant objects to these two sub-conditions, which require the submission of a leachate management plan, within three months and the provision of a leachate storage lagoon/tank within six months. Both timelines are considered to be too short.

### ***Technical Committee's Evaluation***

*The Technical Committee considers that these items should be submitted as per the Proposed Decision in order to manage and collect the leachate generated at the facility and to prevent environmental pollution.*

### ***Recommendation***

<sup>1</sup> The Waste Management (Landfill Levy) Regulations 2002 require that the calculation of weight of waste deposited at all unauthorised sites must be calculated by the relevant local authority from 1st June 2002 in order to assess the liability of these sites for the landfill levy.

No change

**Ground 12: Condition 3.15.1 & 3.15.7 (Landfill Gas Management)**

Neiphin Trading Ltd. object to these two sub-conditions which require the submission of a landfill gas utilisation feasibility report and the installation of additional landfill gas monitoring boreholes around the perimeter, both within three months. Both timelines are considered to be too short. An accurate assessment of the utilisation potential of landfill gas cannot be produced until the design of the landfill is finalised and an accurate assessment can be made of the capacity of the landfill. Conditions of the licence may place constraints on the formation level and the ultimate height of the facility and these will obviously have impacts on the capacity of the landfill. Furthermore the timescale of three months is extremely tight for the installation of a considerable number of boreholes. Additionally, the objection considers that any additional boreholes be installed as the lined landfill is developed.

***Technical Committee's Evaluation***

*The Technical Committee notes that this condition deals with landfill gas management and considers that the submission of the landfill gas utilisation assessment within six months rather than three months from the date of grant of the licence is appropriate. The TC note that there is no link between the "potential for gas generation" which is related to the waste previously deposited and the design of the landfill. However, the issue of landfill gas migration off-site needs to be determined as soon as possible and therefore the conditions contained in the PD should remain the same:*

***Recommendation***

Amend Condition 3.15.1 as the following:  
In conjunction with the installation of final capping of a cell/cells or any part of the facility which contains previous landfilled waste, the licensee shall submit to the Agency for its agreement within **six** months of the date of grant of the licence, an assessment of whether the utilisation of landfill gas as an energy resource is feasible. If feasible such a system shall be installed within a timeframe agreed with the Agency. This assessment shall include proposals regarding the utilisation of heat energy from this plant.  
  
Condition 3.15.7:  
No change.

**Ground 13: Condition 4.1 (Restoration and Aftercare Plan)**

Neiphin Trading Ltd. objects to this condition on the grounds that the time allowed for the submission of a detailed Restoration and Aftercare Plan is too short. The production of such a plan will take at least three months after the landfill design is finalised.

***Technical Committee's Evaluation***

The Technical Committee considers that the submission of the Restoration and Aftercare Plan be submitted within six months rather than three months.

***Recommendation***

Amend Condition 4.1 to the following:  
  
Within **six** months of the date of grant of this licence, the licensee shall submit to the Agency for its agreement a detailed Restoration and Aftercare Plan for the facility. The Restoration and Aftercare Plan shall.....

**Ground 14: Condition 4.2 (Final Profile)**

Neiphin Trading Ltd. object to this condition on the grounds that the maximum level specified would not produce a landform that is consistent with the principals of BAT/BATNEEC in regard to promotion of surface water drainage from the surface of a completed landform. The final landform design is not consistent with the recommendations of the Agency’s Landfill Manual on Landfill Restoration and Aftercare, which recommends a minimum gradient of 1:25 for sites such as this, which will experience differential settlement. The objection notes that the surrounding levels rise to 102 mOD Poolbeg and in order to achieve a minimum gradient of 1:25 (given the facility is 200m wide in the northern part of site) the objection recommends a maximum final height of 106mOD Poolbeg.

**Technical Committee’s Evaluation**

*The Technical Committee considers the final profile should mirror that of the spot heights etc. contained in the application and EIS. Both the original application and EIS (EIS dated June 1997 - Volume 1, Section 5.10 ‘Landscape and Visual Impacts’ and Volume II Figure 28 ‘Proposed Final Contours and Future Monitoring’) specify a maximum facility height of 100mOD Poolbeg, which relates to the levels of the surrounding land. These heights cannot be changed unless a new EIS and application are submitted. If necessary, the applicant will be required to regrade or profile the waste to comply with the final contours.*

**Recommendation**

No change
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**Ground 15: Condition 5.1 (Waste Activities & Acceptance)**

The applicant objects to this condition on the grounds that it is *ultra-vires* for a number of reasons (similar to those listed in objection to Condition 3.1). Condition 5.1 appears to assume that the facility is a greenfield site and that the infrastructure should be developed before the commencement of any waste activities.

**Technical Committee’s Evaluation**

*The TC disagrees with the statement that the Condition assumes that the facility is a greenfield site and notes that there is a requirement in the Condition for the submission of reports and provision of infrastructure for both the recovery and disposal activities prior to any waste operations. The TC considers that the recovery and disposal operations envisaged at the facility are not necessarily linked. For example, it will take a period of time to construct an engineered landfill at this facility whereas waste destined for disposal could be sent to an agreed facility (Condition 5.8) until a lined landfill is available.*

*The TC considers that the waste management infrastructure required prior to the commencement of the related waste operations is appropriately conditioned. For example, a report on the handling and processing equipment necessary for waste recovery operations needs to be agreed with the Agency (Condition 3.12) prior to the commencement of any waste recovery operations.*

**Recommendation**

<b>Amend Condition 5.1</b>  Wastes shall not be recovered <b>at the facility</b> or disposed of in any cell or part of the facility without the prior agreement of the Agency.
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**Ground 16: Condition 5.2**

Neiphin Trading Ltd. objects to this condition on the following grounds. The first is that it goes beyond national and EU legal obligations. The waste collection permit regulations (SI No. 402 of 2001) provide a number of exemptions from the requirement to hold a waste collection permit. Condition 5.2 removes these exemptions and would place such collectors and transporters in an impossible position as the condition would require them to have a collection permit but the collections permit regulations would not allow them to receive such permits.

The second is the requirement on the licensee to maintain a copy of those permits on-site is impossible to comply with.

Thirdly, Section 34 of the Waste Management Act 1996 clearly states that the offence of not complying with the requirement to hold a waste collection permit lies with the collector. To create an offence for a third party (i.e. the licensee) if they do not maintain all relevant waste collection permits is probably ultra vires.

Fourthly, the condition is likely to be ultra vires in that it exceeds national and EU legislation and places an onus on the licensee, which was never envisaged in national or EU legislation. Section 38 of the Waste Management Act 1996 creates an offence if the holder of waste transfers that waste to other than an authorised person, in this case an authorised person would be either a person holding a waste collection permit or a person exempted in law from holding such a permit.

They therefore recommend that the condition be deleted and removed in its entirety from the licence.

**Technical Committee’s Evaluation**

*The Technical Committee notes the comments made by the objector. The purpose of this condition is to comply with National and EU legislation and facilitate the necessary tracking of waste movements. However this condition is necessary in order to ensure that the facility is used by authorised waste collectors only. The TC considers that Section 41 of the Waste Management Act, 1996 specifies a variety of conditions that can be attached to a waste licence including the recording of waste movements to and from the facility. The Agency must be satisfied that appropriate measures are in place to ensure that only authorised waste collectors deliver waste to the facility.*

**Recommendation**

No change.
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**Ground 17: Condition 5.4.2**

Neiphin Trading Ltd. objects to this condition on the grounds that the PD clearly envisages the deposit of inert waste, such as soil and stone, at the facility. In the event that such disposal would be carried on, there is little point in compacting inert waste with a steel wheeled compactor.

The objector recommends that the condition be amended as follows “All wastes, other than inert waste, deposited at the working face shall be compacted, using a steel wheeled compactor.....”

**Technical Committee’s Evaluation**

*The Technical committee notes the objector’s comments and considers that inert waste may not need to be compacted using a steel-wheeled compactor in all cases. However, all waste*

that is landfilled will need to be compacted and profiled to ensure that there will be no depression. The licensee could agree an appropriate compactor with the Agency for the compaction of waste at the inert waste landfill.

**Recommendation**

Amend Condition 5.4.2 to read: All waste deposited at the working face shall be compacted, using a steel wheeled compactor or an equivalent agreed with the Agency, .....
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**Ground 18: Condition 5.6.3**

Neiphin Trading Ltd. objects to this condition on the grounds that the primary waste activity on the facility is the excavation, processing and recovery of in situ wastes. The condition is unworkable in this scenario and was probably not intended to cover such a scenario. They suggested that the condition be amended as follows “Waste once disposed of and covered shall not be excavated, disturbed.....”

**Technical Committee’s Evaluation**

The Technical Committee notes the objector’s comments. The inclusion of ‘only with the prior agreement from the Agency’ in the PD allows the objector to excavate waste where necessary but the TC considers that the wording should be slightly amended for clarification purposes.

**Recommendation**

Amend Condition 5.6.3  Wastes once deposited and covered shall not be excavated, disturbed or otherwise picked over without the prior agreement from the Agency.
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**Ground 19: Condition 5.6.12**

Neiphin Trading Ltd. object to this condition on the grounds that it is impracticable, impossible to comply with, and at variance with the waste activities applied for, and proposed to be authorised under the PD. A significant waste activity at the facility is the excavation of in situ wastes, their processing and recovery. The in situ wastes to be excavated do not have an impermeable hardstanding under them. The excavated wastes are then processed by plant that is situated on existing waste. The processed streams are then stored on other existing waste. The existing waste will eventually be excavated over a large area. The main waste activities at the facility are similar to those carried on at a quarry. Additionally, a restriction on the parking of vehicles on an impermeable hardstanding is also impracticable and of no benefit, environmental or otherwise, as such parking areas are likely to be located on areas where there is a considerable thickness up to several metre, of low permeability, often inert, waste underlying them.

They recommended that the condition be amended as follows “Other than on existing areas of waste, the licensee shall only handle or store waste for recovery purposes and park vehicles in areas of the facility where an impermeable hardstanding surface exists”.

**Technical Committee’s evaluation**

The Technical Committee notes the comments made by the objector. The TC considers that a dedicated waste recovery area should be provided as required in Condition 3.18. The make-up of the vehicle parking area (and facility roads) was addressed in Ground 9 above (Objection to Condition 3.5.2). We consider that the following condition i.e. 5.7.1 covers the handling of waste recovery operations on impermeable hardstanding areas and that there is duplication in this condition.

**Recommendation**

Delete Condition 5.6.12.

**Ground 20: Condition 5.7.2**

Neiphin Trading Ltd. objects to this condition on the grounds that it exceeds national and EU legislation and as such, if included in the licence, will probably be ultra vires.

Furthermore the definition of inert waste in this condition contradicts that in national and EU legislation and in the interpretation of the PD. The limits on parameters established in Schedule F do not reflect this definition of inert waste. If we take any one of the parameters listed in Schedule F and consider a situation where the analysis indicated that a parameter was exceeded, even by one unit, then the waste would not qualify as inert. Therefore, it is obvious that the established limits for a number of parameters is not an appropriate manner for defining inert waste and, if included in the licence, may render it ultra vires. The standards used in Schedule F are imported from Austrian standards and have not been assessed for their relevance to Irish soil.

They recommended that the condition be amended as follows “Waste accepted, or generated at the facility shall be considered to be inert waste if it can be demonstrated that the waste will not undergo any significant physical, chemical or biological transformations and that it will not dissolve, burn otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact with in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater”.

In addition they recommended that Schedule F: Criteria for the Acceptance of Inert Waste and any references to that Schedule, be deleted and removed from the licence.

**Technical Committee’s Evaluation**

*The Technical Committee notes the comments made by the objector. The TC is aware that since the issue of the Proposed Decision (11/10/02) that EU legislation establishing criteria and procedures for the acceptance of waste at landfills has been published (2003/33/EC). Consequently, a number of conditions (5.3.1, 5.7.2) and Schedule F should be amended to take on board the requirements of this legislation.*

*The TC notes that the objector has paraphrased the definition of inert waste as outlined in the Interpretation to this licence, which was derived from the Landfill Directive (1999/33/EC). The TC notes that a slightly amended definition has been listed in the Waste Licensing Amendment Regulations (SI 336 of 2002) and proposes that this definition should be inserted in the Interpretation to this licence. The TC determined that there is no need to provide another definition in the Condition as proposed by the objector, as it would already be catered for in the Interpretation.*

**Recommendation**

**Amend Inert Waste Definition in Interpretation Section**

**Waste (i) that does not undergo any significant physical, chemical or biological transformations; (ii) that will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter, or be adversely affected by other matter, including waters, with which it comes into contact in a way that causes or is likely to cause environmental pollution, and (iii) in particular, will not endanger the quality of surface water or groundwater.**

**Replace Condition 5.3.1**

Prior to commencement of waste acceptance at the facility, the licensee shall submit to the Agency and obtain its agreement on written procedures for the acceptance and handling of all wastes, including the excavation, handling and processing of waste excavated from the existing landfill to establish formation levels (if needed) for the lined non-hazardous landfill. These procedures shall include details of the pre-treatment of all waste to be carried out prior to acceptance at the facility and shall also include methods for the characterisation of waste in order to distinguish between inert, non-hazardous and hazardous wastes. The procedures shall have regard to the EU decision (2003/22/EC) on establishing the criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 and Annex II of Directive (1999/31/EC) on the landfill of waste.

**Amend Condition 5.7.2**

The acceptance of inert waste for recovery shall be as specified in *Schedule F: Acceptance of Inert Waste* of this licence

***Schedule F Acceptance of Inert Waste***

***Remove existing Schedule F and replace with:***

***F.1 Acceptable Waste for Recovery***

Only the wastes listed below are acceptable for recovery at the facility, unless otherwise agreed with the Agency.

<b>WASTE</b>	
Topsoil	Solid Road Planings, Solid Tarmacadam, Solid Asphalt
Subsoil	Brickwork
Stone, Rock and Slate	Natural Sand
Clay, Pottery and China	Concrete
Glass	Tiles and Ceramics

***Ground 21: Condition 5.7.4***

Neiphin Trading Ltd. objects to this condition on the grounds that it contravenes national and EU waste policies and sustainable development policies. The object of processing this in situ waste is to recover it. It is unprecedented that a national body, such as the EPA would require that waste be disposed of instead of recovered. We note the comment in the Inspectors Report that “The reason for this is that shredded mixed non-inert waste has been previously disposed of at the facility”. While this may be true for some earlier wastes, in recent years the waste has been stored pending recovery. It should be noted that shredded mixed non-inert waste has been, and is being, recovered at the facility. This does not mean that soil obtained by processing this waste should be required to be disposed of.

They therefore recommend that the condition be amended as follows “Waste soils/fines generated from the recovery process of waste extracted on-site shall be stored separately at the facility and, if not suitable for recovery, shall be landfilled into the lined cells on-site or at another agreed facility”.



**Technical Committee’s evaluation**

The Technical Committee notes the comments made by the objector. Condition 5.7.3 of the PD requires the recovery of waste where feasible. The TC notes that the Inspectors report highlighted the reason for this is that shredded mixed non-inert waste has been previously disposed of at the facility. This included waste from the two Dean Waste Company Limited facilities (Waste Licensed Reg. No. 42-1 and 45-1).

However, we consider that waste soil/fines generated from the recovery process of waste **extracted on-site** may be used in the capping and restoration of the landfill and other infrastructural development subject to it been shown fit for purpose.

**Recommendation**

Amend Condition 5.7.4 as follows: <b>Waste soil/fines generated from the recovery of waste extracted on-site may be used in the capping and restoration system. The licensee shall submit evidence to the Agency that the processed waste material is fit for the purpose that it is intended and this shall include references to any specific reference standards (e.g. BS, CEN, DETR) or guidance produced by the Agency. Following agreement with the Agency, this reprocessed waste material may be used. Waste not suitable for recovery shall be landfilled into the lined cells at the facility or at another agreed facility.</b>
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**Ground 22: Condition 6.6.1**

Neiphin Trading Ltd. objects to this condition on the grounds that Section 52 of the Waste Management Act requires the EPA to obtain the consent of the sanitary authority in which the sewer is vested or controlled, where the licence involves a discharge of a trade effluent. The authorisation by the EPA of such a discharge without obtaining the appropriate consent would result in the waste licence being ultra vires. It is likely that the discharge will be to a sewer vested in or controlled by Kildare County Council. Given the types of waste authorised to be landfilled, the leachate discharged will probably be similar in composition to that discharged by the KTK Landfill (81-2).

They recommended that this condition be deleted and that the EPA obtains the appropriate consent prior to issuing the waste licence. They also recommend that Schedules C.5 and Table D.8.1 be amended subsequent to the consent being obtained from the Sanitary Authority.

**Technical Committee’s evaluation**

The Technical Committee considers that a Section 52 consent would only be necessary where the applicant proposes to discharge directly to a sewer vested in or controlled by Kildare County Council. If the applicant wishes to discharge to sewer then a Section 52 consent would be required. The applicant has not proposed such a discharge but has indicated that they are considering transport of leachate to an off-site treatment plant.

**Recommendation**

No change.
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**Ground 23: Condition 7.4.1**

Neiphin Trading Ltd. objects to this condition on the grounds that it does not distinguish between cells for the disposal of inert waste and cells for the disposal of non-hazardous waste. Obviously, it is unlikely that cells for the disposal of inert waste would require litter fencing.

They recommended that the words “..... prior to the disposal of any non-hazardous waste in any cell.....”.

**Technical Committee's evaluation**

*The Technical Committee note the comments. The TC considers that in some instances, it may not be necessary to install litter fencing around the perimeter of the active tipping area.*

**Recommendation**

Amend Condition 7.4.1 as follows: Litter fencing shall be installed and maintained around the perimeter of the active tipping area prior to the disposal of any waste in any cell <b>unless otherwise agreed with the Agency.</b>
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**Ground 24: Condition 8.9.1**

Neiphin Trading Ltd. objects to this condition on the grounds that the remaining void space will be increasing, rather than diminishing initially. The capacity of the non-hazardous waste landfill can be determined within three months of the date of grant of the licence by engineering modelling.

He recommends that the condition be amended as follows "A topographical survey of the facility shall be carried out on an annual basis. The potential void space of the non-hazardous waste landfill shall be estimated by engineering modelling within three months of the date of grant of this licence."

**Technical Committees' evaluation**

*The Technical Committee considers that it is important that a topographical survey is undertaken immediately after the licence is granted. In light of the large amount of excavation of waste that is proposed to be undertaken and due to the previous activities that have undertaken at the facility, the TC considers that the topographical survey should be undertaken on a regular basis.*

**Recommendation**

No change.
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**Ground 25: Condition 12.1**

Neiphin Trading Ltd. objects to the annual contribution required by the condition on the grounds that it is excessive, that due to the amounts that it may negatively affect proposed waste recovery activities on the facility and that it is unreasonable and discriminatory and may therefore be *ultra vires*. They recommend that a more appropriate sum would be €16,000 per annum; this is in line with the annual charges for the KTK Landfill (81-2).

**Technical Committee's Evaluation**

*The TC considers that due to the nature and extent of this facility and the quantities to be processed that the charges figure quoted is commensurate with the anticipated Agency workload. It is likely that a large number of once-off reports will be required particularly in the early years of operation of this facility. The annual charges specified in the objection above were for an existing landfill that had obtained a review of their licence. Further, the TC is aware that the charge for 2003 is significantly higher than the figure quoted in this objection and that the figure for this facility would be higher if 2003 unit rates were used.*

**Recommendation**

No Change.
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**Ground 26: Schedule C.1**

They objected to this Schedule on the following grounds. There is an inconsistency between the noise monitoring intervals of 30 minutes (Table D.4.1) and the noise emissions limit intervals of 15 minutes.

**Technical Committee's Evaluation**

*The Technical Committee notes the objector's comments and considers that the time periods specified in the Schedules should be clarified.*

**Recommendation**

Amend Table C.1

**C.1 Noise Emissions:** (Measured at the perimeter monitoring points indicated in Table D.1.)

Day dB(A) L <sub>Aeq</sub> (30 minutes)	Night dB(A) L <sub>Aeq</sub> (30 minutes)
55	45

**Ground 27: Schedule D – Table D.1.1**

Neiphin Trading Ltd. objects to the monitoring of landfill gas within the waste mass at an intensity of 1 borehole per ha on the following grounds. The wastes will be excavated and there will be perimeter monitoring locations. We would recommend that the need for monitoring within the waste mass be deleted from the licence.

They objected to the monitoring of leachate composition in the lined landfill at 2 monitoring locations per 5 Ha/cell on the following grounds. Waste cells will be sloped to low points or sumps. The leachate quality can be established by monitoring the leachate pumped from each sump in the lined landfill and at the leachate lagoon/tank. They also objected to the monitoring of leachate in the inert landfill, as there will be no need for doing so if wastes are considered to be inert.

**Technical Committee's evaluation**

*The Technical Committee considers that landfill gas monitoring within the waste mass is necessary so that any biodegradation that is occurring within the waste is monitored. The TC considers that leachate monitoring is necessary both in the lined landfill and in the unlined landfill so that any breakdown of waste that is occurring can be monitored. The TC considers that 2 monitoring points per 5 ha/cell is not excessive. The TC also notes that Condition 8.2 provides for the amendment of monitoring locations, frequencies etc. and that amendment will be considered where necessary after the first year of operation.*

**Recommendation**

No change.

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Brian Donlon  
Technical Committee Chair

Date:  
19<sup>th</sup> June 2003