

<b>MEMO</b>			
<b>TO:</b>	Board of Directors	<b>FROM:</b>	Ted Nealon
<b>CC:</b>		<b>DATE:</b>	18 November 2004
<b>SUBJECT:</b> Technical Committee Report on Objections to Proposed Decision – Reg. No. 111-1			

<b>Application Details</b>	
Applicant:	South East Recycling Co. Ltd.
Location of Activity:	South East Recycling Centre, Carrigbawn, Pembrokestown, Wexford.
Reg. No.:	111-1
Proposed Decision issued on:	30/08/00
Objections received:	19/09/00 and 26/09/00
Circulation of objections:	2/10/00
Inspector:	Mr. Donal Howley

<b>Objections Received</b>	<b>Date Received</b>
<b>Objection by Local Authority:</b> Wexford County Council, County Hall, Wexford.	26/09/00
<b>Objection by Third Parties:</b> Annie & Gerard Browne, Pembrokestown, Whiterock, Wexford.	19/09/00
John Meyler & Declan Curran on behalf of Pembrokestown – Whiterock South Residents Action Group, Pembrokestown, Wexford.	26/09/00
<b>Submissions on Objections:</b> K.T. Cullen & Co. Ltd on behalf of South East Recycling Co. Ltd	31/10/00
John Meyler on behalf of Pembrokestown – Whiterock South Residents Acton Group.	1/11/00

### **Consideration of the Objections.**

The Technical Committee (Ted Nealon, Chairperson, Dave Shannon and Margaret Keegan, committee members) has considered all of the issues raised and this report details the Committee's comments and recommendations following the examination of the objections.

## **Objection No.1: Wexford County Council (26/09/00)**

### ***Ground A1 – Part 1 – Activities Licensed***

*It is Wexford County Council's opinion that the site, by virtue of its location, is unsuitable for the management of putrescible waste which comprises up to 40% of municipal solid waste. This objection is based on the close proximity of the site to residences.*

### ***Technical Committee's evaluation***

The Technical Committee notes that the development of the facility will also require planning permission and considers that operational procedures required by the proposed licence, including the requirement that waste activities be carried out within fully enclosed buildings (Condition 5.5), the storage of waste indoors (Condition 5.10.2) and the turnaround time of municipal waste (Condition 6.1) will ensure that the handling of municipal waste at the facility will not impact adversely on nearby residences. The Technical Committee also notes that Condition 6.8 requires that vermin, birds, flies, mud, dust and odours do not give rise to nuisance at the facility or the immediate environment of the facility.

### ***Recommendation***

<b>No change.</b>
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### ***Ground A2 – Condition 1 - Scope***

*It is noted that Condition 1.2 permits the applicant to modify the licensed area after the licence is issued. This is contrary to the Agency's own advice in its application form.*

*"A site plan must be provided. It should be noted that the site plan will legally define the area to which the waste licence will relate. Waste disposal operations by the applicant outside the area of the licence will be an offence under Section 39 of the Waste Management Act, 1996. Accordingly it is vital that the boundary of the activity is clearly marked and identified."*

*It is noted that Condition 1.4 notifies the applicant of his obligations under other enactment's and regulations. Wexford County Council advises the Environmental Protection Agency of three prosecutions, taken by Wexford County Council, under E.C. (Waste Regulations) 1979 and an Enforcement Notice, served under the Planning and Development Act, 1963, in August, 2000, in respect of this site.*

### ***Technical Committee's evaluation***

The Technical Committee agrees that if the licence is granted the applicant should not be allowed to alter the licensed area. The Technical Committee notes the comments in the final paragraph. The TC notes that the existing office is outside the boundary of the facility and therefore recommends that Condition 4.5 be amended to require that an office be provided within the facility.

### ***Recommendation***

Amend Condition 1.2 to read as follows:
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**Waste activities shall be restricted to the area of land outlined in red on Figure B.2.2 “Site Plan” of the application. Any reference in this licence to “facility” shall mean the area thus outlined in red.**

Amend Condition 4.5 to read as follows:

**Within six months of the date of grant of this licence the licensee shall provide and maintain an office on the facility. The office shall be constructed and maintained in a manner suitable for the processing and storing of documentation. In the interim, the office facilities adjoining the Existing House shall be used until such time as the site office is provided.**

### ***Ground A3 – Condition 2 – Management of the Activity***

*Condition 2 has ten sub-sections which are intended to establish a formal environmental management system on the site. It is noted that the schedule for introduction of the various systems is permissive, particularly when compared with similar licences for similar activities, e.g. Application Register 53-1 (Noble Waste).*

#### ***Technical Committee’s evaluation***

The Technical Committee considers that the timetables are appropriate, especially as many of the licensed activities have not yet commenced. The Technical Committee notes that the timeframes are similar to those specified in a number of licences for similar facilities eg Licence Register Numbers 42-1 (Dean Waste, Sheriff St.) and 97-1 (Swalcliffe Ltd.)

#### ***Recommendation***

**No change.**

### ***Ground A4 – Condition 3 – Notification and Record Keeping***

*This condition requires the applicant to establish the various recording and notification procedures. It also requires the applicant to maintain, at the site office, specific documents. However, the permission does not clearly indicate that the public will have access to these records at the site office.*

#### ***Technical Committee’s evaluation***

The Technical Committee notes that Condition 2.7 requires a Communications Programme to be submitted for agreement to the Agency and that the licensee must under the licence ensure that members of the public can obtain information concerning the environmental performance of the facility at reasonable times.

#### ***Recommendation***

**No change.**

### ***Ground A5 – Condition 4 – Site Infrastructure***

*1. As with Condition 2 there is a list of infrastructural improvements prescribed in this condition. Again, bearing in mind that this is an established activity, the schedule for establishment of this improved infrastructure is overly permissive. For example, the applicant is given eighteen months to install a wastewater treatment system and six months to collect foul water at the existing waste transfer facility. In its role as Sanitary Authority for*

*the County, if this was a housing development, Wexford County Council would require more stringent conditions.*

2. *It is noted that it is prescribed that foul water be directed to a holding tank. Wexford County Council questions whether this is contrary to the proposed licence, which makes no mention of surface impoundment as listed in the third schedule.*

3. *With respect to specified engineering works, both the Agency and the applicant are advised that nothing can be built on, under or over any of the applicant's land without reference to the Planning Act. Wexford County Council, as the statutory planning authority, has previously refused planning permission for infrastructural work similar to that prescribed in Condition 4.10.2.*

***Technical Committee's evaluation***

1. The Technical Committee considers that the timetable for installation of the wastewater treatment system and the collection of foul water is appropriate given that not all the infrastructure is in place at present and not all the waste activities have commenced.
2. The Technical Committee considers it appropriate that the licence control the collection and storage of foul water. Moreover the storage of foul water in a holding tank, if it were a waste activity, would be covered under the definition "the temporary storage of waste, pending collection for disposal, on the premises where the waste was produced" which is exempt from the Third Schedule.
3. The Technical Committee notes the comments in relation to the Planning Act and also notes Condition 1.4 which states that the licence is for the purposes of waste licensing under the Waste Management Act 1996 only and does not exempt the holder from any other statutory obligations or requirements under any other enactments or regulations.
4. The exemption provisions of Section 54(4) of the Act have not been activated by the Agency.

***Recommendation***

<b>No change.</b>
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***Ground A6 – Condition 5 – Waste Acceptance and Handling***

*Condition 5.2 permits the acceptance and processing of household waste, which in the opinion of Wexford County Council, is inappropriate considering its proximity to residences.*

***Technical Committee's evaluation***

Refer to Ground A1.

***Recommendation***

<b>No change.</b>
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***Ground A7 – Condition 6.1***

*Condition 6.1 permits waste for disposal, which would contain a significant proportion of putrescible waste, to be stored on site for three days. This is regarded by the objector as*

*being inappropriate and permissive particularly with respect to the proximity to residences and the storage time allowed.*

***Technical Committee's evaluation***

Refer to Ground A1 and in particular the reference to nuisance control. The Technical Committee considers that a 48 hour turnaround time is sufficient for municipal waste received at the facility at all times other than Bank Holiday weekends but that a 72 hour turnaround time should be permitted at Bank Holiday weekends to allow for the likely closure over the Bank Holiday period, of the disposal facility to which the waste is to be transported.

***Recommendation***

Amend Condition 6.1 to read as follows:

**At all times other than Bank Holiday weekends all municipal waste for disposal shall be removed from the facility within forty eight hours of its arrival on site. At Bank Holiday weekends such waste shall be removed from the facility within seventy-two hours of its arrival on site. No other waste for disposal or waste for recovery shall be stored at the facility for longer than six months.**

***Ground A8 – Condition 6.2***

*Condition 6.2 requires the applicant to inspect the facility at weekly intervals for nuisance. It is considered by Wexford County Council that, because of its proximity to residences, this should be a daily exercise.*

***Technical Committee's evaluation***

Condition 6.2 requires, at a minimum, weekly inspections for nuisances caused by vermin, birds, flies, mud, dust and odours but the Technical Committee notes that Condition 9.9 allows the Agency to increase the monitoring of the facility in the event that such increase appears necessary.

***Recommendation***

**No change.**

***Ground A9 – Condition 6.9***

*Condition 6.9 permits the applicant to establish vermin control measures within three months. It is Wexford County Council's contention that this should be an immediate action item.*

***Technical Committee's evaluation***

The Technical Committee notes that Condition 6.9 requires a review of existing vermin control practices within three months of the date of grant of a licence but Condition 6.8 requires the control of nuisance from vermin with immediate effect.

***Recommendation***

**No change.**

## **Objection No.2: Annie & Gerard Browne (19/09/00)**

### **Ground B1**

*It is proposed to double waste acceptance from a total of 13,500 tonnes per annum to 27,000 tonnes per annum. We believe what this will entail is an obvious increase in traffic, not to mention the corresponding increase in noise, dust etc.*

*Also, may we draw your attention to sections of conditions six and nine, i.e. dust and vermin control and the monitoring of same. This would seem to indicate to us that there will continue to be a problem with both of these issues.*

### **Technical Committee's evaluation**

The Technical Committee considers that nuisance from noise and dust are controlled by Conditions 6 and 7 and notes that traffic is a planning matter and outside the scope of this waste licence. The Technical Committee notes that the reason that dust and vermin are controlled and monitored under the licence is to ensure that they do not give rise to nuisance.

### **Recommendation**

<b>No change.</b>
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### **Ground B2**

*In condition four – site infrastructure, site security and landscaping proposals, we would draw your attention to a decision by Wexford County Council dated 23<sup>rd</sup> February 1996 on an application on behalf of Des Mernagh dated 04<sup>th</sup> January 1996 – Plan Register No. 960012. The proposed development was the erection of screen boundary ditches to boundaries of recycling plant at Pembrokestown, Co. Wexford. The application was refused for the following reasons:-*

- a) The proposal to erect screen boundary ditches to the development on this site which includes extensive unauthorised uses (refuse and plant hire business, storage and sorting of various waste materials and use of external yard areas for recycling processes, not permitted in the permissions relating to the recycling shed – 89/1089, 90/1383, 94/349) would tend to encourage the continuation of such unauthorised uses and would therefore be contrary to the proper planning and development of the area.*
- b) The proposed development and the layout plans submitted with the application indicates a continuation of the existing unauthorised uses of site, which by reason of factors relating to storage of organic waste, external working practices and plant movement, give rise to serious nuisance including foul smells, pest nuisance, noise levels and run offs which are seriously injurious to the amenity of the area. The proposed development would therefore be contrary to the proper planning and development of the area.*
- c) The maps and plans which were submitted relating to the application of the 26<sup>th</sup> January 1996, show serious discrepancies in proposed site boundaries and include an extended site area, the purpose of which is not stated. The proposed development would therefore, be contrary to the proper planning and development of the area.*

***Technical Committee's evaluation***

The Technical Committee notes that these issues refer to the planning and development of the area. These are considered planning issues and as such are outside the scope of this waste licence, however the Technical Committee notes that Condition 1.4 states that the licence is for the purposes of waste licensing under the Waste Management Act 1996 only and does not exempt the holder from any other statutory obligations or requirements under any other enactments or regulations.

Nuisance from foul smells, pests and noise are controlled by Conditions 6 and 7. The control of run off and the protection of groundwater are outlined in the evaluation of Ground E5.

***Recommendation***

**No change.**

***Ground B3***

*While the conditions laid down in the proposed decision to police the recycling/waste operation would seem on the face of it very stringent, the enforcement of these conditions would seem another matter judging by the flagrant breaches in the past which we have set out in past correspondence.*

***Technical Committee's evaluation***

The facility has not held a waste licence to date and the Technical Committee considers that if a waste licence is granted the Agency will enforce compliance with the licence.

***Recommendation***

**No change.**

***Ground B4***

*You will no doubt be aware of the residential nature of the area where South-East Recycling is located. With further housing development underway, the only reason that we can see for the proposed granting of a waste licence to South-East Recycling Co. Ltd. is the fact it is already operating on the present site where in our opinion it would be more suited to an industrial area.*

***Technical Committee's evaluation***

The Technical Committee notes that this is a planning issue and as such is outside the scope of this waste licence. It also notes that the rapid residential development of the area indicates that the presence of the facility has not prevented such such development.

***Recommendation***

**No change.**

**Objection No.3: John Meyler and Declan Curran on behalf of Pembrokestown –  
Whiterock South Residents Action Group – (26/09/00)**

**Ground C1**

*It is not reasonable for us to consider that Mr. Mernagh, given the many breaches of planning laws and the prosecutions brought by Wexford County Council against him for waste offences, has proven himself to be a suitable person to grant such a licence to.*

**Technical Committee's evaluation**

A prosecution under the Waste Management Act 1996 may render a person as not being a fit and proper person to hold a waste licence but the Technical Committee notes that no such prosecutions against the applicant are listed and Mr. Mernagh satisfies the criteria for a fit and proper person, as set out in the legislation. The Technical Committee considers that the Agency will enforce the waste licence, if issued, and that any non-compliances will be addressed.

**Recommendation**

**No change.**

**Ground C2**

*This is a residential area and is developing at a rapid rate.*

**Technical Committee's evaluation**

Refer to Ground B4, this is a matter for the planning authority.

**Recommendation**

**No change.**

**Ground C3**

*Is it not your duty to give us the required protection and insist that this operation be relocated to an industrial area as proposed in section 7-5.6 of the County Wexford Draft Development Plan 2000?*

**Technical Committee's evaluation**

The Technical Committee notes that this is a planning issue and as such is outside the scope of this licence.

**Recommendation**

**No change.**

**Ground C4**

*It appears to us that you are very lenient in the conditions imposed and that they are very flexible, i.e. the area of this site is not defined and our experience is that Mr. Mernagh will extend the site and extend the rules to suit his operation as he decides to do so.*



**Technical Committee's evaluation**

Refer to Ground A2 above.

**Recommendation**

<b>Refer to proposed changes to Condition 1.2 and Condition 4.5 recommended following consideration of Ground A2.</b>
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**Submissions on Objections**

**Submission No. 1: KT Cullen & Co. Ltd on behalf of South East Recycling Co. Ltd – 31/10/00**

**Ground D1**

*The submitter disagrees with the contention that the proposed conditions are permissive or lenient. The timeframes imposed for compliance, particularly with infra-structural improvements, will create a serious financial burden for a company such as South East Recycling. The conditions attached to the proposed decision are no more permissive than any other licence conditions for similar facilities and are considered by this office to be very onerous.*

**Technical Committee's evaluation**

The Technical Committee would agree that the licence conditions are similar to those of other similar facilities.

**Recommendation**

<b>No change.</b>
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**Submission No. 2: Pembrokestown – Whiterock South Residents Action Group – 01/11/00**

**Ground E1**

*In relation to the objection made by Wexford County Council we would support every point made by them and we would have liked them to have gone further but you can get some idea of the problems that they have had in dealing with Mr. Mernagh at this site. They have refused him planning permission on a number of occasions for many breaches of conditions and planning regulations and they have always considered this site as unsuitable for the type of operation carried out by Mr. Mernagh. It has been mentioned to us by Ms. Breda Sheehan that if the EPA grants Mr. Mernagh the licence, which he has applied for that, he would still have to get planning permission from Wexford County Council. We look to you the EPA to protect the environment at Pembrokestown and to ensure that no licence is issued for unsuitable site.*

**Technical Committee's evaluation**

Planning permission issues are outside the scope of this waste licence but the Technical Committee notes that Condition 1.4 states that the licence is for the purposes of waste licensing under the Waste Management Act 1996 and does not exempt the holder from any

other statutory obligations or requirements under any other enactments or regulations. The provisions of Section 40 (4) of the Waste Management Act have been satisfied.

**Recommendation**

**No change.**

**Ground E2**

*Wexford County Council in its Draft County Development Plan June 2000 section 7.5 Waste Management clearly states that they will “Consider permitting the location of Scrapyards, Vehicle Dismantlers, Materials Recovery Facilities, Transfer and Storage Facilities on Industrial Lands, provided that they do not have an adverse impact on surrounding land uses and do not prejudice the proper planning and sustainable development of the area”. Please note that Pembrokestown is a fast growing and desirable residential area.*

**Technical Committee’s evaluation**

Refer to the evaluation of Ground B4.

**Recommendation**

**No change.**

**Ground E3**

*As stated in the objection by Annie and Ger Browne there have been, and will be, many nuisances associated with this operation.*

*To date there has been a marked increase in traffic on the 2 roads leading to Mr. Mernagh’s operation at Pembrokestown, particularly in heavy trucks. With the proposed increases in tonnage this would impose an even greater traffic problem together with the associated problems of noise, dust and litter which can be regularly seen falling from Mr. Mernagh’s trucks and littering our roadsides. These are busy narrow roads unsuitable to the type of heavy trucks used in this operation.*

**Technical Committee’s evaluation**

Traffic is a planning issue and is outside the scope of this waste licence. The Technical Committee considers that nuisances on-site and within the immediate environs will be satisfactorily controlled by conditions 6.2 (nuisance inspections), 6.3 (road network in the vicinity of the facility to be kept free of debris from vehicles using the facility), 6.4 (daily removal of loose litter), 6.6 (appropriate cover of vehicles transporting waste), 6.7 (dust control measures), 6.8 (requirement to ensure that vermin, birds, flies, mud, dust and odours do not give rise to nuisance) and 7.1 (emission limit values for dust deposition and noise).

**Recommendation**

**No change.**

**Ground E4**

*Residents in this locality have suffered continually from the very high level of noise from Mr. Mernagh's site. The crashing of bottles onto concrete, the unloading of skips and the crashing of heavy metal to heavy metal, heavy metal to concrete and the loud noises associated with heavy machinery etc. are daily nuisances and are unacceptable in this fast growing residential area.*

**Technical Committee's evaluation**

Noise emission limit values are set out in Schedule F, and Condition 7.1 specifies that these emission limit values shall not be exceeded. The Technical Committee considers that this requirement, together with the requirement of Condition 7.3 that activities be carried out such that emissions do not significantly impair or interfere with the environment beyond the facility boundary, will ensure that noise from the facility shall not cause nuisance.

**Recommendation**

<b>No change.</b>
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**Ground E5**

*Residents have suffered continual nuisance with obnoxious smells, rats and bluebottles for years and have on many occasions reported same to Wexford County Council. Many of the residents in this area have their own wells and have serious cause to be concerned about the water supply.*

**Technical Committee's evaluation**

The Technical Committee notes that potential nuisance from odours, vermin and flies are controlled by Condition 6.8 which requires that vermin, birds, flies, mud, dust and odours do not give rise to nuisance, and Condition 6.2 which requires weekly inspections for same. Protection of groundwater is afforded by the surfacing of all waste handling and processing areas with concrete (Condition 4.4.2), the direction of all drainage from the concrete hardstanding through a full retention Class I oil interceptor (Condition 4.12.2), the collection of foul water and the tankering of such foul water to a wastewater treatment plant (Conditions 4.12.3 and 7.6), the provision of a wastewater treatment system (Condition 4.12.1) and the bunding of fuel tanks (Condition 4.11.2). The Technical Committee considers that these measures, together with the monitoring of surface water and groundwater as set out in Condition 9 and Schedule E, will provide protection of water supplies in the vicinity of the facility.

**Recommendation**

<b>No change.</b>
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**Ground E6**

*Wexford County Council on 3 occasions over the years successfully prosecuted Mr. Mernagh for illegally storing domestic refuse on this site. Mr. Mernagh gave undertakings to the court that he would not commit this offence again, but he did re-offend. He also gave commitments that he would relocate to a suitable site. He did not. As late as August 2000 notwithstanding that he had an application in with your agency, Wexford County Council had to serve an enforcement order on Mr. Mernagh under the 1963 Planning and Development Act.*

*It is unthinkable that the EPA could ever consider Mr. Mernagh as a candidate for self-regulation under any circumstances.*

***Technical Committee's evaluation***

The Technical Committee notes that self-regulation is an important part of the waste licensing system however the Agency also enforces all licences by regular inspections, annual audits and independent monitoring and when necessary taken appropriate enforcement action.

***Recommendation***

**No change.**

Signed:

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Ted Nealon  
Technical Committee Chairperson