

MEMO			
TO:	Board of Directors	FROM:	Breege Rooney
CC:		DATE:	26 September 2002
SUBJECT: Yellow Bins (Waste Disposal) Limited - Technical Committee Report on Objections to Proposed Decision – Reg. No. 114-1			

Application Details	
Applicant:	Yellow Bins (Waste Disposal) Ltd.
Location of Activity:	Donore, Carragh, Co. Kildare.
Reg. No.:	114-1
Proposed Decision issued on:	13/05/02
Inspector:	Donal Howley

Objections Received	Date Received
1. Environment & Resource Management Ltd on behalf of the applicant	10/06/02
2. Thomas O'Connell	05/06/02
3. Bernadette Crean	06/06/02
4. Edwina Murphy on behalf of Donore Residents Association	06/06/02

Submissions on Objection	Date Received
1. Environment & Resource Management on behalf of the applicant.	01/08/02
2. Thomas O'Connell	02/08/02

Consideration of the Objections.

The Technical Committee (Breege Rooney, Chairperson, Malcolm Doak and Olivia Cunningham, 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 and submissions on this waste transfer station.

OBJECTION No 1:
Environment & Resource Management Ltd. on behalf of the applicant (10/06/02)

GROUND 1

General

Environment & Resource Management Limited have been instructed by Yellow Bins (Waste Disposal) Limited, Donore, Caragh, Co.Kildare, to lodge objections to aspects of the Proposed Decision.

The waste licence application was made on 30/09/99 for the acceptance of less than 25,000 tonnes of waste per annum. The prescribed date for making a waste licence application for such a facility was 01/10/99. The facility was refused planning permission for a waste transfer/recovery building by An Bord Pleanála on 15 May 2002¹.

The objection is split into two parts: Part I deals with conditions that instruct the applicant to fulfil conditions prior to receiving wastes at the facility. Part II deals with objections to specific conditions.

Part I: Conditions to be fulfilled prior to the commencement of site operations.

The applicant has objected to a number of licence conditions that must be fulfilled prior to the commencement of waste activities at the facility. They include:

Condition	Description
<i>Condition 2.2.1</i>	<i>Management Structure</i>
<i>Condition 2.4.1</i>	<i>Communication Programme</i>
<i>Condition 3.1</i>	<i>Facility Infrastructure</i>
<i>Condition 3.10.1</i>	<i>Construction of Waste Transfer Building</i>
<i>Condition 3.16.1</i>	<i>Layout Drawings</i>
<i>Condition 4.2.1</i>	<i>Landscaping</i>
<i>Condition 5.2.1</i>	<i>Waste Characterisation</i>
<i>Condition 9.2</i>	<i>Emergency Response Procedure</i>
<i>Condition 11.4.1</i>	<i>Monitoring Locations</i>
<i>Condition 12.2.2</i>	<i>Financial Provision</i>

The applicant is objecting to the time limits imposed in the conditions rather than to the works required by the conditions. The applicant's greatest concern is Condition 3.1 that requires that the infrastructure is in place before the waste activity commences. It is argued that this condition could take up to 12 months to fulfil upon grant of licence. It is noted that the applicant would have to cease operations in order to comply with the proposed decision yet it applied before the prescribed date. The applicant states that this facility is an existing facility under Irish law and the business has operated at these premises for nearly 20 years. The applicant views this condition as the equivalent of an injunction.

¹ The facility was refused planning permission for a waste transfer/recovery building by An Bord Pleanála on 15 May 2002 for two reasons: (i) Major intensification of use would seriously injure the amenities of the area; (ii) Increased volumes of heavy truck traffic would endanger public safety on a narrow substandard regional road.

It is the applicant's opinion that the facility has and can operate, in the absence of the waste recycling and transfer building, without causing environmental pollution by creating a nuisance through noise etc. or a risk to waters, the atmosphere, land etc. The existing facilities will be used for only a short time whilst the proposed building is constructed.

The applicant requests the following timeframes to address these licence conditions:

Condition	Description	Suggested time-frame from grant of licence
<i>Condition 2.2.1</i>	<i>Management Structure</i>	<i>3 months</i>
<i>Condition 2.4.1</i>	<i>Communication Programme</i>	<i>3 months</i>
<i>Condition 3.1</i>	<i>Facility Infrastructure</i>	<i>12 months</i>
<i>Condition 3.10.1</i>	<i>Construction of Waste Transfer Building</i>	<i>12 months</i>
<i>Condition 3.16.1</i>	<i>Layout Drawings</i>	<i>12 months</i>
<i>Condition 4.2.1</i>	<i>Landscaping</i>	<i>3 months</i>
<i>Condition 5.2.1</i>	<i>Waste Characterisation</i>	<i>3 months</i>
<i>Condition 9.2</i>	<i>Emergency Response Procedure</i>	<i>3 months</i>
<i>Condition 11.4.1</i>	<i>Monitoring Locations</i>	<i>3 months</i>
<i>Condition 12.2.2</i>	<i>Financial Provision</i>	<i>3 months</i>

Technical Committee's Evaluation

Currently the applicant handles approximately 40,000 tonnes per annum of municipal, commercial (including food waste), industrial and construction and demolition waste in an outdoor area. The nearest residents are located approximately 300m from the facility. The original application was for under 25,000T in September 1999 but an Article 16(1) reply (dated 17/08/01) specifies that the applicant proposes to accept 60,000 tonnes of waste per annum. The Inspector's Report lists the following environmental nuisances or pollution occurring at the facility:

- (i) Noise monitoring results (February 2001) were in excess of 55 dB(A) during the day-time and in excess of 45 dB(A) at night-time at the boundary and at noise sensitive locations. The main noise impacts were attributed to mobile plant and traffic on site in addition to road traffic.
- (ii) Odour nuisance was identified as a significant problem arising from the long-term storage of organic waste outdoors at the facility, particularly during the year 2000.
- (iii) The facility has been poorly managed, leading to an environmental nuisance to nearby residents, e.g. storing large quantities of waste for long periods of time outdoors, storing waste in areas without any hardstanding or drainage controls, allowing waste to be stored outside the site boundary.
- (iv) Analysis of groundwater below the site, showed levels of lead (0.47 mg/l) and total petroleum hydrocarbons (72 µg/l), exceeded the MAC and drinking water standards (0.05 mg/l and 10µg/l respectively). Soil sample analysis from three trial boreholes indicated hydrocarbon contamination, at levels above the target value but below the intervention values in relation to Dutch guidelines.

The applicant has not produced new evidence or results to show that there has been an improvement at the site in relation to the above matters. The Proposed Decision prohibits the

acceptance of waste at the facility prior to the provision of an enclosed building due to the reasons above. The technical committee agrees with the Inspector's conclusion that the provision of an enclosed building for on-site waste activities is necessary so as to prevent environmental pollution.

The Technical Committee has assessed each of the ten objections on timeframes as per the tables listed above:

Condition 2.2.1 Management Structure

The time frame stipulated in the Proposed Decision i.e. “prior to the commencement of waste activities” should be retained. The facility has been poorly management in the past leading to environmental nuisances, so it is essential that the management is in place prior to the commencement of waste activities at the site.

Condition 2.4.1 Communications Programme

The Proposed Decision requires that the communications programme be established prior to the commencement of waste activities. The applicant has stated that waste activities will not be recommenced for 12 months at the site if they have to put in all the required infrastructure. The applicant has requested a revised timeframe of 3 months from the date of grant of licence. While the Technical Committee would welcome the shorter timeframe it is of the opinion that the timeframe stipulated in the Proposed Decision is fair.

Condition 3.1 Facility Infrastructure

This has been discussed above. The Technical Committee is of the opinion that the infrastructure should be provided prior to the commencement of waste activities at the site.

Condition 3.10.1 Construction of the Waste Transfer Building

The Technical Committee is of the opinion that the waste transfer building should be constructed prior to the commencement of waste activities for the reasons discussed above.

Condition 3.16.1 Layout Drawing of the Infrastructure

This drawing will have to be drawn up prior to the construction of the infrastructure. As the Technical Committee is of the opinion that facility infrastructure should be provided prior to the commencement of waste activities, therefore this drawing should also be provided prior to the commencement of waste activities at the site.

Condition 4.2.1 Landscaping

This condition requires that a landscape programme is agreed prior to the commencement of waste activities at the facility. It requires such details as time-frame for landscaping, species and age etc. The Technical Committee is of the opinion that to provide these details prior to the commencement of waste activities at the facility is not too onerous a task.

Condition 5.2.1 Waste Acceptance and Handling Procedures

The Technical Committee is of the opinion that these should be submitted to the Agency and developed prior to the commencement of waste activities at the site as they may affect the construction of the waste transfer building.

Conditions 9.2, 11.4.1, and 12.2.2 (Emergency Response Procedure, Monitoring Locations, and Financial Provision).

The Technical Committee welcomes the applicant's proposal to furnish these details three months from the date of grant of licence. However, it is considered satisfactory that the details be submitted prior to the commencement of waste activities at the facility.

Technical Committee's Evaluation

Recommendation

No Change

Part II: Objections to specific conditions

GROUND 2

Condition 1.6 (Waste acceptance and hours of operation) (Conditions 1.6.1, 1.6.2 &1.6.4)

The applicant considers the proposed time for waste acceptance to be too narrow; it would mean that lorries arriving after 5.30 p.m. would have to wait until 8.30 a.m. the following morning to tip wastes, which would represent a significant delay and impede the flow of operations. It is requested that facility hours of operation be extended to 8.00 a.m. – 7.00 p.m. and the hours of waste acceptance be extended to 8.00 a.m. – 6.00 p.m.

It is also argued that there may be instances when the applicant is called upon to collect wastes from an industrial client in an emergency situation and from facilities that operate 7 days per week, 24 hours per day. The applicant proposes to add a condition to allow for the situation outlined above.

Proposed condition 1.6.4

“Wastes shall not be accepted at the facility beyond the times noted in Conditions 1.6.1 to 1.6.3 except in exceptional circumstances. The licensee shall notify the Agency of same the next working day.”

Technical Committee's Evaluation

Condition 1.6 Waste Acceptance and Hours of Operation

The application stated that the hours of operation (Art 16(1) 27/02/01) are 6am – 8pm Mon – Fri and 8am – 5pm Sat. The Proposed Decision (due to the potential of noise nuisance) specifies the hours for waste acceptance for Monday to Saturday inclusive as 8.30am to 5.30pm and the hours of operation as 8.00am to 6.00pm. In view of the noise nuisance discussed in Ground 1 and in the Inspector's Report it is recommended that the hours as specified in the Proposed Decision should be retained.

Recommendation

No Change

Condition 1.6.3

The applicant will know in advance of special local events if it has been requested to collect waste. This condition allows the applicant to request permission from the Agency to collect waste on Sundays and on Bank Holidays. The Technical Committee are of the opinion that waste collection and delivery to this facility on a Sunday and on a Bank Holiday should be the exception rather than common practise. Hence, the Technical Committee do not recommend amending this condition.

Recommendation

No Change

Proposed Condition 1.6.4

The Proposed Decision allows the facility to operate 6 days a week. The applicant can apply to the Agency if they need to take waste in an emergency situation (Condition 1.6.3). Hence, the Technical Committee are of the opinion that the applicant's proposed condition 1.6.4 is not necessary.

Recommendation

No Change

GROUND 3

Condition 3.1

Condition 3.1 states:

“The activity shall not commence until the infrastructure required under this licence is in place. Waste shall not be accepted at this facility without the written agreement of the Agency”

The applicant understands “infrastructure” to mean:

	<i>Suggested time frame from grant of licence</i>
<i>Facility office</i>	<i>3 months</i>
<i>Waste Inspection and Quarantine Areas</i>	<i>3 months</i>
<i>Weighbridge</i>	<i>3 months</i>
<i>Wheel Cleaning System</i>	<i>See comments on this Condition</i>
<i>Waste Transfer/Recovery Building</i>	<i>12 months</i>
<i>Waste Handling, Ventilation Drainage Systems and Processing Plant</i>	<i>12 months</i>
<i>Waste Treatment System</i>	<i>12 months</i>
<i>Tank, Drum and Fuel Storage Area</i>	<i>6 months</i>
<i>Monitoring Infrastructure</i>	<i>3 months</i>
<i>Facility Notice Board</i>	<i>3 months</i>

The applicant requests that the condition be amended to give the applicant a period of time to complete the infrastructural changes, whilst operating the transfer station. The requested period of time is 12 months for the completion of all required additional infrastructure from the date of grant of the licence. The suggested time frames for infrastructure are described in the above table.

Technical Committee's Evaluation

The infrastructure required by the Proposed Decision is detailed in Condition 3 of the licence. As discussed in Ground 1, the Technical Committee agree with the Inspector's conclusion that an enclosed building for on site waste activities is required so as to prevent environmental pollution taking place. In addition, all the infrastructure, as detailed in Condition 3 of the Proposed Decision, associated with the waste operations are essential to ensure environmental pollution does not take place. The applicant agrees that modernisation of the facility is required. However, Yellow Bins (Waste Disposal) Ltd. have not shown that environmental nuisance and pollution will not take place prior to the provision of this infrastructure. Hence, the Technical Committee do not recommend amending this condition.

Recommendation

No Change

GROUND 4
Condition 3.9.1

Condition 3.9.1 states:

“The licensee shall maintain a system for wheel cleaning facility at the facility”

The applicant proposes that this condition be deleted in its entirety. The applicant states that this operation will take place on a concrete hardstand or under a roof and therefore a wheel cleaning facility is not required. The applicant notes that a wheel-cleaning facility is not a feature of other similar and larger licensed waste transfer facilities.

Technical Committee’s Evaluation

Licence Reg No’s 34-2 IPODEC Ireland Ltd. (tonnage limit per annum 150,000), 44-1 Padraig Thornton Waste Disposal Ltd. (tonnage limit per annum 150,000) and 3-2 Ballymount Bailing Station (tonnage limit per annum 350,000) all require provision of a vehicle cleaning system. The requirement for a wheel cleaning facility is not as onerous and is appropriate for a facility allowed to accept 60,000 tonnes per annum. It should be clarified that a wheel-cleaning facility is required so as to wash down wheels after it has travelled over waste so as to avoid carrying it outside the site boundary. Hence, the Technical Committee are of the opinion that such infrastructure is necessary regardless of whether the whole site is on a concrete hard stand.

Recommendation

No Change

GROUND 5
Condition 3.11.2 (Quantity of Waste to be accepted at the facility)

The applicant notes that the amount of incoming wastes at the waste transfer facility can vary greatly from day to day. It is likely that there will be days that incoming wastes will exceed the duty capacity of on-site plant. The applicant suggests that these wastes can be processed, as required, in the following days when less wastes may be received and that an exceedance of duty capacity should be noted but not treated as an incident.

Technical Committee’s Evaluation

It is not good environmental practice or management to accept more waste than a facility can process on a daily basis. If too much waste is accepted and it is not processed the same day then it would have to be stored overnight. If it is not processed then it may have to be left on the floor of the waste transfer building. This can lead to nuisances of odour, flies and vermin. Hence, the Technical Committee is of the opinion that the facility should only accept the quantity of waste that it can process on the day i.e. in keeping with the duty capacity at the facility.

Recommendation

No Change

GROUND 6
Condition 9.4.1 (Emergencies)

Condition 9.4.1 states:

“In the event of a complete breakdown of equipment or any other occurrence which results in the closure of the transfer station building, any waste arriving at or already collected at the facility shall be transferred directly to appropriate landfill sites or any other appropriate facility until such time as the transfer station building is returned to a fully operational status. Such a breakdown event will be treated as an emergency and rectified as soon as possible”.

The applicant proposed that the clause “or already collected at the facility” be deleted from this condition. It is suggested that if there is a breakdown of equipment which facilitates the transfer of wastes at the facility the wastes in the waste recycling and transfer building cannot be removed from the facility before this equipment is repaired.

Technical Committee’s Evaluation

In the event of a major incident e.g. a fire that causes a complete breakdown of equipment that results in the closure of the transfer building then it is imperative that all waste at the facility is removed as promptly as possible to avoid nuisances from odour, flies, vermin etc. Municipal waste decomposes quickly if stored indefinitely.

Recommendation

No Change

GROUND 7
Emission Limit Values in Schedule C.3

Emission Limit Values (ELV) in Schedule C.3 should be synchronised with the parameters to be monitored in Schedule D.4.1.

Technical Committee’s Evaluation

Three parameter emission limits for treated wastewater (prior to discharge to percolation area) specified in Schedule C3 do not tally with the type of monitoring required as specified in Schedule D.4.1.

Recommendation

Amend Schedule C3 as follows:	
C.3 Emission Limits for Emissions to Percolation Area from Wastewater Treatment Plant	
Parameter	Emission Limit Value
	Daily Mean Concentration (mg/l) except pH
BOD	25
Suspended solids	35
Fats, Oils, Grease Mineral Oil	No visible traces
Ammoniacal Nitrogen Total Ammonia (as N)	10
Total Oxidised Nitrogen (as N)	10
pH	6-9

GROUND 8
Schedule D.1 Monitoring Locations

Note 7 in Schedule D.1 refers to Condition 3.14. It should refer to Condition 3.15.

Technical Committee's Evaluation

The Technical Committee notes that applicant's comment on a typographical error was correct and recommends an amendment to Note 7.

Recommendation

Amend Note 7 in Schedule D.1 to reference Condition 3.15
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OBJECTION No 2:

Thomas O'Connell on behalf of Thomas O'Connell & Charlotte O'Connell , Matthew and Bernadine McCabe and James and Mercedes Egan of 05/06/02

General

The objection is on behalf of Thomas and Charlotte O'Connell who live at Caragh House, Prosperous, Naas, Co. Kildare; Matthew and Bernadine McCabe who reside at The Cock Bridge, Donore, Naas, Co. Kildare and James and Mercedes Egan who reside at Woodville Stud, Prosperous, Naas, Co. Kildare.

It should be noted a number of document were submitted with the objection:

1. An Bord Pleanala refusal for planning permission dated 15/05/02
2. Letter from EPA to Mr. Tom O'Connell dated 24/05/02
3. Letter from Mr. Tom O'Connell to EPA dated 12/04/02
4. Letter from Mr. Tom O'Connell to the Chief Engineer, Waterways Ireland dated 07/03/02
5. Letter from Mr. Tom O'Connell to An Bord Pleanala, dated 27/02/02
6. Letter from An Bord Pleanala to Mr. Tom O'Connell dated 22/02/02
7. Map – Annex C.
8. Planning Report Ref. No. 0012264 dated 26/06/01
9. Planning file 00/2264 dated 05/07/01
10. Kildare Co. Council memo dated 05/05/96
11. Kildare Co. Council memo dated 27/06/96
12. Forbairt report dated 29/04/96
13. Yellow Bins (Waste Disposal) Ltd. EIS March 2001
14. Cultural heritage assessment
15. Series of photographs

GROUND A1

An Bord Pleanála refusal of planning permission for the proposed development.

An Bord Pleanála refusal for planning permission for the proposed development by Yellow Bins (Waste Disposal) Limited on 15th May 2002 was submitted. This post-dates the Agency's Proposed Decision to grant a licence which is dated 13th May 2002. The objection states that the refusal for planning permission means that the applicant cannot comply with the requirements of Condition 3 of the proposed licence.

Technical Committee's Evaluation

It should be noted that the planning status of the facility and enforcement of planning issues is a matter for the planning authority and not the Agency. Condition 1.3 clarifies a licensee's statutory obligations.

Recommendation

No change

GROUND A2

Threat of pollution to the Grand Canal

The objectors are concerned about the proximity (less than 1km) of the proposed development to the Grand Canal and state that it would inevitably represent an unjustifiable and reckless pollution risk to the Canal. James and Mercedes Egan hold a licence from Waterways Ireland to draw unlimited quantities of water from the summit level for use on their stud farm which adjoins the summit level of Grand Canal.

Technical Committee's Evaluation

The Technical Committee notes the Egan's comments. A review of the Ordnance Survey Sheet (1:50,000) of the Geatstown/Goatstown and 18th Lock area shows streams flow away from the canal. Generally the Grand Canal is lined with clay in the midlands to stop the canal leaking since the Grand Canal was built above the regional watertable. The actual application facility is downgradient from the Canal. The Canal lies at 92mOD whereas the facility lies at 90mOD. The Canal is not at risk from the Yellow Bins facility.

Recommendation

No change.

GROUND A3

History of illegal nuisance

Yellow Bins (Waste Disposal) limited were ordered to remove waste from the facility following legal proceedings brought in the Circuit Court by a nearby resident namely Michael Goldrick. A number of nuisances have been associated with the facility namely noxious smells, gases and fumes from stored wastes; litter on roads, vermin and insects. The objectors state that the owners and operators of Yellow Bins are not fit and proper persons to control such a facility.

Technical Committee's Evaluation

Potential nuisances that could arise from the facility are controlled by Condition 7 of the Proposed Decision. Condition 3 of the Proposed Decision requires that all waste processing activities are carried out in the waste transfer building and the Proposed Decision prohibits waste acceptance at the facility until the construction of this building. The processing of waste in this building should ensure that the potential for nuisance is eliminated. The licensee is also required to inspect the facility and its immediate surrounds on a weekly basis for nuisances – these include vermin, birds, flies, mud, dust, litter and odours. In addition, Condition 1 prohibits the acceptance of hazardous waste, liquid waste, animal by-product, sludges or asbestos waste.

It should be noted that the applicant was assessed to be a fit and proper person in accordance with the requirements of Section 40(4)(d) of the Waste Management Act, 1996.

Furthermore, if the Board of the Agency decides to grant a licence in respect of this facility, the Agency will carry out site inspections, audits, compliance monitoring checks as well as reviewing records and proposals required under the licence as part of the enforcement of the waste licence. The Agency will take whatever action it deems necessary to ensure that the licensee complies with the licence and does not cause environmental pollution.

Recommendation

No Change

GROUND A4

Summary of submissions

The main objections are summarised as follows: The proposed waste licence should be refused upon the ground primarily that it is meaningless considering the refusal of planning permission and also upon the grounds that it represents a serious threat of environmental pollution and that the operators are not fit and proper persons to run such a facility.

Technical Committee's Evaluation

The above comments are assessed under Ground A1, A2 and A3 .

Recommendation

No change

OBJECTION No.3:
Bernadette Cream 06/06/02

GROUND B1

Refusal of planning permission by An Bord Pleanála.

An Bord Pleanála refused planning permission for the proposed development by Yellow Bins (Waste Disposal) Limited on 15th May 2002, this post-dates the Agency's proposed decision to grant a licence which is dated 13th May 2002. The infrastructure required to fulfil the conditions of the licence was refused planning permission.

Technical Committee's Evaluation

The TC notes that issues relating to planning permission are not a matter for the Agency.

Recommendation

No change

GROUND B2

Non-compliance with court order

The objectors states that Yellow Bins (Waste Disposal) Limited are not complying with conditions as set out by court order Mc Goldrick vs Yellow Bins in March 2001.

Technical Committee's Evaluation

This is a matter for the parties concerned and not the Agency.

Recommendation

No change

GROUND B3

Operating illegally

The objector states that Yellow Bins (Waste Disposal) Limited have been operating in an illegal manner without a licence.

Technical Committee's Evaluation

The TC notes that the primary responsibility for enforcement of environmental protection legislation at the facility remains with the Local Authority in the period before the Agency decides on the waste licence application. 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. All licensees are required to comply with the conditions of their licence.

Recommendation

No change

GROUND B4

Inappropriate infrastructure

The roads are incapable of handling the heavy traffic involved in a 60,000 tones a year waste transfer plant.

Technical Committee's Evaluation

The road network and traffic issues are under the remit of the planing authority and are not within the scope of the waste licence application. However, Condition 7.3 of the PD requires the licensee to ensure that the road network in the vicinity be kept free of any debris caused by vehicles entering or leaving the facility.

Recommendation

No change

GROUND B5

Nuisance to residents

The facility attracts birds of prey that drop meat and meat products on nearby residential properties. Rats are rampant thus posing a threat of disease.

Technical Committee's Evaluation

Potential nuisances are controlled by Condition 7 of the Proposed Decision. Th PD states that all waste activities are to be carried out within a building on impermeable concrete, this should ensure the potential for such nuisance is eliminated. The Proposed Decision also requires the licensee to undertake various environmental monitoring and comply with emission limit values for dust, noise and wastewater.

Recommendation

No change

OBJECTION NO.3:

Edwina Murphy on behalf of Donore Residents Association 06/06/02

GROUND C1

Traffic

The extra traffic generated by such an operation poses an unacceptable risk to the residents safety.

Technical Committee's Evaluation

Please note that the road network and traffic issues are under the remit of the planning authority and are not within the scope of the waste licence application. However, Condition 7.3 of the PD requires the licensee to ensure that the road network in the vicinity be kept free of any debris caused by vehicles entering or leaving the facility.

Recommendation

No Change

GROUND C2

Dust deposition

In dry weather in the summer the operation of this facility causes high levels of dust deposition.

Technical Committee's Evaluation

Provisions for dust control are required under Condition 7 of the PD. Dust monitoring requirements are set out under Condition 8.1 and dust deposition limits are set under Schedule C. Hence the TC are satisfied that the PD contains adequate measures to control any potential dust emissions from the facility.

Recommendation

No Change

GROUND C3

Nuisances

The operation of the facility generates pests such as flies and rats.

Technical Committee's Evaluation

The issues in relation to potential nuisances are discussed under Objection 2 Ground A3

Recommendation

No Change

GROUND C4

Pollution of waters

A stream runs to the back of Donore houses, which is in close proximity to the facility. Concern was also expressed on the pollution of groundwater and the subsequent health consequences for the residents.

Technical Committee's Evaluation

The issues in relation to potential water pollution was discussed under Objection 2 Ground A2.

Recommendation

No Change

GROUND C5

Refusal of planning permission by An Bord Pleanála.

An Bord Pleanála have turned down Planning Permission for the expansion of the existing building. The infrastructure is not at all suitable for the protection of the environment.

Technical Committee's Evaluation

The issues in relation to planning matters was discussed under Objection 2 Ground A1.

SUBMISSIONS

Two submissions were received in relation to the Objections

Submission No. 1 Environment & Resource Management Ltd. on behalf of the applicant (1/08/02)

General

The applicant detailed that they are committed to establishing a communications plan, maintaining relationships with neighbours who have not objected to the proposed decision and improving relations with the objectors to the facility to the extent possible and within reason.

In general the applicant doesn't believe that objections to the proposed decision should have any bearing on the waste licence for the following reasons:-

- 1. There is no new information presented. Concerns expressed previously by third parties have been dealt with in the Inspector's Report to the Proposed Decision.*
- 2. Planning matters referred to in third party submissions remain as planning matters. These planning matters are being addressed by the applicant.*

The objections, in some cases, refer to issues of the past that have been appropriately rectified and maintained in a suitable fashion. In many cases the objections are prone to considerable exaggeration and in some cases they are spurious.

The applicant is presently operating the facility in an environmentally sound manner and is committed to operating under the terms of a Waste Licence.

Technical Committee's Evaluation

It should be noted that everyone has a right to object to a Proposed Decision under the current legislation. In addition, all objections are fully considered by the Agency before reaching a final decision on the application.

The Planning Authority in this case, Kildare County Council, are the relevant authority to address planning issues. The Agency is precluded by law from dealing with planning matters as the EPA is not the relevant planning authority.

The Proposed Decision requires that a communication programme is established to ensure that members of the public can obtain information about the facility. This information must be available to all the general public regardless of whether they objected or not.

Recommendation

No Change

The following are specific comments on the third party objections to the proposed decision:-

1. **Donore Resident's Association**
Environmental monitoring is required by the Proposed Decision for dust, vermin and surface water.

Technical Committee's Evaluation

The Technical Committee agree that the Proposed Decision does require dust, vermin and surface water monitoring and does not recommend a change in the monitoring.

Recommendation

No Change

2. **Ms. Bernadette Crean**
Items 1-4 are not relevant to the Proposed Decision.

It is required that vermin and birds do not give rise to an off-site nuisance (i.e. Condition 7.2).

Traffic, a planning matter, was reviewed by specialist expert traffic consultants. It was concluded that with some minor improvements (i.e. slip lane, widening entrance, signage) that the predicted flow of traffic as a result of the site would not have a detrimental effect on the local road network.

Technical Committee's Evaluation

The objection made by Ms. Bernadette Crean is discussed under Objection No. 3. As there is no new information in this submission in relation to that objection the Technical Committee's evaluation remains the same.

Recommendation

No Change

3. **Caragh House**

There is no basis to the assertion that the facility has or would be a “serious threat of pollution to the Grand Canal”. The proposed decision sets out measures for the control and monitoring of surface water generated at the site. The “history of illegal nuisances” is just that – history – and the allegation of illegality spurious. As part of the Waste Licence Application process and a Section 55 Notice from the local authority the applicant has and continues to improve facility operations.

A waste licence is for future site activities and not past site activities.

Technical Committee’s Evaluation

The Technical Committee’s evaluation is discussed under Objection No. 2.

Recommendation

No Change

4. **First Party Comment**

The applicant then goes on to re-iterate the comments in its objection:-

- a) *The applicant’s most significant concerns with the Proposed Decision are a number of licence conditions that must be fulfilled prior to the commencement of site operation.*

We, the applicant wish to vigorously re-iterate that it does not object to these conditions but does object to their timing.

The condition of greatest concern is Condition 3.1 that requires that the infrastructure be in place before the waste activity commences. This condition could take up to 12 months to fulfil upon grant of licence.

To be in compliance with the licence the applicant would have to cease operations.

It is the applicant’s opinion that this facility has and can operate, in the absence of the waste recycling and transfer building, without causing environmental pollution. The activities at this facility are established and thus the provisions of the EPA Act 1992, in relation to BATNEEC should also be taken into consideration (i.e. the existing facilities will be used for only a short time whilst the proposed building is constructed).

The applicant then outlines the same proposed timeframes for the provision of infrastructure as detailed in the objection.

In conclusion the applicant would like to re-iterate that:-

- *The applicant is committed to operating the waste transfer and recycling facility in an environmentally responsible manner.*
- *The applicant is committed to continuing or establishing communications with neighbours.*

- *The objections to the Proposed Decision do not contain any new information and should have no bearing on a final Waste Licence.*

Technical Committee’s Evaluation

The applicant has supplied no new information in the submission in relation to the above. Hence, the Technical Committee’s assessment on this matter is discussed under Objection No. 1 – General. The Inspector’s Report lists several environmental nuisances or pollution occurring at the facility. Environmental pollution is ongoing and is not being controlled by the applicant.

Recommendation

No Change

Submission No. 2: Thomas O’Connell on behalf of Thomas O’Connell & Charlotte O’Connell , Matthew and Bernadine McCabe and James and Mercedes Egan of 05/06/02

1. *It is submitted that the EPA have no jurisdiction under the Waste Management Act, 1996 to consider an objection from Yellow Bins in respect of a proposed decision to grant a waste licence to the applicant Yellow Bins. It is submitted that this is so as a matter of statutory construction. Section 40, 42, 43 of the Waste Management Act, 1996 are discussed to support this argument.*

Technical Committee’s Evaluation

It is contended that the Agency has no jurisdiction to consider an objection by the applicant. For the purposes of the Act an objector and an applicant can be one and the same person. There are numerous references in the Act to the applicant and objector. This should not lead one to conclude that because they are referenced or mentioned separately that they are and must always be distinct persons. The submission makes reference to a number of subsections and paragraphs in the Act including 45 (2) (d)(e) (f) (g) where the terms applicant and objector are used. This is merely to provide for instances where a person other than the applicant can make an objection etc. The Act provides for the Minister to make regulations governing a number of procedural and other issues relating to the licensing process and it is clear from these Regulations that an applicant for a licence can lodge an objection. This clarity is drawn from the fact that the regulations sets a fee for an objection by the applicant at a particular level while that from any other person is set at a lower level.

The Act says that ‘Any person may,, and at any time before the expiration of the appropriate period, make an objection to the Agency in relation to a decision referred to in subsection (2) that it proposes to make.’ As the Act says ‘any person’ it means just that and that includes the applicant.

To suggest that an applicant cannot object to a proposed decision by the Agency and that only other parties would be unjust to say the least. The Technical Committee recommends no change.

Recommendation

No Change

2. *The second objection is based on the principle that state agencies have a constitutional duty to observe the rule of law. In essence it is submitted that for the Agency to grant a waste licence to a facility which it knows to be operating in flagrant breach of the Planning Code (and thereby committing a criminal offence) is to aid and abet or counsel and procure the commission of offences under the Planning Code. Part VIII of the Planning and Development Act 2000 and the Repealed Code are also discussed.*

Technical Committee's Evaluation

The second element of the objection is to the effect that the Agency should not grant a licence to a person for a development that has been refused planning permission. It is argued that if the Agency grants a licence to such a person then it is aiding and abetting or procuring and giving counsel to the committing of an offence under the planning code.

The Waste Management Act along with the EPA Act provides the Agency with details of its functions and powers. Section 40(4) makes it quite clear to the Agency that it cannot grant a licence unless it is satisfied on a number of issues. None of these relate to the planning status of the development. The fact that a person holds a licence granted by the Agency does not give that person an automatic right to construct a development and operate it in accordance with the conditions of a licence. Licences granted by the Agency make it very clear to the person licensed that the licence is for the purposes of waste licensing only and nothing in the licence shall be construed as negating the licensee's statutory obligations or requirements under any other enactment's or regulations and this includes the planning code. In any event, the Agency notifies the planning authority of any proposed licence or licence that has been granted in all cases. It is therefore a matter for the planning authority to take whatever measures or steps they consider appropriate in relation to planning matters.

Recommendation

No Change

Signed:

Breege Rooney
Technical Committee Chairperson