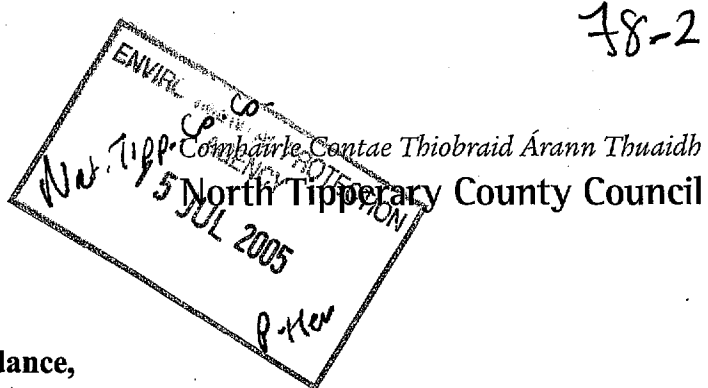


78/2



**Ms. Pernille Hermansen,
Inspector
Office of Licensing & Guidance,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Co. Wexford.**

14th July 2005

Re: Review of Ballaghveny Landfill Waste Licence.

Dear Ms. Hermansen,

I refer to your letter of the 19th May 2005 regarding possible Planning or EIA requirements in respect of the Ballaghveny Landfill Licence - Partial Review and wish to advise that the Council's Planning Department has considered the matter in some detail and is satisfied that the licence review does not constitute a material change to the overall nature or extent of the operation of the Ballaghveny facility. The matter is submitted, does not require the adjudication of An Bord Pleanála in this case as set out below.

The Ballaghveny Landfill Waste Licence Application was submitted to the EPA on the 30th September 1998 in accordance with the Waste Management Act 1996 and Waste Management (Licensing) Regulations.

The Planning requirements for the development at that time were covered by Part X of the Local Government (Planning & Development) Regulations 1994. However, Section 130(3)(c) of those Regulations set down that Part X would not apply to proposed development if; "the development is required by Part IX or any other statutory provision to comply with procedures for the purpose of giving affect to the Council Directive of 27th June 1985 (85/337/EEC) (EIA Directive). The Ballaghveny Landfill Development was therefore a 'specified development' under First Schedule, Part III(c) of the Regulations for "installation for the disposal of industrial or domestic waste with an annual intake of greater than 25,000 tonnes".

Part IX of the Regulation sets out the requirements for Environmental Impact Assessment for "specified development" by or on behalf of Local Authorities and the Ballaghveny Landfill Waste Licence Application included an EIA in accordance with Part IX. The EPA granted a Waste Licence 78-1 to North Tipperary County Council for the operation of the Landfill at Ballaghveny in May 2001 subject to conditions including 8.2 - 'unless otherwise agreed with the Agency the final post settlement height of the facility shall not exceed 114m OD at any location'.

During the period when the Part IX application to the EPA was being processed and pending the granting of the Waste Licence and the completion of new cell

construction in September 2001, North Tipperary County Council was required to continue landfilling within the old cells at Ballaghveny. The license application included the filling of cells 1-5 to a finished height of 114m OD. However, as cells 1 and 2 were not lined (with HDP) it was decided to cease filling cells 1 and 2 and to cap them at 110m OD. It was decided instead of filling cells 1 and 2 to the applied limit of 114m OD the Council would continue to fill cells 3-5, (which were lined with HDP), with the waste which otherwise would have been bound for cells 1 and 2. This was considered to be a more effective and environmentally acceptable solution, but resulted in a varied finished height of landfill in cells 1 to 5 of between 110m OD and 120m OD (maximum height). While cells 3-5 were filled above the level requested and granted in the original license application to the EPA (114m OD), it did not result in any increase in the overall waste intake level of cells 1-5 above that stated in the license application. The overall waste intake was redistributed to take account of the higher standard of lining in cells 3-5.

Should the removal of the Waste from cells 3-5, above the 114m OD level, be required it would cause severe handling and odour problems. It was considered that the height increases was not visually significant and would be integrated into the landscape as part of the rehabilitation as grassland. On this basis it was decided to seek the agreement of the EPA under condition 8.2 for the retention of the revised level.

The Agency decided it would be appropriate to decide the matter by way of a formal Partial Review of the licence under Article 12.3 (d) of the Waste Management (Licensing) Regulation 2000. The Council submitted the Partial Review documentation to the Agency on the 16th March 2004. It was decided to also include, in the Partial Review process, an amendment to Condition 5.12.3 regarding the acceptance of treated sludge at the facility and Condition 5.12.2 seeking to increase the quantity of C&D waste to be recovered at the facility from 1,500 tonnes per annum to 10,000 tonnes per annum, in line with the Midlands Regional Waste Management Plan.

It is considered that the alterations requested in the Licence Conditions under review will have little or no impact on the environment or operation of Ballaghveny Landfill. Mitchell & Associates, Landscape Architects, in the visual impact assessment included with the review documentation, concluded that the overall visual impact of the height changes proposed for the Landfill would be not significant and neutral. In landscaping terms a neutral impact is defined as "a change that does not affect the quality of the environment" and a slight impact is defined as "an impact which causes changes in the character of the environment which are not significant or profound".

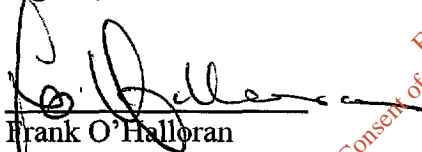
The Planning Section of North Tipperary County Council is of the view that the increase in height is non-material and does not constitute a material change to the overall nature or extend of the operation of the facility at Ballaghveny. In any event, there would appear to be no facility in Planning law to retrospectively carry out a part VIII procedure under the Planning and Development Regulations, to 'retain a minor variation to finished level of a landfill', if such a procedure was required. The variation in the finished height of cells 1-5 from the agreed 114m OD across cells 1-5 to a new sloping gradient of between 110m OD - 120m OD across cells 1-5 did not

result in an increase in the overall intake of waste in these cells, and resulted in a more satisfactory solution in view of the higher standard of lining on cells 3-5.

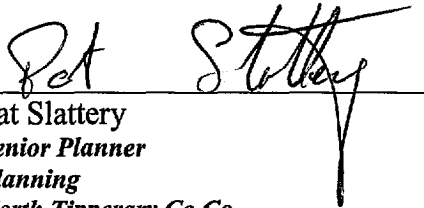
The immediate impact of the suggested EPA referral to an Bord Pleanala would be to further delay a decision on this "Partial Review" which review would only have been suggested by the EPA if the height issue was not considered to be significant. In addition, it would also further delay the remediation of cells 1 to 5 when the recommendation for the appointment of a contractor has already been made and when the Council wishes to proceed at an early date. It should be noted that the delay in proceeding with the Cells 1 to 5 Remediation Contract is primarily responsible for licence non-compliance issues, however temporary landfill gas infrastructure will be provided in the near future in agreement with the EPA, Office of Environment Enforcement.

The variation in height would not require the Council to carry out a Part VIII procedure under the Planning and Development Regulations 2001. As there was no increase in the waste intake to cells 1-5 it would not involve any requirements for an EIS either and therefore no need for a determination by An Bord Pleanala. Overall, therefore, it is submitted that the Ballaghveny Landfill is in compliance with the requirements of the Planning Development Acts. It is further submitted that the Partial Review of the Waste Licence, requiring changes to the conditions set down by the EPA, can be carried out by the EPA without further reference to the planning process and the Authority would urge the Agency to determine the matter as soon as possible to enable the necessary cell rehabilitation work to proceed.

Signed,



Frank O'Halloran
Senior Engineer
Environment
North Tipperary Co Co



Pat Slattery
Senior Planner
Planning
North Tipperary Co Co

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