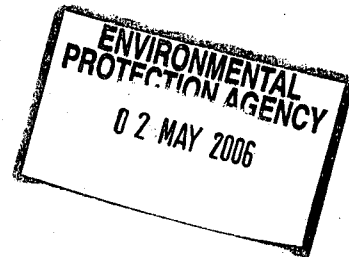


ENVIRONMENTAL MANAGEMENT SERVICES
Comhairleoirí Comhshaoil
Environmental and Planning Consultants

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02 May 2006

Office of Licensing and Guidance,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Co. Wexford.



Dear Sir,

**Proposed Decision by the Environmental Protection Agency to Grant a
Waste Licence to Brownfield Restoration Ireland Limited for the Clean-up
and Remediation of an Unauthorised Landfill at Whitestown Lower,
County Wicklow.**

EPA Waste Licence Register Number 204-1

OBJECTION ON BEHALF OF THE WHITESTOWN AWARENESS GROUP

In response to the Environmental Protection Agency's letter dated 06 April 2006, enclosing a copy of the Agency's notification of its proposed decision to grant a waste licence to Brownfield Restoration Ireland Limited for the clean-up and remediation of an unauthorised landfill at Whitestown Lower, we wish to object to this decision. Our objection is made on behalf of the Whitestown Awareness Group (WAG), the address of which is:-

**C/o Ms Emer Bailey,
Donoughmore,
Donard,
County Wicklow.**

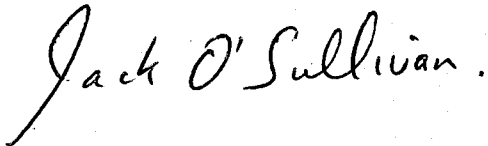
The grounds of our objection are elaborated in the enclosed submission, and we wish to emphasise to the Agency that the Whitestown Awareness Group is satisfied that the proposed waste licence allows only those activities necessary for the clean-up and remediation of this unauthorised landfill, and that the licensee is not permitted by the licence to import waste to the site.

However, there are several aspects of the proposed waste licence which give cause for concern among members of the WAG and other local residents, and we also expect the applicant (Brownfield Restoration Ireland) may object to the Agency's proposed decision. Therefore a second but equally important reason

for our objection is to ensure that the Whitestown Awareness Group remains a participant in the process by which the Agency will arrive at a final decision on this waste licence application.

A cheque for € 190.46 is enclosed, in payment of the statutory fee for making an objection, and we would specifically request the Agency to refund this fee in the event of no objection being made by or on behalf of Brownfield Restoration Ireland Limited.

Yours sincerely,



Jack O'Sullivan

Environmental Management Services

on behalf of the

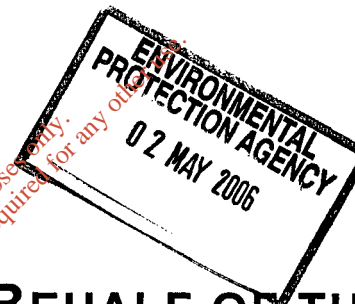
WHITESTOWN AWARENESS GROUP

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ENVIRONMENTAL MANAGEMENT SERVICES

Proposed Decision by the Environmental Protection Agency to Grant a Waste Licence to Brownfield Restoration Ireland Limited for the Clean-up and Remediation of an Unauthorised Landfill Site at Whitestown Lower, County Wicklow.

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OBJECTION ON BEHALF OF THE WHITESTOWN AWARENESS GROUP

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02 May 2006

ENVIRONMENTAL MANAGEMENT SERVICES

Proposed Decision by the Environmental Protection Agency to Grant a Waste Licence to Brownfield Restoration Ireland Limited for the Clean-up and Remediation of an Unauthorised Landfill Site at Whitestown Lower, County Wicklow.

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OBJECTION ON BEHALF OF THE WHITESTOWN AWARENESS GROUP

CONTENTS

	Page
1. Introduction	1
2 The Whitestown Awareness Group and their Participation in the Planning and Licensing Process to Date	2
3. The Role of Inert Waste in the Remediation Process, as Stated in the Proposed Decision	4
4. General Comment on the Reasons for the Agency's Decision ..	4
5. The Report of the EPA Inspector	5
5.1 The Principles of Sustainability and the Role of the Regulatory Agency	5
5.2 Inadequate Site Selection Process, and Site Unsuitability	6
5.3 Vulnerability of the Underlying Aquifer and the Carrigower River ..	6
5.4 The Inspector's Logic and Conclusions about Landfilling and Other Waste Management Activities at the Whitestown Site	6
5.5 Proposed Waste Recovery Activities on Site	7
6. Observations on the Proposed Decision and Licence Conditions ..	7
6.1 Conditions 1.3, 1.4 and 8.9.4	7
6.2 Condition 1.10 -- Specified Period of Five Years	7
6.3 Condition 2.1	8
6.4 Condition 3.22	8
6.5 Condition 10 -- Closure, Restoration and Aftercare	8
6.6 Condition 11 -- Notification of Incidents	9
6.7 Condition 11.7 -- Documentation to be Kept on Site	9
6.8 Schedule A. Authorised Processes	9
7. Request for Refund of Objection Fee Paid to the Agency	9

ENVIRONMENTAL MANAGEMENT SERVICES

Proposed Decision by the Environmental Protection Agency to Grant a Waste Licence to Brownfield Restoration Ireland Limited for the Clean-up and Remediation of an Unauthorised Landfill Site at Whitestown Lower, County Wicklow.

EPA Waste Licence Register Number 204-1

OBJECTION ON BEHALF OF THE WHITESTOWN AWARENESS GROUP

1. Introduction

On 18 March 2004, an application was submitted by Brownfield Restoration Ireland Limited to the Environmental Protection Agency for a Waste Licence for a landfill facility, to include the excavation and re-deposition of illegally deposited wastes, and the construction of a composting and resource recovery facility, lined landfill for the disposal of further quantities of commercial and industrial wastes, and restoration of the existing unauthorised landfill at Whitestown Lower, County Wicklow.

On 09 February 2005, the Whitestown Awareness Group (WAG) submitted observations to the Agency, pointing out that they would have no objection to the EPA issuing a waste licence which required the applicant to excavate and remove the illegally deposited wastes from the site, together with a significant proportion of contaminated soil, sand and gravel; dispose of these wastes off-site at a licensed facility; to restore the former quarry to an appropriate and sustainable use; to carry out these activities under controlled conditions so that no pollution or nuisance would be caused; and to undertake environmental monitoring.

The WAG submission also expressed serious concern that applicant's proposal to accept and deposit a further 180,000 tonnes of commercial, industrial and household wastes is unnecessary, environmentally inappropriate, potentially damaging to the area and to the adjacent Special Area of Conservation, and would be a source of further nuisance and disruption to nearby householders and landowners. If the Agency were to permit the acceptance and disposal of further quantities of waste in this unauthorised landfill, such a decision would serve only to give an unwarranted legitimacy to the former illegal dumping operation, and would encourage the owners and operators of other

unauthorised landfills to believe that they could escape their liabilities and costs of remediation by pursuing a similar course of action. Such a permission, if granted, would also be in conflict with European Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC.

The WAG submission further concluded that the site is intrinsically unsuitable for the proposed large-scale land-filling operation, and the submission urged the Agency to refuse a waste licence which would permit the acceptance and deposition of any further waste materials on the site, or which would allow the existing illegal landfill to remain in its present form and location.

Following consideration of this objection, and further submissions from WAG and the applicant, the Agency issued on 06 April 2006 a Proposed Decision to grant a waste licence to Brownfield Restoration Ireland Limited for the remediation of the illegal landfill at Whitestown Lower, Co. Wicklow.

The Whitestown Awareness Group welcomes certain of the conditions under which Brownfield Restoration Ireland Limited would be allowed to operate and manage the site at Whitestown, especially the restriction of activities to those necessary for the clean-up and remediation of the historically deposited wastes, and the refusal of permission for a mixed waste landfill and for the importation of any further amounts of waste to the site. Other proposed conditions give rise to concern however, and these are addressed in the following sections of this objection document.

2. The Whitestown Awareness Group and their Participation in the Planning and Licensing Process to Date

As stated on our submission dated 09 February 2005, the Whitestown Awareness Group is an association of residents living in the areas of Donard, Glen and Stratford, formed to express local serious concerns about the unauthorised landfilling and deposition of wastes in what was then "O'Reilly's Quarry" at Whitestown.

Observations of unauthorised waste-related activity at O'Reilly's Quarry were made by members of the Group as early as January 1998; and details of these observations, together with a brief account of unsuccessful representations made to Wicklow County Council, and the Council's unhelpful responses, are given in section 2 of our submission to the Agency dated 09 February 2005.

As further information about the unauthorised disposal of waste at Whitestown came to light, the degree of local concern heightened, and members of the Group became aware that the persons allegedly responsible for the illegal dumping of waste at Whitestown may not only be attempting to escape their liability, but may be seeking to profit from their previous actions.

Following a number of public meetings in the area, the Whitestown Awareness Group decided to oppose the application by Brownfield Restoration Ireland Limited for a waste licence, and to urge the Environmental Protection Agency to refuse the application. Following the initial submission to the Agency in 2005,

the WAG submitted an objection on 04 March 2005 to Wicklow County Council against the planning application by Brownfield Restoration Ireland Limited.

On 24 March 2005, Wicklow County Council decided to refuse planning permission for the proposed waste management facility, citing four reasons based on the unsuitability of the subject site, inadequacy of the EIS, conflict with certain objectives of the County Development Plan, and increased traffic hazard caused by the large number of heavy vehicles required to service the proposed landfill.

The decision of the Planning Authority was appealed by Environment and Resource Management Limited (ERM) on behalf of the applicant, Brownfield Restoration Ireland Limited (BRI), and the appeal was received by the Board on 20 April 2005. The Whitestown Awareness Group did not appeal, but submitted observations on the applicant's appeal, and urged An Bord Pleanála to support the original decision of the Planning Authority and to refuse planning permission for the proposed landfill site.

On 23 August 2005, An Bord Pleanála decided to refuse planning permission for the proposed landfill, giving as one of the two reasons for refusal the conclusion that the hydrogeological conditions pertaining at the site, the high connectivity between the site and the groundwater, and the proximity of the Carrigower River (a designated Special Area of Conservation), would result in the proposed development giving rise to a significant adverse impact on the SAC and presenting an unacceptable risk of water pollution.

An Bord Pleanála had based the above conclusion primarily on the detailed evidence of an expert hydrogeologist with many years of experience (Mr David Ball), and his report was submitted to the Agency on 16 November 2005 by Ms Ailish Greene, a local resident and member of WAG. David Ball's report then became the subject of a strongly worded submission to the Agency by Golder Associates on behalf of the applicant.

On 22 February 2006, a final submission was made to the Agency by Ms Ailish Greene, in which she drew a valid comparison between the proposal for a residual waste landfill at Blessington (EPA Waste Licence Register 213-1) and the applicant's proposal for a landfill at Whitestown. Her submission pointed out that both proposals were equally unacceptable on environmental grounds, that the Agency had refused to grant a waste licence for a landfill at Blessington, and that a licence should also be refused for the site at Whitestown.

It is therefore clear that the Whitestown Awareness Group has participated fully and positively in the planning and licensing process, and that the arguments put forward by WAG have largely been accepted by the Agency. We therefore trust that the EPA will have regard to our remaining concerns, as expressed in this submission.

The address of the Whitestown Awareness Group (for correspondence) is:

**C/o Ms Emer Bailey,
Donoughmore,
Donard, County Wicklow.**

3. The Role of Inert Waste in the Remediation Process, as Stated in the Proposed Decision

Brownfield Restoration Ireland Limited had originally applied for a waste licence to permit the following waste related activities:

- Emplace a sequence of vertical barrier walls around the entire facility to prevent recharge to the Carrigower River via the existing illegal waste landfill;
- Protect the river from spills or plugs of contamination that may be caused during waste excavation;
- Operation of a mobile waste recovery unit for the excavation and treatment of previously deposited wastes at the gravel pits;
- Waste treatment building (Resource Recovery Building);
- In-vessel composting facility;
- Landfill facility for placement of mixed waste; and,
- Restoration of all lands for agricultural purpose in the future.

The introduction to the waste licence provisionally granted by the EPA states that *"the licence does not permit the mixed waste landfill and restricts the range of activities to only those associated with the remediation of the historically deposited waste including the deposition of any recovered inert waste in excavated areas"*. Landfilling of inert waste is permitted, but *"the importation of waste onto this facility is prohibited under this licence"* (Condition 1.4). Furthermore, *"all domestic, commercial and other non-inert wastes shall be removed off-site to an approved disposal / recovery facility"* (Condition 1.3).

While welcoming these conditions, we would point out that it is unclear about the use of inert waste for the purpose of remediation -- if the landfilling of inert waste is permitted, can such wastes be brought to the site without conflicting with Condition 1.4 ?

As stated by the EPA, *"no waste can be brought on to the site. Following initial engineering works to prevent pollution, all domestic, commercial and other non-inert wastes must be removed off-site to an approved disposal/recovery facility. Historical inert waste may remain on site"*.

We therefore request the Agency to clarify this issue by re-stating that no wastes, including inert wastes, may be brought into or onto the Whitestown site, and only those inert materials already on site may be used for remediation or restoration purposes.

4. General Comment on the Reasons for the Agency's Decision

The reasons for the proposed decision are given by the EPA as follows:

1. This decision is made in the knowledge of the presence of illegally deposited waste at the applicant site, and having regard to the need for a high standard of environmental protection, as well as the need for

precaution in relation to potentially harmful effects of emissions from this waste, as there exists, in the opinion of the Agency, reasonable grounds for believing that such emissions could cause significant environmental pollution if left un-addressed.

2. The proposed site is within 100 metres and directly up-gradient of the Carrigower River, which is designated a Site of Community Importance (SCI) (salmonids) as per EU Decision of 7 December 2004.
3. The underlying geology is highly permeable – there is no natural barrier in the sub-soils.
4. Domestic residences lie immediately adjacent to the proposed landfill approximately 20 metres from the facility boundary and 40 metres from the landfill footprint.
5. Furthermore, and mindful of the presence of illegally deposited waste on the applicants land, this decision complies with Government policy as articulated in Circular WIR: 04/05 (Department of Environment, Heritage & Local Government), and the provisions of Article 8 (second indent) of Council Directive of 15 July 1975 on Waste (75/442/EEC, as amended).

These reasons are very appropriate, and are welcomed by the Whitestown Awareness Group, especially the reference to the proximity of nearby houses.

5. The Report of the EPA Inspector

5.1 The Principles of Sustainability and the Role of the Regulatory Agency

The report by the Agency's Inspector, Dr Jonathan Derham, is very informative and well argued in that he refers specifically to the principle of sustainability; he expands and interprets the principle to include a fourth pillar which he refers to as "*good governance*", and he mentions the need to protect the interests of society. The Whitestown Awareness Group urges the Agency to adopt a similar approach to sustainability when considering applications for landfills and other waste-related facilities in the future.

In arriving at his recommendation that only a restricted waste licence should be granted, the Agency's Inspector considers a number of relevant principles in addition to the principle of sustainability. He says that in a situation where there has been illegal deposition of waste, and where the waste may have to be dealt with to some extent by on-site residual disposal, any solution to the problem should at the very least follow the standard regulatory norms and procedures as would apply to a legitimate operation proposing such a facility.

He goes on to say that the regulator, i.e., the EPA, must ask what would be the likely view taken if this licence application were for a new legitimate waste facility to be determined according to the statutory planning and environmental regulatory frameworks. In this context, he is looking at the wider picture, and seems to take into account the legitimacy and relevance of the reasons for the decision taken by An Bord Pleanála to refuse planning permission.

5.2 Inadequate Site Selection Process, and Site Unsuitability

The Agency's Inspector also points out that the proposed site had not been selected following conventional landfill site selection criteria; and he does not accept the argument put forward by Golder Associates on behalf of the applicant company that the public concerns about the lack of any site selection process are not relevant merely because the site is a 'brownfield' site.

Furthermore, in relation to the selection of on-site remedial solutions for illegal waste deposits involving a landfill, he concludes that the application of excessive engineering solutions to offset inappropriate or poor site selection is not considered BAT, i.e., if the site is intrinsically unsuitable for waste disposal, it is not the best environmental or technical solution to use excessive engineering works in an attempt to improve it.

5.3 Vulnerability of the Underlying Aquifer and the Carrigower River

The Whitestown Awareness Group welcomes the acceptance by Dr Jonathan Derham of Mr David Ball's professional opinion that the ground-water beneath the site is extremely vulnerable, and that the Carrigower River located just 100 metres down-gradient, is a high risk receptor. This is in direct contrast to the submission by Golder Associates, which sought to discredit the independent and excellent report produced by Mr David Ball on behalf of An Bord Pleanála.

5.4 The Inspector's Logic and Conclusions about Landfilling and Other Waste Management Activities at the Whitestown Site

He concludes that any decision to locate a domestic, commercial and industrial waste landfill facility in the immediate (100m) catchment of the river and so close to private residences would represent an unacceptable and unsustainable precedent. Logically, if a new and legitimate proposal for a residual domestic, commercial and industrial waste landfill facility would in principle be unacceptable in such a location, then the solution to an illegal waste deposit involving the same type of facility should be equally unacceptable.

Having considered that landfilling would be unacceptable at the Whitestown site, the Inspector goes on to consider the waste management operations requested in the waste licence application. He reasons that the deposit or placing of inert material on the Whitestown site where associated with the remediation and reclamation of the former illegal waste areas and the restoration of the quarry does not represent a risk to the integrity of the river, either directly or via precedent, and he says that it seems to be the best practicable option for such material, and would be sustainable. He makes the comparison with planning applications for quarries, where he says it is quite common to have conditions requiring the restoration of worked out areas with soils, sub-soils and other suitable inert materials.

The Inspector's reasoning outlined in sections 5.1 to 5.4 above is welcomed by the Whitestown Awareness Group

5.5 Proposed Waste Recovery Activities on Site

However, we must note with some concern the Inspector's statement that "*the waste recovery buildings and composting units proposed by the applicants for this site are, from an environmental risk perspective, the sort of activities that would be acceptable for a location such as Whitestown*". He concludes that the continued operation of this infrastructure after the remediation of the historical waste areas is acceptable subject to compliance with the terms of the attached amended recommended decision, and the development and operation of waste recovery infrastructure on a site formerly occupied by illegal waste does not conflict with the Ministerial Direction (Environment's Circular (WIR: 04/05) of 3 May 2005) in relation to illegal waste activities.

The construction of temporary lagoons (impoundments) is also allowed by the proposed waste licence, together with the physico-chemical treatment of wastes on site, and this must also be a matter of some concern to local residents. We understand that these settlement lagoons are primarily for the holding and treatment of storm water, and for the separation of silt or finely divided solids from the supernatant water. Lagoons for the collection of leachate will be lined, and all leachate must be removed from the site for treatment at another location.

6. Observations on the Proposed Decision and Licence Conditions

6.1 Conditions 1.3, 1.4 and 8.9.4

The first two conditions, under which the importation of any type of waste onto the Whitestown site is prohibited, and all domestic, commercial and other non-inert wastes must be removed off-site to an approved disposal or recovery facility, are particularly welcomed. Condition 8.9.4, which states that "*final disposal of waste on the site is limited to the deposition of inert wastes recovered from the historically placed wastes, and which are deemed suitable for restoration*", is also particularly welcome.

However, we would again draw the attention of the Agency to the reported presence of a very large tonnage of contaminated soil, sand and gravel on the site, and to the lack of any detailed consideration in the licence of what should be done to make this material environmentally safe.

6.2 Condition 1.10 -- Specified Period of Five Years

Condition 1.10 states that "*having regard to the nature of the activity and arrangements necessary to be made or made in connection with the carrying on of the activity, the specified period for the purposes of Section 49(2) of the Waste Management Acts 1996 to 2005, is 5 years*".

We would interpret this to mean that this facility could continue in operation for up to 5 years, and we would submit that this is too long a period allowed. As the Agency will be aware, three years elapsed between the time when the unauthorised waste was discovered and the making of the licence application,

and during this period there was no enforcement activity. Those three years were then followed by over two years consideration by the EPA. We would therefore submit that an immediate start date and a finishing date of less than two years should be made a condition of the licence. Our basis for this suggestion is that the applicant stated he would have completed remediation of the site within three years.

6.3 Condition 2.1

Condition 2.1 requires that the licensee shall employ a qualified and experienced facility manager who must be present on the facility at all times during operation. While this is desirable, we would request that, because of the unusual circumstances pertaining to this site (unauthorised waste disposal, illegal activities and uncertainty about the quantities of waste and contaminated substrate present within the site), we would additionally request that the Agency should appoint a member of the EPA staff or a consultant employed by the EPA to be present at all times while the site is being remediated. We consider it important that the site should be kept under independent observation at all times while remediation or other waste-related activities are in progress.

As stated in the Agency's press release dated 7 April, 2006, the EPA may appoint an independent technical expert to oversee the remediation programme and report to the EPA on a regular basis; and we request that this should become a licence condition.

6.4 Condition 3.22

This condition refers to waste handling and processing plant and equipment to be used at the facility, and we would request that the condition be amended to require all of such plant to be mobile so that no fixed plant is permitted on the site. Our reason for this additional point is to ensure that there would be no excuse for the licensee to continue using the plant after the purpose for which the licence is issued has ceased, i.e., after the site has been restored. It is important that no permanent waste recovery buildings or structures should be constructed on the site.

6.5 Condition 10 -- Closure, Restoration and Aftercare

This condition requires that the excavated areas formerly occupied by historical waste shall be suitably graded to a safe and stable landform; and this is welcome. However, we would request the Agency to expand this condition so as to ensure that the final landform has a natural appearance and is similar (as far as practicable) to other landforms in the surrounding area. As the Agency will be aware, it is possible that a "safe and stable landform" could be visually intrusive and a constant reminder of the presence of buried wastes and the previous waste-related activities. We would additionally ask that this condition should be amended to require the restoration of the site to beneficial agricultural use.

6.6 Condition 11 -- Notification of Incidents

Conditions 11.2 and 11.3 require the licensee to notify the Agency of any release of environmental significance to atmosphere, any incident with the potential for environmental contamination of surface water or groundwater, or posing an environmental threat to air or land, or relating to discharges to water (in which case the eastern Regional Fisheries Board must be notified) as soon as practicable after such an incident.

We would submit that the expression "as soon as practicable" does not require or express the necessary degree of urgency to ensure protection of the vulnerable aquifer and the SAC; and we would suggest that these two conditions should be modified to replace "as soon as practicable" with an expression such as "immediately or as soon as practicable thereafter, and not more than 12 hours after the incident under any circumstances whatsoever".

6.7 Condition 11.7 -- Documentation to be Kept on Site

Condition 11.7 requires the licensee to keep certain documents on site, and these documents must be available to the Agency for inspection at all reasonable times. We would request that this condition be amended to require that the same documentation should be available for inspection by local residents or their representatives at all reasonable times.

6.8 Schedule A -- Authorised Processes

The Whitestown Awareness Group is particularly concerned that some nine processes are authorised, and it would appear that a number of these may give rise to nuisance and may be visually intrusive, e.g., composting, mechanical-biological treatment (MBT), shredding, crushing, screening, sorting, blending, baling, and re-packaging. Furthermore, while these processes would appear to be covered by the general licence conditions, there are no specific conditions included in the licence to ensure that none of these processes would give rise to nuisance, emissions, or other adverse impacts on the quality of life and enjoyment of properties by local residents.

7. Request for Refund of the Statutory Fee Paid to the Agency

We would specifically request the Agency to refund our fee in the event of no objection being made by or on behalf of Brownfield Restoration Ireland Limited.

Jack O'Sullivan

Environmental Management Services

on behalf of the

30 April 2006

Whitestown Awareness Group