



**OFFICE OF  
LICENSING &  
GUIDANCE**

**REPORT OF THE TECHNICAL COMMITTEE ON  
OBJECTIONS TO LICENCE CONDITIONS**

<b>TO:</b>	Directors	
<b>FROM:</b>	Technical Committee	<b>- LICENSING UNIT</b>
<b>DATE:</b>	8 <sup>th</sup> August 2006	
<b>RE:</b>	Objection to Proposed Decision for Neiphin Trading Limited, Waste Reg: W0047-2	

Application Details	
Class(s) of activity:	Waste Disposal Activity classes 1, 4, 5, 6, 11, 12 & 13 Waste recovery Activity classes 2, 3, 4, 11 & 13
Location of activity:	Kerdiffstown, Naas, Co Kildare.
Licence review application received:	30 July 2004
PD issued:	02 February 2006
First party objection received:	None
Third Party Objections received	27/02/2006, 27/02/2006, 27/02/2006, 27/02/2006.
Submissions on Objections received:	31/03/2006, 31/03/2006, 03/04/2006.

**Company**

Neiphin Trading Ltd., operates an integrated waste management facility at a site which is the subject of a review application. The facility is located approximately 3.5km northeast of Naas and some 0.5km to the west of the N7 National Primary Route and Johnstown Village, on the local distributor road (PI 175A). The land use in the surrounding area varies, and includes agricultural and recreational use (Naas Golf Course). There are approximately 20 houses within 200m of the facility, including Kerdiffstown House. The nearest private residence to the boundary of the facility is 20m away. The site is a former sand and gravel pit that has a history of various extractive and backfill operations. A range of waste management operations at this site are currently authorised under Waste Licence Register 47-01.

Four objections to the Proposed Decision have been received:

- (1) Naas Golf Club
- (2) Mr. Liam Foley & Mrs Deirdre Foley

- (3) Hannah Foley and Michael Butler
- (4) Michael Foley.

The applicant did not object to the terms of the Proposed Decision.

Three submission on the objections have been received:

- A. Naas Golf Club
- B. Mr. Liam Foley & Mrs Deirdre Foley
- C. Dr Ted Nealon, A1 Waste (The Applicant).

**Consideration of the Objection**

The Technical Committee, comprising of Frank Clinton and Maeve McHugh has considered all of the issues raised in the Objections and this report details the Committee’s comments and recommendations following the examination of the objections together with discussions with the inspector, Dr. Jonathan Derham, who also provided comments on the points raised and clarifications to the Technical Committee as requested.

The Technical Committee considers that the technologies and techniques as described in this report; the application; the Inspector’s Report and in the Proposed Decision are the most effective in achieving a high level of protection of the environment having regard to the way the installation is located, designed, built, managed, maintained, operated and decommissioned.

This report considers the four (4 No.) valid third party objections and three submissions on objections. One objection was deemed inadmissible, as it did not comply with legal requirements.

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**First Party Objection**

There was no objection by the applicant to the Proposed Decision.

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**Third Party Objections**

**Objection No. 1: Naas Golf Club, Kerdiffstown, Naas, Co. Kildare.**

This document contained two grounds for objection.

- (i) Failure of the Proposed Decision to provide a specification for an upper level (A.O.D.) for the landfilled areas of the site, and
- (ii) The inclusion of composting in authorised processes / addition of household derived recyclables.

- (i) Failure of the Proposed Decision to provide a specification for an upper level (A.O.D.) for the landfilled areas of the site.

The objection argues that the reason cited by the applicant when the review of the licence was sought, was to regularise the final approved contours for the landfill between the planning permission and the EPA licence (Register No. 47-1).

**Technical Committee's consideration:** The objector is correct in that the reasons cited by the licensee as a basis for the review of the licence included the regularisation of the final approved contours for the landfill between the planning permission and the EPA licence (Register No. 47-1).

However, the general view had been taken by the Agency prior to the receipt of this review application that the finished levels for a landfill site were more correctly a matter for the Planning Authority to specify as a part of a planning permission than for the Agency to specify as part of a waste licence. Therefore it was decided during the processing of the review of the licence in this case that the revised licence should not specify such a limit and that the protection of the visual amenity should rest solely with the planning permission.

**Recommendation:** No change

- (ii) The inclusion of composting in authorised processes / addition of household derived recyclables.

The objector indicates that '*.... There is a very major concern within the Club at the inclusion of composting and the applicant's request to include household recyclables, as these have the potential to be odorous...*'.

The objector elaborates that '*....we are unhappy at the proposed frequency and level of monitoring...*'.

**Technical Committee's consideration:** In the inspectors report it is pointed out that '*....the storage and pre-processing of the household derived putrescible waste stream has the potential to be odorous. In addition, the final curing of compost post-processing in the vessels could also be potentially odours...*'. Therefore, it is the view of the Technical Committee that, as there is a risk of odours arising from these new activities at the site, every precaution must be taken to avert odorous nuisances arising.

In response the Technical Committee will recommend that the monitoring of the Composting Unit Biofilter(s) should be increased to provide for the periodic monitoring of hydrogen sulphide emissions and for the frequency of monitoring of ammonia and mercaptans to be increased from bi-annually to quarterly.

**Recommendation:** change Schedule C.1.4 to read as follows:

**C.1.4 CONTROL & MONITORING OF COMPOSTING PROCESS & EMISSIONS**

***Biofilter***

**Emission Point Reference No.:** Composting Unit Biofilter(s)

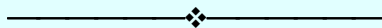
**Description of Treatment:** Biofiltration

<b>Control Parameter</b>	<b>Monitoring</b>	<b>Key Provision/Equipment Note 1</b>
<b><u>Bed Media</u></b>		
Odour assessment <sup>Note 2</sup>	Daily	Designated employee (Subjective)
Condition and depth of biofilter <sup>Note 3</sup>	Daily	Designated employee (Visual)
Moisture content	Bi-annually	Moisture gauge
PH	Bi-annually	pH probe
<b>Hydrogen sulphide</b>	<b>Quarterly (Inlet &amp; Outlet gas)</b>	<b>Sampling tubes, fresh bed media</b>
Ammonia	<b>Quarterly (Inlet &amp; Outlet gas)</b>	Sampling tubes, fresh bed media
Mercaptans	<b>Quarterly (Inlet &amp; Outlet gas)</b>	Sampling tubes, fresh bed media
Total viable counts	Annually (Inlet & Outlet gas)	Sampling equipment, fresh bed media
<b><u>Air Handling</u></b>		
Flow/Negative Air Pressure	Pressure gauge/flow	Fans/air pump/alarm

Note 1: The licensee shall maintain appropriate access to backup, standby and/or spares to ensure the operation and control of the abatement system.

Note 2: This subjective assessment should be carried out by a staff member immediately upon arriving on-site

Note 3: The biofilter shall be examined to ensure that no channelling is evident, and that moisture content is adequate. Watering, turning, restructuring and the addition of supplementary bed materials, or total bed replacement shall be carried out, as required, subject to bed performance.



Furthermore the Technical Committee has reconsidered the wording of Condition 5.3 of the Proposed Decision which deals with potential odour nuisances emanating from the site and has determined that the wording of the condition should be strengthened.

**Recommendation:** Amend the wording of condition 5.3 to read as follows:

*The licensee shall ensure that activities on the site are carried on in a manner such that emissions, including odours, do not result in an impairment of, or an interference with amenities or the environment beyond the facility boundary or any other legitimate uses of the environment beyond the facility boundary.*

**Objection No. 2: Mr Liam Foley & Mrs Deirdre Foley, Kerdiffstown, Sallins, Naas, Co. Kildare.**

This document contains objections to 18 specific conditions of the Proposed Decision:

***(i) Objection to condition 1.6.1 - Waste Acceptance Hours and Hours of Operation.***

The objector argues that the condition in the Proposed Decision does not reflect the comments made in the Inspectors Report, and cites this as a basis for the objection. The view is also taken that the operation should not work outside of ‘*normal business hours*’, and that the condition should stipulate that ‘*no other plant, equipment or trucks of any kind may gain access to the facility outside of the hours of operation specified in the licence*’.

**Technical Committee’s consideration:** It is felt that the hours of operation as set out in Condition 1.6 of the Proposed Decision reflect normal business hours. The condition as written is quite clear as to the limitations of activity on the site with regard to time of day / day of week etc., and no further modification to the terms of the condition are required.

**Recommendation:** No change

***(ii) Objection to Condition 1.6.2 - Hours of Operation***

The objector argues that the facility should be restricted to operate only between the hours of 0800 hrs and 1800 hrs on weekdays and to 0800 to 1300 hrs on Saturdays, rather than the hours stipulated in the Proposed Decision which are 0730 hrs to 2000 hrs Monday to Friday and 0800 to 1800 hrs on Saturdays.

**Technical Committee’s consideration:** The TC is aware that the overall level of activity in the environs of the facility is high during daytime and evening hours. This is especially true of the level of traffic movement on the N7 located a short distance from the site of the activity. There would be very little tangible benefit to the nearby residents by restricting the activities (for example from the point of view of noise emissions) on the site as suggested while very large levels of traffic are moving on the nearby N7.

**Recommendation:** No change.

***(iii) Objection to Condition 1.9 - Condition dealing with other legal responsibilities of the licensee.***

An objection is being made against the fact that Condition 1.9 seems to indicate that the licensee has certain and separate obligations to the Agency, to the Local Authority and to the Department of Agriculture. The objector would like the condition to assume overall regulatory power over the facility.

**Technical Committee's consideration:** A complex waste facility such as this one will need to be regulated by a number of regulatory bodies with a range of distinct interests and expertise. It would not, for example, be reasonable or practicable for the Agency to regulate matters related to the agricultural safety, as the Agency would not possess the necessary statutory powers or expertise to do this effectively. While it may be a little frustrating for the objector to have to deal with more than one regulatory body there is little that can be done in the context of a Waste Licence to overcome this issue.

**Recommendation:** No change.

*(iv) Objection to Condition 1.10 - Substitution of former licence by the reviewed licence.*

The objector states that to grant a revised licence to an activity, which has had a poor compliance history, is to somehow reward the non-complaint former licensee.

**Technical Committee's consideration:** The reason for the licence revision in this case was to regularise a number of matters which were unclear or ambiguous in the former licence and to provide the Agency and the OEE with a more effective and enforceable set of conditions for the future control of the site. It is an error to portray this revision exercise as some sort of reward or sop to the former licensee. The terms of the revised licence will provide for better regulation of the activity.

**Recommendation:** No change.

*(v) Objection to Condition 3 - Infrastructure and Operation*

The objection states that new buildings have been located on the site of the activity without planning permission, and there is a level of dissatisfaction about the fact that these buildings have been put in place.

**Technical Committee's consideration:** It is incumbent on the operator of the activity to ensure that planning permission is sought and obtained for all structures on the site which require planning permission. It is a matter for the planning authority to ensure that all such structures are compliant with planning law.

**Recommendation:** No change.

*(vi) Objection to Condition 3.28 - Compost Facility*

The objection states that there is no planning permission to establish and maintain infrastructure outlined in the Licence Review application. A condition of Planning permission 01/1364 which relates to the recycling building beside the proposed

composting infrastructure states that “ **No incineration or chemical or biological processes shall be carried out within the shed or in its vicinity**” and the reason given was “**in the interests of amenity and public health**”.

**Technical Committee’s consideration:** The objector is directed to Condition 1.9 of the proposed decision which states that:

*This licence is for the purposes of waste licensing under the Waste Management Acts 1996 to 2005 only and nothing in this licence shall be construed as negating the licensee’s statutory obligations or requirements under the Planning and Development Act 2000 (as amended), or any other enactments or regulations.*

The objector may be confusing the Agency’s role in the granting of a Waste Licence, with the Local Authority / An Bord Pleanala role in granting Planning Permission. It is correct that the Agency cannot grant planning permission for the carrying on of any activity, and for any activity which requires planning permission the operator must obtain planning permission before such an activity can commence legally. The granting by the Agency of a Waste Licence for an activity does not confer any rights upon an operator to operate without planning permission where planning permission for such an activity is legally required.

**Recommendation:** No change

***(vii) Objection to Condition 3.28.3 - Conflict between Planning Permission and the requirement to establish a composting area, and separation distances.***

The objector repeats the point made in Point of Objection 2(vi) above. The Technical Committee will not reiterate its comments here or add anything further to what is written above on this matter.

In relation to the separation distance between the composting operation (should planning permission be obtained for it) and the neighbouring house, the objector is directed to Condition 3.28.4 of the Proposed Decision which states:

*Facilities for the curing of compost shall not be located within 200m of a private residence.*

Compliance with this condition will ensure that the compost curing operation is adequately separated from the dwelling of the objector.

**Recommendation:** No change

***(viii) Objection to Condition 3.28.4 - Proximity to nearest residence***

The objector points out that there does appear to be a conflict between the terms of conditions 3.28.3 and 3.28.4 of the Proposed Decision.

**Technical Committee's consideration:** On the face of it if condition 3.28.3 was to be complied with it is possible that the composting areas and associated infrastructure would be located within 200 m of the neighbouring house. However, Condition 3.28.4 places an additional requirement on the licensee in that the locations of the composting area and its associated activities must be at a distance of 200 m or more from the neighbouring house (or any other private residence).

Furthermore, there is an inherent typographical error in Condition 3.28.3, as written, and this has likely compounded the confusion between the two conditions. The Technical Committee proposes to amend the wording of Condition 3.28.3 in order to both remedy the typographical error and to clarify the relationships between this condition and Condition 3.28.4.

**Recommendation:** Condition 3.28.3 should be amended to read as follows:

*Modifications to Drawing NTL/238 Rev B, dated 30/09/04, of the review application for the final layout and locations of the composting area and associated infrastructure, shall be agreed by the Agency. Such agreed modifications shall be consistent with the requirements of Condition 3.28.4 of this licence.*

**(ix) Objection to Condition 5.3 - No repercussions for non compliance with terms of condition on odour, noise, dust, rats, birds, hours of operation, etc.,**

The objector is unhappy with Condition 5.3 on the basis that there is no explicit threat to the licensee for non-compliance with the terms of the condition.

**Technical Committee's consideration:** It will be a matter for the Office of Environmental Enforcement to monitor and supervise the activities on the site and to take whatever enforcement action as is merited in response to any non-compliance with the terms of the licence as are detected. It may ultimately be a matter for the Courts to decide on 'repercussions' for non-compliances.

**Recommendation:** No change

**(x) Objection to Condition 5.6 (& related Condition 11.12) - Control of nuisances.**

The objector raises the concern that the requirements of Condition 5.6 may in themselves provide an opportunity for additional nuisance as well as off-site and on-site pollution through the inappropriate application of techniques for the control of pests on the site. To clarify, it is felt that perhaps it is Condition 11.12 that the



objector is really concerned about, as this condition specifies the keeping of records in relation to the use of insecticides and rodenticides, etc.

**Technical Committee's consideration:** Effective control of pests is regarded as an important element of overall environmental control on many waste treatment facility sites. In general, neighbours to such sites expect that pests such as rats, flies and birds will be controlled so as to avoid nuisance. As a part of best practice for the control of such pests some chemical controllers are used and this is regarded as Best Available Techniques (BAT) for such activities. Approaches to pest control which include the use of pesticides are specified in the BAT Guidance Note for Waste Transfer Facilities, and the approaches specified in the conditions referred to here are in accordance with BAT for the sector.

**Recommendation:** No change

(xi) **Comment on Condition 6.11.2 - Control & Monitoring**

The TC quotes from the document:

*“We have no objection to this condition. We want to say thank you because if this Condition is enforced, at least one long term problem is solved.”*

**Recommendation:** No change to the content of the condition. The TC however would like to take this opportunity to correct a typographical error in Condition 6.11.2, the final sentence of which should read as follows:

*“The licensee shall implement any noise attenuation measures considered appropriate arising from this report”.*

(xii) **Objection to Condition 6.18.9 - Location of the gas management infrastructure**

The objector states that this building has already been established and that it is located closer to the house than is allowed for in the Condition (i.e., objector suggests that the condition cannot be complied with unless the gas management building is moved!).

**Technical Committee's consideration:** A submission on this objection was received from the applicant which states :

*The objectors are incorrect in their allegation. No development of landfill gas infrastructure has commenced yet.*

The Technical Committee takes the view that the objector may have been genuinely mistaken about the alleged unauthorised development on the site of the activity.

**Recommendation:** No change

***(xiii) Objection to Condition 6.18.10 - Landscaping plan***

The objection refers to a ‘get-out’ clause – “...where possible...” as a weakness in many past condition contained in Planning Permissions and in the Waste Licence for this facility.

**Technical Committee’s consideration:** The condition (6.18.10) does not contain the wording ‘where possible’.

**Recommendation:** No change

***(xiv) Objection to Condition 6.20 - Bird Control***

The objection states that this condition was also a condition of the past licence for the site but that it was not complied with.

**Technical Committee’s consideration:** The condition seems to be a reasonable and appropriate one for inclusion in a licence for a waste disposal facility. The TC makes the assumption that the conditions of the licence will be enforced by the Office of Environmental Enforcement.

**Recommendation:** No change

***(xv) Objection to Condition 6.21.3 and 6.28 jointly:***

- ***Use of steel wheeled compactor and assessment of structural impact on neighbouring house***

The objection seems to make an association between the use of a vibrating road-making roller (which may have caused structural damage to the house during past road-making activity) with the operation of a steel wheeled waste compaction machine.

**Technical Committee’s consideration:** The TC takes the view that the type of impact experienced from the vibrating road-making roller on the structural integrity of the house is unlikely to be repeated by the use of a steel wheeled compaction machine which will be used to move about on uncompacted waste material.

**Recommendation:** No change

***(xvi) Objection to Condition 8.9.2 - Materials handling***

The objectors do not agree with the placing of any waste within 200 m of their private dwelling. The condition of the Proposed Decision would have allowed the land filling of inert waste within a radius of 100 m of the dwelling house and would have required that any other waste type would have to be prohibited within the 100 m radius.

**Technical Committee's consideration:** The Technical Committee has consulted a number of information sources in order to provide a comprehensive and informed response to the concerns raised by the objectors in this case. The references consulted in preparing the response to this particular point of objection include an Inspectors Report for a landfill site application and a Technical Committee Report on objections to the granting of a waste licence for a landfill site.

- (i) *There is currently no statutory guidance for 'buffer' zones around landfills. Buffers or 'cordon sanitaires' are intended to provide space or distance between an activity and a receptor for the purpose of mitigating an actual or potential risk to that receptor. And not all receptors are sensitive to the same impact. For example, in a landfill situation where potential impacts might include noise, dust, odour, visual, gas migration, leachate, etc.; a receptor such as a Coillte commercial tree plantation will not be as sensitive to noise as may a local house. An unlined landfill with no gas collection network may require a larger buffer to afford the necessary risk reduction for a local house than may be the case for a modern facility with full containment and collection. So the concept of a buffer will mean different things depending on the circumstance. (Source: Technical Committee Report on objections to Proposed Decision, Register Number W066-02, Rampere landfill).*
- (ii) *The Irish development control documents (Building Regulations 1997 - Part C and the associated DoE Guidance 'Protection of New Buildings and Occupants from Landfill Gas', 1994) speak of a 250m planning control zone around landfills. The Irish guidance notes that the 250m should be considered as a guideline; and in areas with particularly favourable gas migration paths, the gas may migrate further. Importantly the DoE guidance notes that in cases where there are gas control measures (e.g. containment & extraction) little or no gas migration may occur. The DoE documents considered the 250m as a zone around a proposed development site where the developer would check in particular for historical landfilling (i.e. no gas control measures likely), and where a risk needed to be assessed. Indeed, the DoE 1994 guidance stated that no (private) houses should be permitted within 50m of an actively gassing landfill and no private garden within 10m. Unless in exceptional circumstances (e.g. land remediation project), it would be*

*difficult to technically accept that a mixed waste landfill could operate within 100m of a private residence without causing nuisance (noise, odour, etc). (Source: Inspectors report on an Application for a Waste Licence for a landfill, Register Number W0153-1, Greenstar Holdings).*

On the basis of previous considerations of this issue by the Agency the Technical Committee has formed the view that the requirements of condition 8.9.2 are in keeping with best practice and are in line with the requirements of conditions set in other waste licences in similar settings in the past.

**Recommendation:** No change

***(xvii) Objection to Condition 10 – Decommissioning & Aftercare***

The objection in this case can be broken into two parts:

- (a) The licence condition as written provides that the completed cells should be capped within 2 years of filling. The objector feels that 6 months should be more than adequate.
- (b) The objection states that the final height (level) for the capped cells should be specified at 100 m O.D.

**Technical Committee’s consideration:**

(a) The final capping of the filled cells will need to be co-ordinated with the installation of the landfill gas management infrastructure. The timeframes for the installation of this equipment have yet to be decided in accordance with the requirements of a separate condition (Condition 3.30.3). Therefore the 2-year window between the completion of waste filling into a cell and the final capping is appropriate.

(b) Please refer to ***Objection No. 1(i)*** above, which has already addressed this point.

**Recommendation:** No change

***(xviii) Concluding Remarks:***

The objection states:

*“.....The interaction and cross-over of the Waste Management Acts, 1996 and the Planning & Development Acts is most confusing and creates anomalies that we find very frustrating when we are trying to get to grips with the legislation pertaining to the facility.....”.*

**Technical Committee's consideration:** The point made is noted, but there is no useful response, which can be made by the Technical Committee on the matter, as the TC has to operate within the confines of exiting legislative arrangements. The concluding remarks also contain a number of other comments in relation to the overlaps between the legislation and the roles of the regulatory bodies. It is beyond the scope of the work of the TC to deal with these comments in any meaningful way.

**Recommendation:** No change

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**Objection No. 3: Hannah Foley and Michael Butler,  
Kerdiffstown, Sallins, Naas, Co. Kildare.**

This objection document contains 8 individual elements:

***(i) Objection to Condition 1.3 - Planning permissions etc.,***

The points & arguments raised here have already been dealt with in relation to *Objection 2(iii)* above, and the response of the Technical Committee will not be reiterated here. Please refer to *Objection 2(iii)* above.

<b>Recommendation:</b> No change
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***(ii) General Objection: - not specific to any particular Condition of the Proposed Decision.***

The Objection document states:

*The breach of duty by the EPA to the citizens of Ireland, and specifically members of the Foley and Butler families, by its failure to conduct a thorough investigation, and familiarize itself with the issues involved, in advance of its decision to grant this licence. Also, the breach of duty by the EPA in its failure to act decisively as a responsible regulatory authority on known licensing breaches.*

**Technical Committee's consideration:** The application for a licence in this case was made in the conventional manner and was in accordance with the formal procedures established in Law for such applications. The information submitted by the applicant was deemed by the licensing inspector to be to a standard and extent to allow for a thorough investigation of the facts in relation to the activity to be licensed. The TC has no concerns that any omission or oversight existed in relation to the processing of this application.

<b>Recommendation:</b> No change
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***(iii) Objection to the inclusion of Class 2 (Recycling or reclamation of organic substances which are not used as solvents (including composting and other biological processes).***

The objection document states that the Agency "...do(es) not have the authority to sanction the handling of this type of waste at this facility....".

**Technical Committee's consideration:** The objector may be confusing the Agency's role in the granting of a Waste Licence, with the Local Authority / An Bord Pleanala role in granting Planning Permission. It is correct that the Agency cannot grant

planning permission for the carrying on of any activity, and for any activity which requires planning permission the operator must obtain planning permission before such an activity can commence legally. The granting by the Agency of a waste Licence for an activity does not confer any rights upon an operator to operate without planning permission where planning permission for such an activity is legally required. The Agency does, in fact, have the legal right to grant a Waste Licence for an activity which includes Class 2 (*Recycling or reclamation of organic substances which are not used as solvents (including composting and other biological processes)*).

It should be noted that Condition 1.9 specifically acknowledges that a waste licence does not excuse an operator from the requirements of National Planning Law.

**Recommendation:** No change

***(iv) General Objection - not related to a specific condition but referring to gas, noise, odour and litter.***

The objection states:

*We urge the EPA to consider our position as long-term residents of a rural area now being faced with the possibility of ever increasing levels of gas emissions, noise, odours and litter, should licence 47-2 come into effect.*

**Technical Committee's consideration:** The conditions contained in the Proposed Decision, together with any amendments made during the objection phase are intended to provide for the effective control of all environmental impacts associated with the project. Specific and detailed conditions on gas emissions, noise, odours and litter will, through effective enforcement, provide for the protection of the environment and the prevention of unacceptable impacts on the environs of the activity.

**Recommendation:** No change

***(v) General Objection - related to the lack of independent monitoring of gas emissions, noise, odours and litter.***

The objection articulates a concern that the monitoring equipment mentioned in the Proposed Decision is equipment under the care and control of the licensee and the inference is that the licensee might not be fully trusted to carry out the monitoring properly.

**Technical Committee's consideration:** The Agency provides a state-of-the-art compliance monitoring service for the performance of checks on licensed waste activity sites. These checks act, in effect, as a type of calibration for on-site monitoring equipment and any anomalies in data generated or deliberate abuses by a

licensee of monitoring equipment will be uncovered by this external compliance monitoring effort.

**Recommendation:** No change

*(vi) Objection to Condition 1.6 - Hours of operation.*

This issue has been comprehensively addressed in response to Objection No. 2(ii) above.

**Recommendation:** No change

*(vii) Objection to Condition 6.21.8 - Use of lighting during hours of darkness*

The objection states that the use of strong lighting at the facility during the hours of darkness represents a type of pollution on the local environment and suggests that the practice should cease.

**Technical Committee's consideration:** The Condition which is referred to in this objection states simply:

*The licensee shall provide and use adequate lighting during the operation of the facility in hours of darkness.*

It is unreasonable to suggest that a condition of a licence should specify anything less than what is specified here. It is appropriate that adequate lighting should be provided by the licensee during hours of darkness when the facility is in operation, to facilitate safe working conditions, effective control of operations and indeed to facilitate effective inspection of the site by Agency staff should inspections be required after dark.

**Recommendation:** No change

*(viii) General Objection related to the raising of the berm by 2 meters.*

The objectors complain that their house is already overlooked by the berm at the applicant facility and that raising the berm further would give rise to security concerns and might give rise to a danger of flooding.

**Technical Committee's considerations:** This issue has been dealt with under Objection 1(i) above. The response put by the Technical Committee in relation to that point of objection is appropriate and relevant to the specific objection made in this case. Please refer to Objection 1(i) above.



**Recommendation:** No change

***(ix) Concluding Remarks:***

The objectors state that they suspect that the applicant is unwilling or unable to fulfil the conditions of the licence and to obey Planning Law. The objectors suspect that the EPA and Kildare County Council may not have the ability to regulate the facility. They state that the proximity of their house to the facility means that the conditions of the licence will not be adequate to provide sufficient environmental protection.

**Technical Committee's considerations:** The Technical Committee has no specific response to make in relation to the ability of the applicant to conform to Planning Law, except to say that it will be a matter for the Planning Authority to deal with any such failures through enforcement.

The EPA and the Office of Environmental Enforcement will provide thorough and comprehensive enforcement of any waste licence as may issue.

The Technical Committee, having given close consideration to the latter part of this objection, has reconsidered the conditions intended to prevent impacts such as nuisance, impacts that might be more likely due to the close proximity of the operation to the home of the objectors. In light of the comments made by the objector and in light of recent comments from the courts (EPA V Greenstar Recycling (Munster) Limited), the Technical Committee has decided to revisit the wording of condition 5.6 of the Proposed Decision which states:

*The licensee shall ensure that vermin, birds, flies, mud, dust, litter and odours do not give rise to nuisance at the facility or in the immediate area of the facility. Any method used by the licensee to control any such nuisance shall not cause environmental pollution.*

The Technical Committee has taken the view that the wording of this condition should be changed so as to remove the focus of 'nuisance control' away from the site of the activity itself, and to strengthen the control and/or avoidance of nuisance outside the boundary of the facility and therefore more effectively control the impacts on the ambient environment. The wording in the new condition will more accurately reflect the terms & terminology of the EPA Acts and the Air Pollution Act (1987) insofar as these deal with significant environmental pollution and associated nuisances. Also, the reference to odour should be removed from the condition as this has been adequately addressed in the earlier Condition 5.3, and the reference to it in Condition 5.6 may create an unnecessary ambiguity.

**Recommendation:** The wording of condition 5.6 should be amended to read as follows:

*The licensee shall ensure that all or any of the following:–*

*vermin  
birds  
flies  
mud  
dust  
litter*

*which are associated with the activity do not result in an impairment of, or an interference with amenities or the environment or any other legitimate uses of the environment beyond the facility boundary. Any method used by the licensee to control or prevent any such impairment / interference shall not cause environmental pollution.*

.....

**Objection No. 4: Michael Foley,  
Kerdiffstown, Sallins, Naas, Co. Kildare.**

This hand-written objection is not very well structured but it does raises 8 broad objection topics as follows:

- (i) Health & Safety & Welfare
- (ii) Proximity of the activity to his home
- (iii) Nuisance (noise, odour, vermin, dust)
- (iv) Monitoring & possible tampering with equipment
- (v) Enforcement by OEE / EPA
- (vi) Complaint handling
- (vii) Hours of operation
- (viii) Local Authority Enforcement & Planning issues.

***(i) General Objection in relation to Health, Safety & Welfare.***

The objector does not elaborate in any substantial manner on what Health, Safety and Welfare issues are perceived as being a problem in relation to the Neiphin Trading Limited operation.

**Technical Committee's considerations:** The TC takes the view that in the broadest sense issues of health, safety and welfare have been properly addressed in the Proposed Decision, insofar as such matters can be addressed within the scope of a waste licence.

**Recommendation:** No change

***(ii) General Objection in relation to proximity of the activity to the objector's house.***

The objection draws attention to the close proximity which exists between the house of the objector (where he lives with his family) and the activity. The question is posed as to whether all of the building and operations are located at the “required” distance from the house.

**Technical Committee's considerations:** This issue has been addressed in this report under point of Objection 2(xvi) above.

**Recommendation:** No change (*the issue is addressed above under Objection 2(xvi)*).

***(iii) General Objection in relation to nuisance (odour, noise, dust, vermin etc.).***

Throughout the objection document the objector refers to various possible sources of nuisance including nuisance from dust, odours vermin and noise.

**Technical Committee's considerations:** The issue of nuisance was discussed above (Objection 3 (ix)). It is felt that the amended condition 5.6 as recommended will resolve any concerns which may have existed under the former wording of that condition.

**Recommendation:** No change (*the issue is addressed above under Objection 3(ix)*).

***(iv) General objection in relation to monitoring of the activity***

The objector is concerned that monitors (especially for odours and for dust) which were located on the site in the past may not have been immune from tampering or interference.

**Technical Committee's consideration:** This point of objection is very similar to the one raised under Objection 3(v) above, and the response of the Technical Committee is the same in this case, as it was in the case of the earlier point of objection. Please refer to Objection 3(v) above.

**Recommendation:** No change (*the issue is addressed above under Objection 3(v)*).

***(v) General Objection in relation to Enforcement input at the site of the activity.***

The point of objection relates to a quotation taken from the original inspectors report where the Licensing Inspector stated that “...It is fair to say that a firm grasp of material balance and flows on the facility is not easily obtained for the casual and infrequent visitor to the site (such as myself)...”.

**Technical Committee's consideration:** The licensing inspector would likely be quite an infrequent visitor to a site such as the applicant site. However, inspection personnel from the OEE would be likely to be much more frequent visitors to the site in the course of their routine inspection work and in the course of follow-up to incidents, etc. The fact that the licensing inspector is an infrequent visitor to the site should not be interpreted as meaning that the site does not receive the appropriate level of enforcement inspections.

**Recommendation:** No change

***(vi) General objection in relation to Complaint Handling***

As an epilogue to a point of objection in relation to nuisances the objector refers to a perception that complaints previously made by him to the applicant have been completely ignored.

**Technical Committee's consideration:** Condition 11.5 of the Proposed Decision sets out the procedures to be followed in relation to the recording of and follow-up to complaints. The objector should be aware of this type of condition, as it was also a feature of the earlier licence that is currently in effect on the site. Where the objector discovers that the applicant ignores a complaint or otherwise does not respond in the appropriate manner to a complaint in relation to any environmental aspect of the activities on the site, the objector would be free to raise the matter with the OEE and consideration could be given (and would likely be given) to the pursuit of enforcement action.

**Recommendation:** No change

***(vii) General Objection in relation to Hours of Operation:***

The objector states that there has been a lot of 'late night' activity at the site. While the objection is no more specific than this, it is suspected that the activity being complained of may have taken place outside the hours allowed under the current licence in effect on the site (i.e., Condition 1.6.2 of the current licence states; *The facility may only be operated during the hours of 07.30 to 20.00 Monday to Friday inclusive and 08.00 to 18.00 on Saturdays.*).

**Technical Committee's consideration:** Where the facility is operated outside the hours specified in the licence the objector (or any other complainant) should bring the fact to the attention of the OEE enforcement staff and seek to have any such non-compliance dealt with in that way.

**Recommendation:** No change

*(viii) General Objection in relation to Local Authority Enforcement & Planning issues.*

The objection text is interspersed with references to weaknesses, as perceived by the objector, in the role of the local authority in relation to activities on the site. These weaknesses relate particularly to the local authority’s functions in relation to planning and planning enforcement, the condition of the roadway outside the site (mud, etc., on the road), the height of the landfill and berm, landscaping, buildings and the overall planning process.

**Technical Committee’s consideration:** The matters raised by the objector in relation to failures / perceived failures by the local authority are beyond the scope of the work of the Technical Committee.

**Recommendation:** No change

.....

**Submissions on Objections**

There were 3 submissions on objections. These were received from;

- A. Mr. Jim Fennell, Naas Golf Club.
- B. Mr. Liam Foley & Ms. Deirdre Foley.
- C. Dr. Ted Nealon, A1 Waste.

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- A. Submission on Objections - Mr Jim Fennell, Naas Golf Club.

The submission supports some comments made by other objectors to the terms of the Proposed Decision and elaborates some additional views & comments.

- Confusion about amount of waste to be taken into the facility.

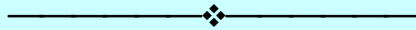
The submission asks: “...Will Neiphin trading be allowed to import 630,000 tonnes every year?....”.

**Technical Committee’s response:** The Company will not be allowed to import 630,000 tonnes of material on to the site every year. This issue was clearly elucidated in the original Inspector’s Report. A total of 630,000 t.p.a will be processed on the site, however a significant proportion of this will be the reworking of material already illegally filled on the site. The exact amount of historically illegally placed waste to be reworked in any given year will be determined through agreement with the Agency under the terms of Condition 8.4.6 which states:

*The licensee shall as part of the AER submit a report (supported by plans) outlining the landfill development sequence/proposals for the subsequent year(s). This report is to include the proposed operational sequence of excavation and processing of the illegally placed historical waste.*

The TC does agree that there may be some ambiguity about the overall quantities of waste which can be accepted onto the site, and this ambiguity centres on the wording & layout of Schedule A.2 of the Proposed Decision. The quantities of commercial, industrial and C&D wastes, household dry recyclables, **and** wastes excavated on-site are summed into one figure of 565,000 tonnes per annum. This does invite some confusion or room for ambiguity, which could be interpreted by the licensee in one way while any other person might interpret it in another way. Therefore, to dispatch this anomaly the TC proposes a tightening up of Schedule A2 to more explicitly specify the quantities of each type of waste, which can be accepted onto the site. The term ‘accepted onto’ to the site is intended to include the exhumation of specified quantities of waste historically illegally land-filled.

**Recommendation:** Schedule A.2 to be amended to read as follows:



**A.2 Waste Acceptance**

**Table A.1 Waste Categories and Quantities**

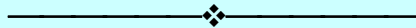
WASTE TYPE <sup>Note 1</sup>	MAXIMUM (TONNES PER ANNUM) <sup>Note 2</sup>
Imported commercial, industrial, and C & D wastes <sup>Note3</sup> , household dry recyclables,	235,000
Waste excavated on-site for reprocessing	330,000
Biodegradable waste for composting (including MBT <sup>Note 4</sup> residues from treatment of municipal waste, household putrescibles, and green waste)	65,000
<b>TOTAL</b>	<b>630,000</b>

Note 1: Any proposals to accept other compatible waste streams must be agreed in advance by the Agency and the total amount of waste must be within that specified.

Note 2: The individual limitation on waste streams may be varied with the agreement of the Agency subject to the overall total limit staying the same.

Note 3: Non-hazardous C&D wastes.

Note 4: Mechanical Biological Treatment.



- Nuisance, animal by-products and historical illegal waste.

This particular point of the submission is a little unclear and it is difficult to ascertain exactly the point the submitter is trying to make.

**Technical Committee's response:** As discussed above (under Objection 3(ix)) it is recommended that the wording of condition 5.6 should be amended to read as follows:

*The licensee shall ensure that vermin, birds, flies, mud, dust and litter associated with the activity do not result in significant impairment of, or significant interference with amenities or the environment beyond the site boundary. Any method used by the licensee to control or prevent any such impairment / interference shall not cause environmental pollution.*

The TC believes that this condition will provide a firm basis for enforcement action in the event that the licensee fails to adequately control nuisances on the site of the activity.

**Recommendation:** No change

- Thorough: This refers to a quotation from the original inspectors report.

The reference from the original Inspectors Report stated;

*"...It is fair to say that a firm grasp of material balance and flows on the facility is not easily obtained for the casual and infrequent visitor to the site (such as myself)...."*

**Technical Committee's response:** This issue was dealt with under point of objection 4(v) above. The licensing inspector would likely be quite an infrequent visitor to a site such as the applicant site. However, inspection personnel from the OEE would be likely to be much more frequent visitors to the site in the course of their routine inspection work and in the course of follow-up to incidents, etc. The fact that the licensing inspector is an infrequent visitor to the site should not be interpreted as meaning that the site does not receive the appropriate level of enforcement inspections.

**Recommendation:** No change

- Illegal Landfills, (Section 60 Policy Direction)

The submission refers to the perception that the grant of an EPA Waste licence may be a reward for Neiphin Trading Limited and others for past illegal waste activity.

**Technical Committee's response:** Under the terms of the Proposed Decision, a substantial burden has been placed on the licensee to carry out a reversal of historical illegal waste placement at this site. Through the media of regulation and enforcement the operator of this facility could be said to be carrying the punishment for past misdemeanours, and the applicant in this case has already acknowledged and accepted that it is appropriate for him to bear this burden. Up to 330,000 tonnes per annum of waste which was historically illegally filled into the lands on this site will have to be brought-up, reprocessed, refilled and/or exported to remote disposal under the terms of the Proposed Decision. The Technical Committee does not think it necessary to add anything to this burden upon the licensee, as the overall outcome of these requirements of this licence will be to render the waste operation safe and to alleviate the potential pollution risks which currently exist in relation to historically illegally landfilled waste on this site.

**Recommendation:** No change

- Contours and 100 mOD final level for the landfill

The submission supports the call by other objectors for the EPA to specify that the overall final height of the landfill should be set at 100m.

**Technical Committee's response:** As stated earlier and in particular in relation to Objection 1(i) the issue of final height for the development is regarded as a matter for the planning authority to deal with under planning permission.

**Recommendation:** No change

- Enforcement – weaknesses perceived.

The submission complains on the one hand about failures by Kildare County Council to carry out effective planning enforcement, and on the other hand about the failure by the Agency to prosecute Neiphin Trading Limited for non-compliances with their licence in the past.

**Technical Committee's response:** Failures by Kildare County Council to carry out effective enforcement of planning matters is beyond the scope of the work of the Technical Committee. The Agency has indeed endeavoured to take enforcement actions against Neiphin Trading Limited in relation to non-compliances with the terms of their Waste Licence. In one case taken to the District Court, jurisdiction was refused and the matter was referred to the Director of Public Prosecutions (DPP). The DPP did not proceed with the case.

**Recommendation:** No change

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## B. Submission on Objections - Mr Liam Foley & Ms Deirdre Foley

This submission raises some serious questions about relationships between the Agency and the Applicant. In its introduction (at No.3) the submission states the following:

*All of the objectors in this case have participated in the review process in line with the regulations, with the expectation that the EPA will deal with all parties involved fairly and impartially. However, we are concerned about the personal tone which is present in correspondence between Dr. Ted Nealon, whom we believe is an ex-employee of the EPA, and members of the EPA staff dealing with this review application. This tenuous link between the applicant and the Agency is worrying. Some correspondence between Dr. Nealon and the EPA appears to have been submitted with a view to colouring the judgement of the staff in their task of considering this application. Please see correspondence between Dr. Nealon and Dr. Derham dated 24/10/05 and an undated letter received on 21 November 2005. There is a personal tone to both these letters which is inappropriate in the context of a review of a waste licence. We are concerned that the friendships between ex-colleagues will make it impossible for the staff of the EPA to be impartial in this case and this will lead to unfair advantage for the applicant. If this proves to be the case, we will have no option but to seek a judicial review to ensure that our rights are upheld in this process.*

**Technical Committee's response:** The Technical Committee has had absolutely no direct contact with the applicant in the case of this application and objection, and has not had any contact of any kind with Dr Ted Nealon of Neiphin Trading Limited at any time during the processing of this application. The Technical Committee has had to seek minor clarifications from Dr Derham about minor specific points of detail related to the Inspector's Report and the Proposed Decision. There is nothing to suggest that Dr. Derham had acted in a partial manner in regard to his interactions with the applicant in this case, nor does there appear to be any evidence of undue influence having been brought on him by the applicant. It is important to note that it is the Board of the Agency which decided on the form and content of the Proposed Decision and not the Licensing Inspector as perhaps has been suggested in this Submission on Objections.

The Technical Committee will also endeavor to evaluate all of the information before it in an unbiased manner and will hold no favour for either the Applicant or any individual objector or any author of any submission and the Technical Committee has endeavored to remain completely impartial in all matters pertaining to the production of this Report.

**Recommendation:** No change

- › Undated Letter received by the EPA on 21/11/2005 from Dr Nealon to Dr Derham.

The Foleys (Mr Liam Foley & Ms Deirdre Foley) contacted the Agency about the fact that certain elements of the specified letter were considered by them to be confidential and were not suitable for inclusion on the public file. On 26<sup>th</sup> April the Agency informed the

Foleys that the specific texts, which had caused concern, had been blacked out on our files and these texts were no longer accessible to third parties or the public through Agency files.

**Technical Committee's response:** It was indeed regrettable that private information in relation to the value of the Foley home should have found its way onto the Public Files of the EPA. The Agency did move quickly to rectify the matter once the Foleys had drawn attention to it. The Foleys were notified of the actions taken by the Agency in a letter dated 26<sup>th</sup> April 2006, and it is felt and hoped that the Agency did everything that could reasonably have been done under the circumstances.

**Recommendation:** No change

- Letter to Dr Mary Kelly dated 07/03/2006 re: William Cox Objection to Proposed Decision.

This passage of the submission deals with the perceived prevarication and / or perceived procrastination which took place on the part of the Agency in relation to the invalid objection received from William Cox. In summary what took place was the following:

- The Agency received correspondence from William Cox which sought to establish an objection to the Proposed Decision.
- In line with normal office procedures the documentation was circulated to all relevant contacts (applicant, other objectors etc.) as if it was a valid objection.
- Further to the tendering of concerns by the applicant about the validity of the objection, the correspondence was re-examined by senior staff and legal advisors of the OLG and it was deemed that the correspondence submitted by William Cox was not in order and not consistent with the requirements of the legislation for valid objections.
- A follow-up advisory was circulated to all those which had already been circulated with the documentation and they were informed that the William Cox documentation was not, in fact, a valid objection.

**Technical Committee's response:** OLG staff had, with the utmost of best intentions circulated the William Cox documentation on the understanding that it was a valid objection (which it transpired later not to be). The process which led to the determination that the William Cox documentation was, in fact, invalid was quite a skilled and involved one and required deep legal analysis. It would be unreasonable to expect that junior administration staff could have 'spotted' the problem upon receipt of the correspondence. This particular experience has been a novel one for the OLG as a whole and one from which lessons for the future have been learned.

**Recommendation:** No change

- Observations on other objection letters:

The submission holds that an EIS should have been required for the changes to the development, and goes on to say that there are major issues in relation to planning legislation which need to be resolved etc.

**Technical Committee's response:** Comments in relation to the planning process are beyond the scope of the work of the Technical Committee.

**Recommendation:** No change

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#### C. Submission on Objections - A1 Waste (the Applicant) signed by Dr Ted Nealon.

The submission specifically responds to the Objections received from Naas Golf Club, Mr Michael Foley, Mr Liam Foley & Mrs Deirdre Foley and the objection from Ms Hannah Foley & Mr Michael Butler.

- Naas Golf Club

Contours: The submission addresses the issue of finished levels for the landfilled portions of the site.

**Technical Committee's response:** The issue of finished levels on the site are not being dealt with under the terms of the Waste Licence. This issue is a matter for the Planning Authority. See comments under Objection 1(i) above.

**Recommendation:** No change

- Inclusion of composting and addition of household dry recyclables: The submission acknowledges that odours can arise in association with composting processes, but balances this by stating that any potential odours as might arise will be offset by the provision of a dedicated building for waste acceptance and mixture and the use of best available in-vessel composting technology.

**Technical Committee's response:** The TC is convinced that the controls built into the Waste Licence together with effective enforcement are adequate to control odours from the facility.

**Recommendation:** No change

‣ Comments on Objection by Mr Michael Foley

The submission presents a general rebuttal of many of the points raised in Mr Michael Foley's objection.

**Technical Committee's response:** This particular element of the submission provides no new information. Mr Foley's objection has already been considered in detail earlier in this report (See Objection No. 4 above).

**Recommendation:** No change

‣ Comments on Objection by Mr Liam Foley & Mrs Deirdre Foley

**Overview & Technical Committee's response:**

- a. Hours of Operation: The applicant comments that no change has been sought in the application for the hours of operation.
- b. Enforcement history: The applicant acknowledges that there have been some issues between the operator and the OEE and that some discussion on interpretations of conditions is on-going.
- c. Condition 3.27: The Applicant recognises the need for the condition.
- d. Condition 3.28: There was a slight anomaly between Conditions 3.28.3 and Condition 3.28.4. This has been resolved by a suggested amendment to condition 3.28.3. (See point of Objection No.2(viii) above).
- e. Conditions 5.3 & 5.6: See ***Technical Committee's Consideration*** of the point at Objection No 3(ix) above.
- f. Condition 6.11.2: As read.
- g. Condition 6.18.9: The applicant simply clarifies that work on the gas infrastructure has not yet commenced, as a reassurance to the L&D Foley.
- h. Condition 6.18.10: Landscaping work is on-going and will continue under a new Licence should one be granted.
- i. Condition 6.20 (Bird Control): The applicant states that birds do not gather at the site while the Objectors (L&D Foley) contend that birds are a problem. The specific condition (6.20) leaves no room for doubt as the requirements of the condition are mandatory and will have to be adhered to by the licensee.
- j. Conditions 6.21.3 and 6.28: As read.
- k. Planning Permission etc.: The applicant's submission on this point is a little misleading. The objector had raised an issue about the length of time needed between the finalisation of work on the filling of a cell and the final capping of the call. This particular

issue was dealt with under point of Objection No. 2(xvii) above. The issue on final ordnance datum level for the engineered landfill was also addressed in point of Objection No.1(i) and at point of Objection No 2 (xvii)(b) above.

1. Conclusions: The submission contends that the objectors are incorrect in their interpretation and discussion of the planning permission for the facility. Taken as read.

**Recommendation:** No change

- › Comments on the Objection by Ms Hannah Foley & Mr Michael Butler.

**Technical Committee's response:** The submission singles out one particular point in the objection from Ms Hannah Foley & Mr Michael Butler for rebuttal. The submission disputes that the operation is not in compliance with its planning permissions and disputes that the operation is not in order with its current waste licence. Taken as read.

**Recommendation:** No change

### **Overall Recommendation**

It is recommended that the Board of the Agency grant a licence to the applicant

- (i) for the reasons outlined in the proposed determination and
- (ii) subject to the conditions and reasons for same in the Proposed Determination, and
- (iii) subject to the amendments proposed in this report.

Signed

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Frank Clinton

for and on behalf of the Technical Committee