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Ms. Sonja Smith
Office of Climate Change, Licensing & Resource Use,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
County Wexford

10th July 2007

RE: Objection to Proposed Decision on a Review of a Waste Licence (Waste Licence Register No. W0111-03)

Dear Ms. Smith,

On behalf of South East Recycling Company Ltd (SERC), we submit this objection to the Proposed Decision to refuse to grant a revised licence for its materials recovery facility located at Carrigbawn, Pembrokestown, County Wexford.

The enclosed submission contains that information specified in Section 42 (4) of the waste Management Acts 1996 to 2005. An original and two copies of the objection and a cheque for €500, which is the fee for an objection by the applicant, are enclosed.

If you have any queries, please call me.

Yours sincerely,


Jim O'Callaghan



0604819/JOC/MW

cc: Malcolm Dowling Greenstar Ltd., Ballyogan Business Park, Ballyogan Rd, Sandyford, Dublin 18

email: info@ocallaghanmoran.com Website: www.ocallaghanmoran.com

O'Callaghan Moran & Associates. Registration No. 8272844U

EPA Export 25-07-2013:21:54:12

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South East Recycling Company Ltd.

Waste Licence Review No. W0111-03

Objection to the Decision to Refuse a Revised Waste Licence

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Prepared For: -

South East Recycling Co. Ltd.,
Carrigbawn,
Pembrokestown,
Co. Wexford

Prepared By: -

O' Callaghan Moran & Associates,
Granary House,
Rutland Street,
Cork

10th July 2007

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1. INTRODUCTION

O'Callaghan Moran & Associates (OCM), acting on behalf of the Objector:

South East Recycling Company Ltd.
Carrigbawn,
Pembrokestown,
County Wexford.

submits this objection to the notification of a proposed decision on a review of a waste licence (Licence Reg. No.W0111-03), issued in accordance with Section 42(2) of the Waste Management Acts 1996 to 2005, wherein the application for a revised Waste Licence was refused.

The Proposed Decision that accompanied the Notice sets out three reasons for the refusal. These reasons are the subject matter of the objection.

The full grounds for the objection and the reasons, considerations and arguments upon which they are based are presented in Section 2 of this submission. The response to the first reason for the Agency's decision to refuse the application was prepared by Arthur Cox, Solicitors. For ease of interpretation, each of the Agency's reasons is presented in italics followed by South East Recycling Company Limited (SERC) objection.

The fee of €500 is enclosed.

2. GROUNDS FOR OBJECTION

1. *The applicant has not demonstrated to the satisfaction of the Agency, that the expansion in operations applied for in the licence application review will be carried out in accordance with the conditions of revised licence if granted.*

It is premature to state that SERC cannot comply with the conditions of a revised licence, when such conditions have not been specified by the Agency and have not been seen by SERC and it is unlawful to prejudge an outcome and form a decision on this basis. SERC has outlined in its waste licence application how it intends to manage the changes requested and has informed the Agency that it will carry out all works required to comply with BAT. Although not expressly stated it is clear that this reason for refusal is linked to SERC's compliance history. This is a legally flawed decision for the reasons set out below.

Ongoing Legal Proceedings Must Be Disregarded

The Inspector at page 7 of the Inspector's Report dated 22nd May 2007 (the "Inspector's Report") states as follows:

"Serious regard must be given to the refusal of the licensee to give an undertaking in the Circuit Court¹ on 16th April 2007 to comply with the conditions of the current licence, W0111-01. The Application has not demonstrated an ability to manage the facility within the conditions of the current licence, therefore the granting of a licence permitting an increase in the amount of waste, waste streams and hours of operation on site is premature at the time."²

In relying upon this statement, the Inspector has fundamentally erred in both law and fact. No regard should have been taken of the events of 16th April 2007 and when drafting the first reason to refuse the revised licence application, the EPA erred in having any regard to same.

It is our contention that the judge exceeded his statutory powers as a District Judge in seeking an undertaking from SERC in the context of the prosecution as instituted by the Agency. SERC was advised by Counsel on the day that it was under no obligation, legal or otherwise, to give such an undertaking to the Court. In the circumstances, SERC declined to give such an undertaking.

Furthermore, leave to apply for judicial review of the District Court Judge's decision to refuse jurisdiction has now been granted by the High Court, and a Stay has been ordered on any further action being taken by the District Judge or the Director of Public Prosecutions in relation to the criminal proceedings referred to in the Inspector's assessment.

¹ There is a small factual error in the Inspector's statement in that it refers to the Circuit Court, when in fact the proceedings referred to were District Court proceedings.

² *our emphasis*

In refusing to grant a revised licence, the Agency cannot seek to rely on the fact that SERC, following legal advice and consideration of the matter, exercised its right to not give an undertaking wrongly sought in the context of this criminal prosecution. To do so would be a blatant breach of natural justice and fair procedures. It is legally incorrect that negative inferences which have a seriously adverse effect on SERC should be drawn from something which a High Court judge has considered worthy of judicial review with a stay on progressing the said District Court proceedings.

Compliance Record

It is accepted that SERC had a poor record of compliance prior to its acquisition by Greenstar Limited ("Greenstar") in October 2006. However, the Agency should take cognisance of material changes that have the ability to positively affect facility operations.

It should be noted that the vast majority of events outlined in the Inspector's Report in relation to SERC's compliance record occurred before SERC was acquired by Greenstar in October 2006. In the second last paragraph of page 5 of the Inspector's Report, the Inspector refers to 14 non-compliances being identified between 20th July 2006 and 21st December 2006. As a matter of record, the actual number of non-compliances notified to SERC in this period was half of the number stated by the Inspector. Of these, only one occurred after the acquisition of SERC by Greenstar. The Inspector refers to 11 complaints being made in 2006, but does not refer to any made in 2007. To date, only two complaints have been received by SERC in 2007. As outlined above, the circumstances set out in relation to the prosecution initiated in 2007 (which, it must be reiterated, relates to a breach that occurred in the year 2006 i.e. prior to the change in ownership of the business) are the subject of both judicial review proceedings, as well as an ongoing criminal investigation, and should not be relied upon in the context of this application.

The Greenstar acquisition of SERC in October 2006 is a significant material change, as it provides SERC with access to experienced management and capital resources to ensure compliance with licence conditions. However it appears that the Agency has not taken account of this in its assessment of likely future compliance. Based on Greenstar's track record at other waste licensed facilities the approach adopted by the Agency is not justified.

Greenstar is fully committed to working with the Agency to continue the improvements made in SERC's environmental performance since its acquisition by Greenstar.

No Risk of Significant Environmental Pollution

The Inspector's Report does not refer to any significant environmental pollution at the site (with the possible exception of a potential risk of pollution from odour, which is dealt with comprehensively below).

If it is accepted that there is no significant risk of environmental pollution, it becomes even more difficult to establish the rationale behind the first reason given to refuse to grant the revised licence.

Conclusion

For the reasons outlined above, we respectfully submit that you agree that the first reason set out in the proposed decision to refuse the revised licence application is without substance. There is no evidence to support the contention that SERC will not operate in accordance with the conditions of a revised licence if granted, and it is the firm intention of the new management of SERC to continue to maintain the improved compliance record of the facility. It is not open to the Agency to conclude that SERC will not comply with the conditions of a revised licence. That thinking, which would appear to wrongly permeate this Proposed Determination, is legally tainted.

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2. The Agency is not satisfied, based on the current infrastructure at the facility and non compliance with requirements of the existing licence to provide the necessary infrastructure to carry on the waste activities, that the best available technologies as described in Section 40 (4) (c) of the Waste Management Acts 1996-2005, will be used in the expanded waste activities.

Best Available Techniques (BAT)

BAT is defined in the Waste Management Acts 1996-2005 as the “most effective and advanced stage in the development of an activity and its methods of operation, which indicate the practical suitability of particular techniques for providing, in principle, the basis for emission limit values designed to prevent or eliminate or, where that is not practicable, generally to reduce an emission and its impact on the environment as a whole”, where

‘best’ in relation to techniques, means the most effective in achieving a high general level of protection of the environment as a whole;

‘available techniques’ means those techniques developed on a scale which allows implementation in the relevant class of activity under economically the technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the State, as long as they are reasonably accessible to the person carrying out the activity;

‘techniques’ includes both the technology used and the way in which the installation is designed, built, managed, maintained, operated and decommissioned.

The essence of BAT, as defined in Section 2.1 of the draft BAT Guidance Notes for the Waste Sector: Waste Transfer Stations, published in April 2003 (the “BAT Guidance”), is that ‘the selection of techniques to protect the environment should achieve an appropriate balance between realising environmental benefits and the costs to the person carrying out the activity’.

The Agency has established a range of BAT associated emission limit values (ELV) to indicate levels achievable through the use of a combination of process techniques and abatement technologies. During the licensing process the licensee must indicate to the satisfaction of the Agency that the facility can be operated in such a way that all the appropriate preventative measures will be taken against significant environmental pollution through the application of BAT.

Emission Limit Values (ELV)

It is generally accepted that, at individual facility level, the most appropriate techniques will depend on local factors. A local assessment of the costs and benefits of the available options may be required to establish the best option. The choice may be justified on:

- The technical characteristics of the facility;

- Its geographical location;
- Local environmental considerations;
- The economic and technical viability of upgrading existing facilities.

The overall objective of BAT is to ensure a high level of protection for the environment through the application of appropriate and site specific techniques to eliminate/minimise/control emissions. The use of ELVs allows the Agency to monitor the effectiveness of those techniques applied at individual facilities to control emissions and prevent environmental pollution, and to assess compliance with BAT.

BAT as applied at the Facility

The Agency's BAT Guidance deals with a wide range of potential emissions and suitable control techniques including, air, surface water, waste water, noise and vibration, dust, and odour and other issues such as vermin control. Based on the Agency Inspector's Report on the Application it is understood that the Agency's concern about compliance with BAT at the facility relates primarily to odours.

The BAT Guidance sets out the key requirements that should be considered at the Design and Operational Phases, and also identifies a range of recommended management techniques for odour control. It is important to note that the BAT Guidance recognises that 'there are no techniques that can completely eliminate odours at transfer sites handling biodegradable waste'.

Design Phase

At the Design Phase, which is typically before a facility is developed, the Management Techniques that may be applied include:

- The identification of sensitive receptors adjacent to the site;
- The development of design and operational procedures to minimise the risk of the migration beyond the boundary of odours which would create a reasonable cause for annoyance.

It should be noted that the provision of a negative air pressure system is not mandatory under the BAT Guidance because other techniques, such as waste handling and odour suppression measures, may be suitable.

Current Status

Waste transfer activities have been carried out at the facility since 1987. The current waste licence was issued in January 2001. At the time the licence was issued there were 26 houses within 500m of the site boundary and one housing estate being developed within 150m of the site entrance. Since then further housing estates and individual houses have been constructed.

The waste processing building is not fully enclosed and a negative air pressure system is not provided. SERC has developed operational procedures to minimise the risk of odours and these are discussed below.

Operational Phase

Requirements

In the Operational Phase the key requirements are:

- Appropriate procedures should be developed for dealing with malodorous waste. Vehicles delivering and removing waste should be enclosed or covered. All putrescible/biodegradable waste should be removed from the premises within 48 hours of arrival.

The recommended control techniques include:

- Restrict acceptance of waste known to be malodorous;
- Use of odour neutralising sprays and additives before onward transport;
- Use of appropriate air filtration system with bio-filter to remove odour;
- Ensure that all biodegradable/odorous waste is removed within 48 hours;
- Conduct regular inspection and monitoring of waste handling areas;
- Any compacting or treatment of malodorous waste to be carried out in an enclosed area.

Current Status

Particularly malodorous waste, such as food processing waste, are not accepted at the facility. Wastes with a biodegradable content are delivered to the site in fully enclosed vehicles. These vehicles are off-loaded inside the processing building and subsequently loaded into larger fully enclosed vehicles for transport off site. At present the odour abatement at the facility includes a spray system in the processing building that delivers a masking agent.

At present all biodegradable waste is removed within twenty-four hours of its arrival on-site, except when received on weekends (the site can operate until 2.00pm on Saturday) and preceding Bank Holidays (when the facility is not authorised to operate). This means that the majority (>80%) of biodegradable waste is removed on the same day it is received. The facility management carries out regular inspection of waste handling areas. No compacting or treatment of biodegradable waste is carried out at the facility.

Site Specific Emission Limit Values (ELVs)

Noise, Dust and Emissions to Sewer

A wide range of environmental monitoring is carried out at the facility in accordance with the existing licence. There are no process emissions to surface water or groundwater, and the only process emission is to sewer. The discharge to the foul sewer is regulated by a trade effluent licence issued by Wexford County Council, which does contain ELVs.

ELVs are separately set for dust deposition limits (350mg/m²) and for noise (55dBA). Monitoring frequencies are outlined in Schedule C (Recording and Reporting to the Agency) of the waste licence.

Current Status

The latest (Q1, 2007) round of dust monitoring results was submitted to the Agency on 29th March 2007. Dust is currently monitored at 5 perimeter locations. During the latest monitoring event, the dust level (ELV) was exceeded at a single location. The exceedance is mainly due to the particular location of this monitoring point (D6) which is situated along a busy third class road to the east of the site. The dust encountered here was considered to have largely if not entirely emanated from the road users. At all other monitoring locations the recorded dust levels were well below the specified limit, which verifies the Inspector's conclusion that the dust monitoring indicates general compliance with the ELVs apart from occasional exceedances of the deposition limit due to contributions of off site sources.

Noise monitoring is carried out at seven locations around the site. The most recent monitoring results submitted to the Agency (Q1, 2007) confirm the Inspector's conclusion that noise is not an issue at the site, although the limit of 55dBA was exceeded on a number of occasions at certain monitoring locations. The monitoring carried out during 2006 concluded there was no significant impact from the facility at the noise monitoring locations during day or night time.

Recent analysis of emissions from the sewer confirm that the discharge complies with limits set in Discharge Licence No. SS/S047/02 issued by Wexford County Council.

Air Emissions

There are no major emission points to air at the facility and no air emission ELVs are set in the current licence. The facility is a potential source of odours on site which may migrate off site and be detectable off site, if sufficient mitigation measures are not put in place. Odour ELVs are not specified in the BAT Guidance.

The Inspector's Report states that submissions on the application were received from members of the public in relation to odours from the facility and that 'the operation as it stands frequently generates foul odours'. It appears that the submissions are based on the experience prior to Greenstar's acquisition of SERC in October 2006.

The Inspector's Report states that '...in order to process putrescible waste without causing an odour nuisance the licensee would be required to install a continuous negative air pressure system on the waste processing building, with extracted gases being subject to the appropriate treatment to the satisfaction of the Agency'.

The Inspector's assessment of the need for a negative air pressure and associated treatment plant appears to be based on the assumptions that this is the only technique capable of minimising odour nuisance.

This assumption is not supported by the records of odour complaints from the public received by the Agency since Greenstar acquired SERC in October 2006. As odours and their effects are subjective, the level of complaints may be used as an indicator of the scale of odour problems at a waste handling facility.

In 2006 the Agency received 11 complaints from the general public concerning facility activities. Of these 8 related to odour nuisance, 1 related to dust, 1 related to noise and 1 related to miscellaneous issues. All of these complaints were before October 2006, when Greenstar acquired SERC.

In accordance with Condition 3.13 of the current licence, all complaints are recorded at the site. From 1st January to 31st June 2007, the Agency will be aware that only 2 complaints were received about facility operations, 1 of which relates to odour. In relation to the odour complaint, an assessment was carried out by the Agency enforcement Inspector who noted that the odour did not constitute significant impairment of, or interference with, the environment beyond the facility boundary at the time. Subsequent to the investigation of the complaint, the odour suppression system was activated in and around the transfer building. This is the normal procedure employed should it become apparent that an odourous load has been delivered to the site. No other odour complaints were made directly to the facility in the period from October 2006 to 5th July 2007.

During the site inspections carried out by Agency personnel since October 2006 (December 06, March 07 and May 07), odours were not identified either as a non-compliance issue or referenced as a potential non-compliance.

The records of odour complaints and the findings of the Agency's site inspections indicate that since October 2006 facility activities have not resulted in a significant source of odours and confirm that the odour management techniques applied at the facility are effective.

Conclusions

Based on the data obtained from the recent environmental monitoring programme, the facility is generally compliant with the relevant ELVs. This level of environmental performance indicates that site activities are carried out in accordance with BAT. Furthermore, the major reduction in odour complaints since Greenstar acquired SERC in October 2006 indicates that facility activities are not a general source of nuisance.

The BAT Guidance recognises a distinction between new and existing facilities (Section 2.8). SERC is not a new facility, as it is already licensed. For existing facilities, like SERC, it is envisaged that they will progress towards that attainment of the ELVs and the associated timeframe will be identified on a case by case basis during the licence review process. Furthermore at existing facilities the following should be taken into account:

- The nature and extent of the emission concerned. In particular, regard should be taken of sensitive receptors and local environmental impacts. A risk based approach should be used to establish the extent of hazards and identify appropriate controls;
- The nature and age of the existing facilities connected with the activity and the period during which the facilities are likely to be used or to continue in operation;
- Whether a disproportionate cost would be incurred to replace the old plant with the new techniques for only a small reduction in emissions.

In the Licence Review Application SERC informed the Agency of its intention to close the facility by September 2010 and to relocate the business to a green-field site in the south-east region. However it appears that neither this, nor the two other aspects described above (the nature of the emission and the disproportionate cost), were taken into consideration by the Agency in its assessment of what constitutes BAT for the facility.

It is understood from the Inspector's Report that the Agency's basis for refusal is that the infrastructure, which it considers is necessary to achieve BAT, has not and will not be provided. It is assumed that the infrastructure referred to is a new building to house municipal waste. However, as has been demonstrated above, the techniques currently applied at the facility meet the objectives of BAT, which is to 'prevent or eliminate or, where that is not practicable, generally to reduce an emission and its impact on the environment as a whole'.

However, should the Agency require the current building to be enclosed, this would be accepted as an additional mitigation measure conforming with BAT for this particular site.

Greenstar is not responsible for failures to comply with the licence conditions prior to its acquisition of SERC. Since October 2006 there has been a significant improvement in the level of environmental performance. Furthermore, in the Licence Review Greenstar gave a commitment to carry out any works that the Agency considered necessary to meet BAT requirements at the facility, which may include refurbishment and full enclosure of the existing building. Greenstar will carry out all the works considered necessary by the Agency in accordance with the direction and timeframe specified by the Agency.

It is considered that this reason for refusal is not justified and that the Agency, in reaching its decision, did not take into consideration the current level of environmental impacts associated with facility activities; the recent change in ownership and consequent improvement in environmental performance; the future plans for the facility, and the recommendations set out in its own draft BAT Guidance.

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3. *The Agency is not satisfied that the applicant will manage an increased waste input and ensure that the necessary protective measures are taken so that operations at the facility will not cause or lead to environmental pollution.*

It appears that the facility is capable of technically processing approximately up to 50,000 tonnes of waste annually. Thus this application seeks approval for 50,000 tonnes per annum.

The facility is currently effectively managing the volume of waste accepted annually in a manner that is not causing environmental pollution. Notwithstanding this, Greenstar gave a commitment in the Licence Review Application that it will carry out any works necessary to meet the Agency's requirements as to what constitutes BAT for the facility. These works include the upgrade of the existing building to provide a fully enclosed structure and augmentation of the existing odour suppression system. All wastes containing biodegradable material will be handled and stored inside the building.

Greenstar has a proven record at its other Waste Licensed facilities of providing the protective measures required to ensure that the operations do not cause or lead to environmental pollution.

Conclusion

The Greenstar acquisition of SERC in October 2006 is a significant material change, as it provides SERC with access to experience management and capital resources to improve its level of environmental performance. However it appears that the Agency has not taken account of this in its assessment of likely future compliance. Based on Greenstar's track record at other Waste Licensed facilities the approach adopted by the Agency is not justified.

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