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This report has been cleared for Submission to the Board by the Dr. Jonathan Derham
 Signed: *CO/Ko/12* Date: *25/9/07*

REPORT OF THE TECHNICAL COMMITTEE ON OBJECTIONS TO LICENCE CONDITIONS	
TO:	Directors
FROM:	Technical Committee - LICENSING UNIT
DATE:	10 September 2007
RE:	Objection to Proposed Decision for South East Recycling Company Limited, Waste Reg: W0111-03

Application Details	
Applicant:	South East Recycling Company Ltd., Carrigbawn, Pembrokestown, County Wexford
Location of Facility:	South East Recycling Company Ltd, South East Recycling Centre, Carrigbawn, Pembrokestown, County Wexford
Register Number:	W0111-03
Type of facility:	Waste Recycling / Waste Transfer Station
Class(es) of Activity (P = principal activity):	3 rd Schedule: 11, 12, 13 4 th Schedule: 2(P), 3, 4, 13.
Quantity of waste managed per annum (applied for as part of this review):	50,000 t
Classes of Waste:	Household Waste, Commercial Waste, Construction & Demolition Waste, Industrial Non-Hazardous
Licence application received:	13/02/07
PD Issued	13/06/07
Third Party submissions on application:	69
First Party Objection received:	Yes
Third Party Objections:	None

Company

South East Recycling Co. Ltd (SERC) operate an existing transfer station at Carrigbawn, Pembrokestown, Co. Wexford. SERC also operate a waste collection service, primarily servicing the Wexford urban area. The company was first issued with a waste licence from the Environmental Protection Agency in 2001 (Reg. No. W0111-01). The licence was for the acceptance of 13,500 tonnes of waste per annum, rising to 27,000 tonnes of waste following the installation of necessary infrastructure, under Classes 11 and 13 of the Third Schedule and Classes 2, 3, 4 and 13 of the Fourth Schedule of the Waste Management Acts (1996-2005). This additional infrastructure has not been installed to date.

Ormonde Waste Ltd bought SERC in October 2004, and in 2006 Greenstar Ltd bought out Ormonde Waste Ltd. Greenstar are thus the beneficial owners of the Pembrokestown operation though the facility remains trading as SERC.

A Licence Review application (Register W0111-02) was received in June 2006 but was subsequently withdrawn. The current licence review application (Register W0111-03) - the subject of this report - was received on 13 February 2007. For this current application the company had requested a licence review for the following reasons:

- Increase the overall limit on annual waste inputs to 50,000 tpa;
- To include non-hazardous household wastes in the acceptance schedule;
- To extend the hours of operation;
- To add Class 12 of the Third Schedule (Waste Disposal Activities – 12: “Repackaging prior to submission to any activity referred to in a preceding paragraph of this Schedule”) to the licensed activities.

Sixty-six submissions were received in relation to the application and these were considered by the Board at PD stage.

On the 13th June 2007 the Agency issued a Proposed Decision to refuse the licence review application.

Consideration of the Objection

The Technical Committee, comprising of Dr J Derham (Chair) and Mr Pat Byrne, 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 and the licence application documentation.

This report considers the first party objection; no third party objections were received.

First Party Objection

The Proposed Decision for the review application, which was issued on 13 June 2007, sets out three reasons for refusal, viz:

- 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 a revised licence if granted.*

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.*
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.*

The objection submitted by the applicant addresses these three grounds for refusal, and cites where necessary sections of the Inspectors Report to the Board for the review application (dated 22 May 2007).

1. First Reason For Refusal – ‘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 a revised licence if granted’

As part of this objection the applicant notes the comments in the inspectors report regarding the refusal by the applicant to give the Circuit Court an undertaking that it would comply with the provisions of the licence pending determination of the court proceedings. The applicant comments that the Agency erred in law in having regard to matters subject of ongoing litigation and which are being contested by the applicants.

The applicants accept that the facility had a poor operational record prior to Greenstar Limited taking over the site in October 2006, and suggest that the Agency should have taken into account the new management systems in place. The applicants are of the view that the site does not represent any risk of significant environmental pollution.

Technical Committee’s Evaluation: All applicants for a waste licence have to be Fit and Proper Persons in order to be granted a licence. In the case of the private sector there are three elements to this requirement:

- The applicant must be free of any relevant convictions
- The applicant must be technically competent
- The applicant must be able to meet the environmental liabilities of carrying on and closing the activity.

The applicant perhaps misunderstands the basis for this reason for refusal. It is not related to the ‘relevant convictions’ clause as – and as is pointed out by the applicant – this court case cited above has not reached a conclusion. Rather, the basis for refusal is principally on the ‘technical competency’ grounds of the *Fit & proper Person* criteria. The Agency concerns relate to the ability of the applicant to operate the facility within the requirements of the licence. In 2006 the facility accepted c.38,000t whereas the licence permitted 13,500t. Greenstar only took over the site in October 2006, however they did not stop accepting waste in the last quarter of 2006, despite being over permitted acceptance levels. An EPA site inspections on 23/3/07 indicated that during the first quarter of 2007 the applicant had accepted c.9,600t of waste, which represents c.70% of their permitted annual intake (and yet we were still in the first quarter). On 24/5/07 a site visit to the

facility reports that 17,770t had been accepted by Greenstar; this being c.4,000t more than permitted in the licence as an annual intake. This flagrant disregard to the licence conditions would suggest that the applicant has little regard to the operational limitations and controls in the current licence to such an extent that the technical competence necessary to operate a larger facility (as applied for in the review), and any associated licence restrictions must be called into question. For the record it is worth noting that whilst they were submitting their objection, the applicants' breach of the existing licence conditions continues. An EPA audit of the facility undertaken on 26 July 2007 found from site records that c.25,000t of waste has been accepted onto the facility so far in 2007, this amount being approximately 100% over permitted amounts in the current licence. The applicants have given no indication to the Agency that they have any intention of ceasing to accept waste at the site in order to comply with licence conditions.

Recommendation: No change.

2. Second Reason for Refusal – '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'

The applicants outline their understanding of BAT and detail how in their view their activity complies with the principals of BAT. The applicants argue that the Agency draft BAT documents recognise a difference between new and existing activities and that as their site is an existing facility, then greater allowances need to be made.

Odours are recognised as one of the principal risks for the site and the applicants outline how they manage odorous waste and state that it is all moved off the site within 24 hours of its arrival. The applicants challenge the assertion in the Inspectors Report that in the event that the waste intake increases to 50,000t per annum, the management of odours at this site would necessitate the introduction of negative air pressure and gas treatment. The applicants do acknowledge that in recent years there has been a significant private dwelling building program in the immediate area of the facility. The applicant comments that odour complaints are not frequent. In relation to other environmental aspects of the activity the applicants comment that compliance with dust ELVs is good.

Technical Committee's Evaluation: The applicant misunderstands the 'existing' activity clause in the BAT guidance note. The *proportionality* approach that would flow from application of the waste licensing process and BAT to an existing waste facility coming to the Agency for the first time for licensing, does not apply to existing licensed operations that want to substantially increase their activities. Such extensions are essentially new activities and are licensed as such. This has been the Agency approach since the commencement of industrial and waste licensing in Ireland. As to the application of BAT on the site it is worth highlighting to the applicants that the 'Techniques' element of BAT, includes for the way the facility is operated. As noted in Objection 1 above, the applicants' history of compliant operation since taking over the site in October 2006 is sufficient to warrant concern regarding their ability to comply with the principle of BAT for an enlarged facility.

Given the proximity of sensitive receptors to the site and the challenged infrastructure available at the facility (open building in poor repair and no air handling or odour abatement – refer Inspectors Report and applicants Objection) it is not at all certain that the applicants could carry on a larger scale activity (than that currently authorised) without causing nuisance. Thirteen odour complaints have been registered against the facility so far in 2007. Excluding landfills, the SERC facility is in the top 5 most complained about EPA regulated waste facilities so far in 2007. A similar situation existed for 2006.

It is interesting to note that the current licence permits the licensee to double their intake (from the authorised 13,500t to 27,000t) subject to the provision of key infrastructure. The applicants have never availed of this option and instead increased intake without provision of infrastructure. And now they want to have an approximate fourfold increase in waste intake having never proven that a doubled intake could be managed without causing nuisance. It is the view of the Technical Committee that the applicants have to date failed to demonstrate that BAT can be successfully applied to increased waste intake at the facility, and so it is premature to sanction any substantial increase over what is authorised in the existing licence.

Recommendation: No change.

3. Third Reason for refusal - 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

The applicant argues that the site 'appears' capable of handling the 50,000 tpa of waste applied for in the review. And in relation to the c. 38,000 tpa that the site is currently [illegally] handling, the applicant suggests that this material is being managed in a manner that that is not causing environmental pollution. Notwithstanding this the applicants reiterate their commitment to put in place the necessary BAT to comply with Agency requests and the competence of the new owners should be taken into account.

Technical Committee's Evaluation: The level of complaints received in relation to the SERC facility as well as the OEE Inspection and Audit reports would suggest that, contrary to the applicants assertion, the facility is not handling the current illegal waste volumes in a way that is not causing environmental impact or risk. The discussion of the previous two objections supports this view.

The Technical Committee are of the view that if the applicants want to show commitment to this site and to operating the site legally and in accordance with BAT, then they should immediately cease taking in waste illegally; and install the infrastructure provided for in the existing licence. They could then seek approval under the terms of the existing licence to increase the waste intake to 27,000tpa. After a sufficient period of operation of the new infrastructure and approved increased intake, and following a favourable review of operational performance and facility compliance record, the applicants would be free to apply for a review to seek to increase their intake beyond the 27,000tpa limitation.

The infrastructure on the site is, in the view of the EPA, not capable of handling the waste amounts currently accepted without resulting in environmental impact

(nuisance). The Inspectors Report for the current licence for this facility (W0111-01) discussed the condition and availability of infrastructure on site. This report concluded that subject to the provision of additional infrastructure the licensee could increase the annual waste intake. This infrastructure has never been installed.

Recommendation: No change.

Overall Recommendation

It is recommended that the Board of the Agency uphold its decision to refuse the licence review application (Register W0111-03) made by South East Recycling Company Ltd.,

- (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) having regard to the views of the Technical Committee as set out herein.

Signed

pp *Colin O'Keefe*

Dr J Derham

for and on behalf of the Technical Committee