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Marcin Libicki  
Chairman of the Committee on Petitions  
European Parliament  
Brussels  
Belgium

17 January 2008

Subject: Concerns related to the implementation of the EC environmental legislation in connection with petitions 295/2005 and 14/2006.

Dear Mr. Libicki,

*Re: 295/2005*

By letter dated 13-12-2007 to me, the Committee on Petitions for the European Parliament notes that it has been petitioned regarding the recent EPA decision for the Fingal Landfill (PD issued 20-9-07). The Parliament points out the requirements of the Landfill Directive (1999/31/EC) in relation to the development of new landfills in meeting certain technical standards for protection (naturally or by provision of measures), as well as the provision of after-care, emissions management, etc. In addition, the Parliament stresses the requirement under the Directive for competent authorities to 'fully assess the compliance of the intended measures with all these legal requirements' to ensure that the landfill does not represent a 'serious environmental risk'.

The Parliamentary communication also asked that they be informed of any arrangements for a Public Hearing, as they wish to participate.

The Parliament expressed concern regarding the reported presence of an aquifer under the footprint of the proposed Fingal landfill. An aquifer is defined in national legislation as 'any stratum or combination of strata that stores or transmits groundwater'. This is a much more all-embracing conservative definition than the more specific Water Framework Directive<sup>1</sup> definition, viz, 'any subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater'. The basic fact of the matter in Ireland is that every square

<sup>1</sup> 2000/60/EC



meter of the national territory is underlain by an aquifer as defined in national legislation. Moreover there is a high dependency by rural dwellers on private and group groundwater supply wells in Ireland.

Mindful of the risk to groundwaters, the EPA approached the assessment of the Fingal Landfill proposal from a precautionary viewpoint.

The proposal was evaluated against, *inter alia*:-

- The requirements of the Landfill Directive<sup>2</sup>, the Water Framework Directive<sup>1</sup>, the Waste Directive<sup>3</sup>, the EIA Directive<sup>4</sup>, and the Groundwater Directive<sup>5</sup>;
- The national technical standards guidance landfill engineering (Landfill Manuals – e.g., Landfill Site Design, Landfill Site Investigation);
- The National Groundwater Protection Schemes – Groundwater Protection Response for Landfills.

There is a public supply groundwater well-field located to the north of the proposed landfill ('Bog of the Ring' supply). The proposed landfill is located outside of the catchment for this well-field. There are rock and gravel aquifers below the proposed footprint of the landfill, however there is a thick layer of in-situ low permeability clay located between the proposed base of the landfill and these local aquifers. The low-permeability in-situ clay layer is a minimum 10m thick, rising to over 20m thick in places. The aquifers under the landfill have been classified by the State Geological Survey as locally important<sup>6</sup> with a low vulnerability, and suitable for development of landfill subject to EPA engineering guidance<sup>7</sup>. The precautionary method adopted in Ireland of landfill site selection, having regard to a national scheme of aquifer classification and vulnerability, is almost unique in Europe and goes beyond any standard articulated in EU Directives.

For the Fingal class of landfill the Landfill Directive specifies a basal liner system equivalent to:

- Mineral layer 1m thickness at  $K \leq 1 \times 10^{-9}$  m/s
- Overlain by an artificial liner (e.g. synthetic) (no standard specified)
- Overlain by a leachate drainage layer >500mm

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<sup>2</sup> 1999/31/EC

<sup>3</sup> 2006/12/EC

<sup>4</sup> 85/337/EEC

<sup>5</sup> 80/68/EEC

<sup>6</sup> On a scale from Regionally Important – Locally Important – Poor Aquifers

<sup>7</sup> As per national Groundwater Protection Schemes (DoE-EPA-GSI, 1999), and in particular the Groundwater protection Response for Landfills

The lining system proposed for the Fingal landfill exceeds the specification in the Landfill Directive, viz,

- Underdrainage/leak detection gravel layer 1m thick with pipe-work
- Overlain by an approved geosynthetic
- Mineral layer 1m thickness at  $K \leq 1 \times 10^{-9}$  m/s
- Overlain by an 2mm HDPE FML
- Overlain by an approved geosynthetic
- Overlain by a >500mm leachate drainage layer (pre-washed granular/rounded stone 16-32mm grain size) with a permeability (K) of  $\geq 1 \times 10^{-3}$  m/s, incorporating leachate collection drains

In addition, and significantly, the proposed licence for the facility requires a 1:50 minimum slope on the base of the facility and a maximum permitted leachate head of 1m at any point in a cell. The combined impact of these technical requirements is the rapid drainage of leachate off the base of the landfill to the leachate extraction sump where levels are required to be maintained below 1m – i.e. minimal leachate head on the majority of the cell floor.

Moreover it is necessary to factor in the natural protection provided by the 10m of in-situ very low permeability clay (majority K values vary  $1 \times 10^{-7}$  to  $1 \times 10^{-9}$  m/s) that lies under the landfill.

By any objective measure, the standard of containment and leachate control for the proposed facility is considerably in excess of the EU BAT standard presented in the Landfill Directive.

For any leachate to enter the rock and gravel aquifers below the landfill the following failure path is required:

- Failure of Leachate collection and Removal Layer
- Failure of Synthetic Liner
- Failure of engineered mineral layer
- Failure of Leak Detection and removal layer
- Failure of 10m of in-situ very low permeability clay

Any reasonable risk assessment for such a sequence of failures to occur at the same time and in the same general location is vanishingly low.

The above discussion addresses the basal lining standards. It is, however, also relevant to discuss the landfill capping standards presented in the proposed licence for the Fingal Landfill. Again, they exceed the technical standards set in the Landfill Directive – by presenting minimum technical and performance standards for the efficiency of the sub- and supra-cap drainage layers as well as the sealing layer.

I would also like to draw your attention to the detailed technical assessment of the proposed landfill as presented in the Inspector's Reports for the application (enclosed), and to the detailed engineering, operations and emissions management conditions, including aftercare provisions, in the Proposed Decision (enclosed).

I also enclose EPA guidance in relation to investigations for landfills and landfill site design, as well as a joint publication between this Agency, our parent Department of the Environment, Heritage and Local Government, and the Geological Survey of Ireland on Groundwater Protection Schemes. I would further like to direct you to the detailed documentation and EIS published on the EPA website for this application. Notable amongst the application documentation is information on site selection and groundwater risk that deals with the aspects of concern to your committee.

The planned oral hearing of objections will provide all concerned with an opportunity to address these and other issues and to provide expert comment. Final details of the date and location of the hearing will be communicated to you as soon as they are agreed. Any person who presents themselves at the hearing will, with the approval of the chairperson, be given an opportunity to make their concerns known at the hearing orally or to observe the process and procedures each day the hearing is taking place. Your letter of 13 December 2007 will be forwarded to the chairperson for his information and any action he considers appropriate.

RE: 14/2006

The implementation and enforcement of environmental impact assessment (EIA) legislation is primarily a matter for the Irish Planning Authorities and the Environmental Protection Agency's role is confined, for the most part, to providing guidance on how environmental impact statements should be prepared.

In the particular case that is the subject of this petition, I note that the matter was referred to the Irish Planning Appeals Board who made a fresh screening determination and agreed with the local planning authority that an EIA was not required.

In the circumstances, the EPA is satisfied that there has been no breach of European or national legislation in relation to environmental impact assessment.

Yours sincerely

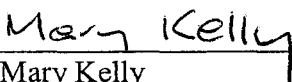
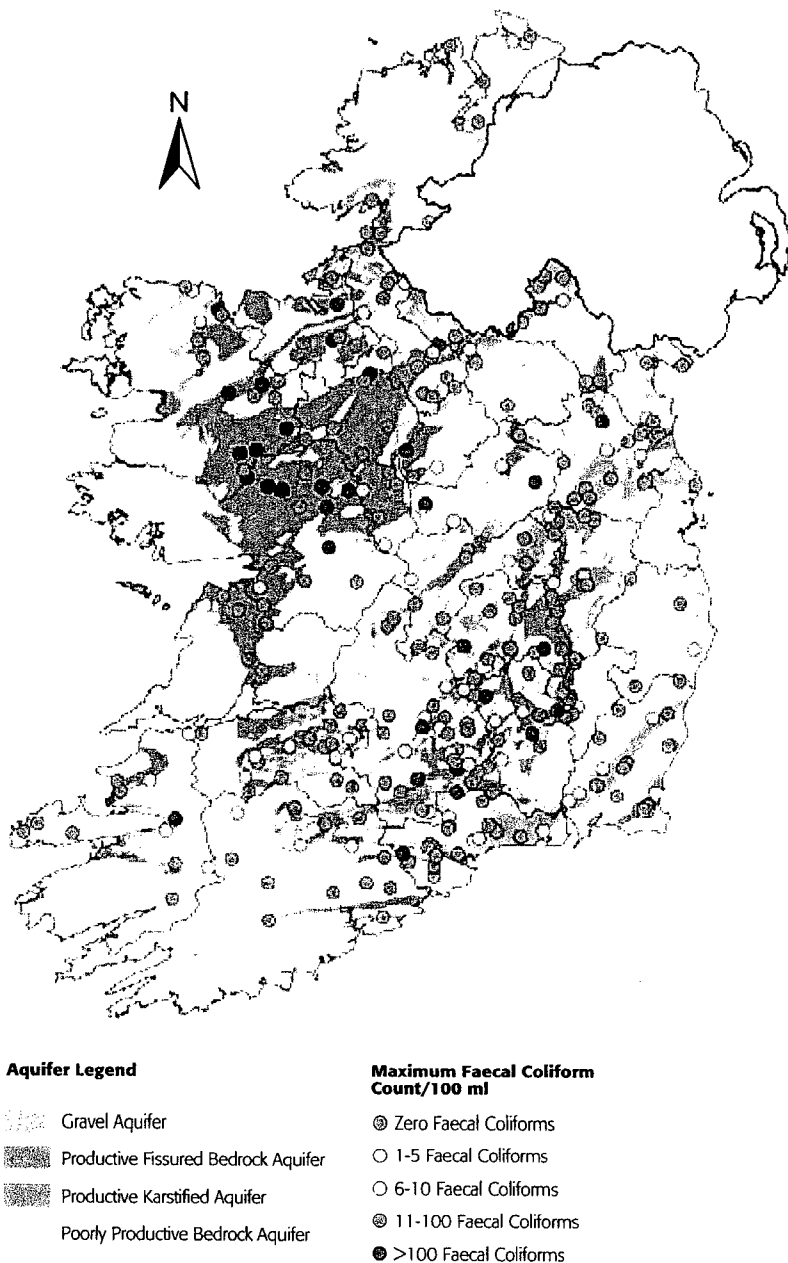
  
\_\_\_\_\_  
Dr. Mary Kelly  
Director General



Figure 9b Maximum Faecal Coliform Count/100ml during 2003-2005



Source: EPA (M. Craig)

**Sources**

EPA (M. Craig); Page, D., Moriarty, J., Doris, Y. and Crowe, M., 2004, *The Quality of Drinking Water in Ireland. A report for the year 2003 with a review of the period 2001-2003*, EPA, Wexford; Toner, P., Bowman, J., Clabby, K., Lucey, J., McGarrigle, M., Concannon, C., Clenaghan, C., Cunningham, P., Delaney, J., O'Boyle, S., MacCárthaigh, M., Craig, M. and Quinn, R., 2005. *Water Quality in Ireland 2001-2003*. EPA, Wexford.





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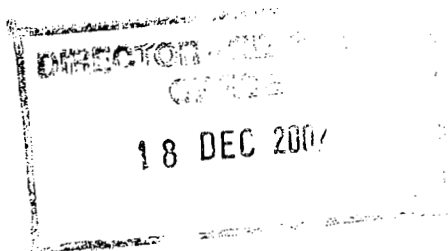
COMMITTEE ON PETITIONS  
THE CHAIRMAN

Brussels.  
AGV/mlh[02-COM.PET(2007)D/77718]

*mk*

207 183 13.12.2007

Ms. Mary Kelly (Director General)  
Environmental Protection Agency  
PO Box 3000  
Johnstown Castle Estate  
Co. Wexford  
Ireland



Subject: Concerns related to the implementation of the EC environmental legislation in connection with petitions 295/2005 and 14/2006

Dear Madam,

During its meeting of 22nd November 2007, the Committee on Petitions continued its examination of the above-mentioned petitions and instructed me to bring to your attention its concerns related to the assessment of the environmental impact of the two projects by Irish authorities.

Petition 295/2005 on the planned landfill to be built in Fingal County, the petitioners reiterated their preoccupations concerning the detrimental environmental impact that such project would have on the Bedrock aquifer lying below it.

As you know, pursuant to the Landfill Directive, the landfill can be authorised only if the characteristics of the site, according to the requirements of Sec. 1.2 Annex 1 of the Directive, or the corrective measures to be taken, indicate that the landfill does not represent a serious environmental risk. Concerning the possible effects on the environment, for example on an aquifer, the Landfill Directive provides strict rules by setting thresholds and after-care procedures. Similarly this applies to all possible emissions. In this context, the members insisted that the responsible national authority should fully assess the compliance of the intended measures with all these legal requirements and trust that your Agency will take all necessary steps to ensure that this will be the case.

Furthermore, members decided to designate Mr. David Hammerstein MEP to participate, on behalf of the Committee on Petitions, to the public hearing that the Environmental Protection Agency scheduled for the beginning of next year. I would be much obliged if you would inform me about the arrangements for this public hearing.

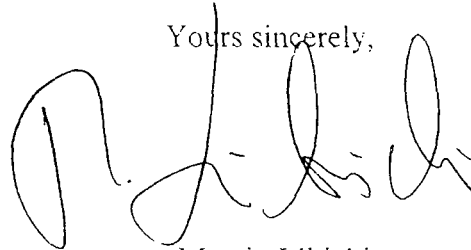
Questions and concerns related to the environmental impact were also raised in case of petition 14/2006 on the planned construction of a dam on Bantry in Cork County. The Committee continued the examination of this petition in the presence of the petitioner and of the representative of the European Commission.

The European Commission sought clarifications with the Cork Council on the contents of the environmental impact assessment (EIA) screening determination carried out in this case under Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive) as amended by Directives 97/11/EC and 2003/35/EC. It resulted that no environmental impact assessment was necessary.

Considering the information provided by the petitioner on the serious impact that such dam would have on local environment, it seemed that, in answering the request submitted by the European Commission, the Cork County appears to have misrepresented the facts in order to justify its decision not to ask for an environmental impact assessment. The Committee is confident that you will look into these allegations and make sure that potential environmental risks are properly assessed prior to the implementation of the Bantry Dam project.

Given your competence on the matter, I strongly encourage you to take all the necessary measures as to make sure that the concerns raised above are adequately addressed. The Committee looks forward to your comments and will continue its examination of these dossiers in due time.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Libicki', written in a cursive style.

Marcin Libicki

Chairman of the Committee on Petitions

*Annexes: Notices for Members (CM 657107 and 640319)*



# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

28.02.2007

## NOTICE TO MEMBERS

**Petition 14/2006** by Timothy Harrington (Irish), on construction of Bantry dam in Ireland.

### 1. Summary of petition

The petitioner protests against the proposed construction of a dam on Bantry in Cork County in Ireland. He underlines that the project will have detrimental effects on the well being of the local residents and the local environment, and that no proper impact assessment has been undertaken. He also points out that the dam would be located directly above Bantry and thus involve risks of accidents. The petitioner argues that the responsible local authorities by ignoring the rules concerning environmental impact assessments (Directive 85/337/EEC) have rendered themselves guilty of infringement of the EU principles concerning sound environmental management, and he therefore ask the European Parliament to intervene.

### 2. Admissibility

Declared admissible on 30 August 2006. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 4 April 2006.

#### **The petition – Summary of the facts**

The petitioner refers to a proposal to construct a dam in Bantry, County Cork, Ireland. He criticises the decision by the Cork County Council to build the dam (capacity estimated at 732.000 cubic metres) and the decision by the Irish authorities to dismiss the need for an environmental impact assessment (EIA) on the basis of storage capacity only. According to the petitioner, risks include vulnerability to flooding and landslide.

Finally, the petitioner expresses the conviction that this project should be subject to an EIA

projects on the environment (EIA Directive) as amended by Directives 97/11/EC<sup>1</sup> and 2003/35/EC<sup>2</sup>.

The purpose of the EIA screening determination is to decide whether an individual project should undergo a formal EIA. The Directive allows Member States the discretion to make the determination by reference to thresholds, case-by-case consideration or a combination of both. The relevant Irish legislation (SI N° 6000 of 2001) requires a mandatory EIA where a dam project involves water storage in excess of 10 million cubic metres or an impounded area of 30 hectares or more. It also provides for an EIA where, despite being below these thresholds, a project is, nonetheless, considered likely to have significant environmental effects.

The Irish authorities have confirmed that no formal EIA was carried out in this case. The project developer, Cork County Council, was also responsible for the EIA screening determination. It considered that a formal EIA was unnecessary as the project involved a storage capacity of 732,000 cubic metres and an impounded area of 13.7 hectares and as it considered that the dam was not located in a designated sensitive area.

Although it did not undertake a formal EIA, Cork County Council prepared a non-statutory environmental impact appraisal in 2002. This document looked at the range of potential environmental impacts that would figure in a formal EIA. The appraisal was made public and the non-technical summary was given to the Commission. This document was the subject of internal review by the council's heritage officer and a senior planner who, based on the appraisal, concluded in 2003 that the project would not have significant effects.

The county council's determination that no EIA was required was challenged in 2003 by an NGO by way of an appeal to Ireland's Planning Appeals Board. The board made a fresh screening determination in October 2003, concluding that an EIA was unnecessary.

From the available information, the Commission is unable to detect a failure by the Irish authorities to make a screening determination in accordance with the discretion that the Directive gives them.

Hence, based on the information provided by the petitioner and the reply received from the Irish authorities, the Commission is not in a position to pursue this case further.

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<sup>1</sup> OJ L 73, 14.3.1997, p. 5.

<sup>2</sup> OJ L 156, 25.6.2003, p.17.

# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

10.11.2006

## NOTICE TO MEMBERS

**Petition 0295/2005 by James Lunney (presumably Irish), on behalf of the Nevitt Lusk Action Group against a Superdump, on a proposed landfill facility**

### 1. Summary of petition

The petitioner is concerned about the planned construction of a large landfill facility in an area in north County Dublin. According to him, the facility would put at risk aquifers that provide drinking water. Furthermore, it would attract birds, which may pose a hazard to air traffic, given that the site is located within 12 km of Dublin Airport. The petitioner says that guidelines of the International Civil Aviation Organisation recommends that landfills should be no less than 13 km from an airport. Moreover, the site would cause nuisances for local residents. Finally, the petitioner is of the view that the construction of this landfill would be in contradiction with the proximity principle laid down in the Waste Framework Directive, which states that waste should be managed as close to its source as possible. According to him, the proposed facility is expected to receive waste from far away areas and thereby create significant additional road traffic. It would also undermine efforts to reach EU recycling targets.

### 2. Admissibility

Declared admissible on 16 August 2005. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 3 February 2006.

The petition concerns the planned construction of a landfill in County Dublin, Ireland. According to the petitioner the construction of the landfill would have negative effects on the environment. Also, the petitioner claims the siting of the landfill does not take into account the principle of proximity.

The general obligations for the treatment of waste are defined in Directive 75/442/EEC on

was located on a historical site and that the distance from the site to an airport fell below recommended guidelines. The petitioner is interested in launching a study to assess the effects of the planned landfill site on the environment and calls for prior investigations. Furthermore, it was suggested that the Commission should interfere in the planning stage.

Since its last Communication, the Commission has not obtained any additional information that would allow it to modify its opinion. More specifically, it has not identified a possible breach of EU waste legislation in relation to the concerns of the petitioners relating to historical heritage and distance from residential properties.

Pursuant to the Landfill Directive, the landfill can be authorised only if the characteristics of the site, according to the requirements of Sec. 1.2 Annex 1 of the Directive, or the corrective measures to be taken, indicate that the landfill does not represent a serious environmental risk. Concerning the possible effects on the environment, for example on an aquifer, the Landfill Directive provides strict rules by setting thresholds and after-care procedures. Similarly this applies to all possible emissions. Assessing the compliance of the intended measures with all these legal requirements is up to the responsible national authority.

The Commission, as the guardian of the Treaty, has a general duty to uphold European Community law. Art. 226 of the EC Treaty contains a power for the Commission to start an infringement procedure where a Member State has failed to fulfil an obligation under the Treaty. However, the Commission considers that there is currently no basis on which it could or should invoke Article 226 in this case, as the process for determining the landfill permit has not been completed and it is not possible to identify any permit-related breach of EU law.

(6)



**epa**

Environmental Protection Agency  
An Ghníomhaireacht um Chaomhnú Comhshaoil

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31/1/08 by GO

(Sun)

Mr Marcin Libicki  
Chairman of the Committee on Petitions  
European Parliament  
Brussels  
Belgium

31 January 2008

**Subject:** *Concerns related to the implementation of the EC environmental legislation in connection with petition 295/2005*

Dear Mr. Libicki

I am to refer to Dr. Mary Kelly's, Director General of Agency, letter dated 17<sup>th</sup> January in relation to concerns raised by the Committee on Petitions as referenced in petition 295/2005. As indicated in that letter the Agency has decided to hold an oral hearing of the objections raised in relation to the proposed decision of the Agency to grant a waste licence for a landfill at Nevitt, Lusk, Co. Dublin [Application Reg. No. W0231-01].

I am to advise that the arrangements for the forthcoming hearing are as follows:

<b>Venue:</b>	Bracken Court Hotel, Bridge Street, Balbriggan, Co. Dublin. (Martello Suite)
<b>Commencement Date:</b>	Monday 3 <sup>rd</sup> March 2008 @ 10.30am

It is noted that Mr. David Hammerstein MEP will attend the hearing and in these circumstances I would be grateful if you could inform him of the dates and venue as referenced above. It is noted that neither Mr. Hammerstein nor the Committee on Petitions have made a formal objection as provided for in national legislation. In these circumstances Mr. Hammerstein should make himself known to the chairperson of the hearing. If he wishes to make his concerns known to the hearing he should advise the chairperson who will seek to facilitate him at an appropriate opportunity during the course of the hearing. I should add that he is very welcome to attend and observe the proceedings each and every day the hearing is in session.

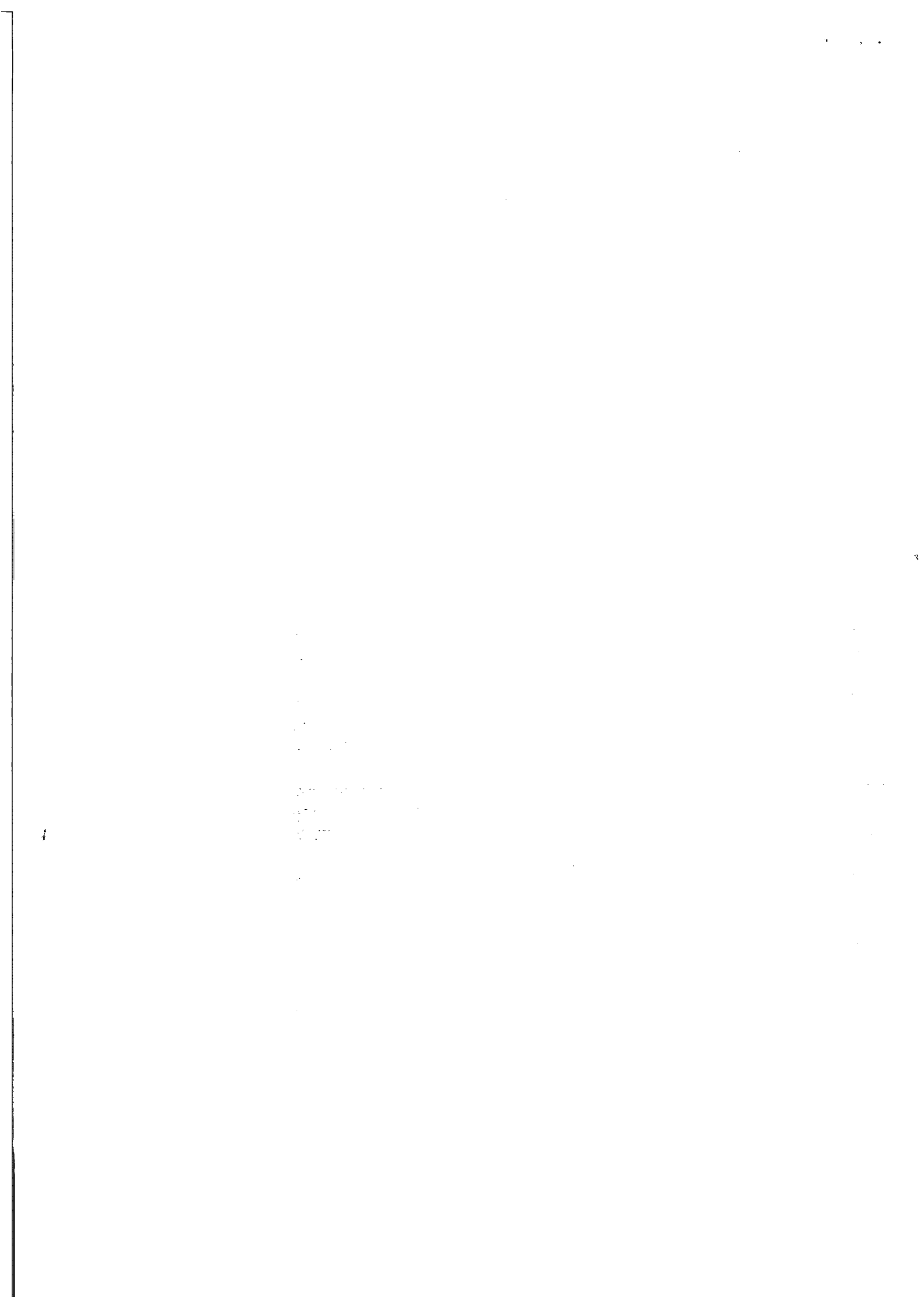
A copy of this letter is being forwarded to the chairperson of the hearing for his information.

I would again ask that you pass on the details of the hearing to Mr. Hammerstein at your convenience.

Yours sincerely

Paddy Nolan  
Programme Manager  
Office of Climate, Licensing & Resource Use

**Register letter no.  
RL 0999 99568 IE  
Posted on the 31/3/08**



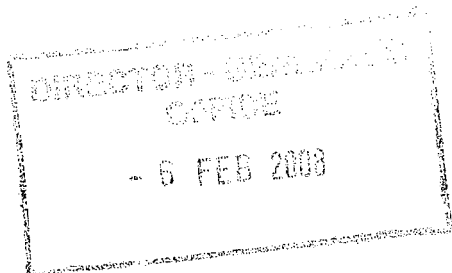


Committee on Petitions  
The Chairman

Brussels,  
AGV/mlh[02-COM.PETI(2008)D/5252]

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301767 01.02.2008



Ms. Mary Kelly  
Director General  
Environmental Protection Agency  
PO Box 3000  
Johnstown Castle Estate  
Co. Wexford  
Ireland

Subject: Your letter of 17 January 2007 on issues raised in petitions 295/2005 and 14/2006

Dear Madam,

I would like to thank you for your letter of 17 January 2007 and for the comprehensive manner in which you addressed our questions. The details you provided will certainly be taken fully into consideration by our Committee when examining the two petitions mentioned above.

As far as the 3rd of March 2008 hearing is concerned, I do hope that Mr. David Hammerstein Mintz will be able to attend it on behalf of the Committee in order to observe the proceedings. I would be much obliged if a formal letter of invitation were to be addressed to Mr. David Hammerstein Mintz.

I would like to take this opportunity to emphasise once more that the concerns of the Committee on Petitions are to ensure in co-operation with relevant national authorities, such as the Environmental Protection Agency, that the European Union legislation is applied fully and indiscriminately.

Allow me to thank you once again, on behalf of the Committee, for taken these two petitions seriously and for addressing the issues raised so thoroughly.

Yours sincerely,

Marcin Libicki  
Chairman of the Committee on Petitions







Environmental Protection Agency  
An Ghníomhaireacht um Chaomhú Coimhshaoil

6

Mr David Hammerstein Mintz,  
European Parliament  
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11<sup>th</sup> February 2008

Dear Mr. Hammerstein,

I have been asked by Dr. Mary Kelly, Director General of the EPA to refer to correspondence between herself and Mr. Marcin Libicki, Chairman of the Committee on Petitions.

As you are probably aware the EPA has decided to hold an oral hearing of objections to the proposed decision to grant a waste licence in respect of a proposed landfill at Nevitt, Lusk, Co. Dublin. The EPA has received objections from a number of parties and is required to deal with each objection in accordance with the procedures and provisions of the various provisions of national legislation including Waste Management Acts and supporting Licensing Regulations. I should add that the Act and supporting Regulations give effect to the provisions of a number of Directives including Council Directive 99/31/EEC of 26<sup>th</sup> April 1999 on the landfill of waste.

The licence application and all correspondence documents in relation to the licence application are available on line from the EPA website at: [www.epa.ie/whatwedo/licensing/waste](http://www.epa.ie/whatwedo/licensing/waste). The availability of all this documentation gives effect to and demonstrates in a real and practical manner the open and transparent approach taken by the EPA to the licensing process.

I understand that the committee is anxious that you be given an opportunity 'to observe the proceedings' on their behalf. In this regard I can confirm that as the process is open and transparent you are most welcome to attend the hearing, as is any of your colleagues on the committee. As the licensing process is a quasi-judicial process the EPA and the hearing must be conducted in accordance with the licensing legislation. In this context those who submitted objections in accordance with the legislation will have an opportunity to present their objections orally at the hearing. Any other person wishing to participate orally at the hearing can do so subject to the consent of the Chairperson.

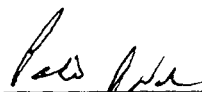
Details of the hearing are as follows:

**Venue: Bracken Court Hotel (Martello Suite)  
Bridge Street  
Balbriggan  
County Dublin**

**Commencing on: Monday 3rd March 2008 at 10.30a.m.**

I hope this provides the details you require. Should you require any further information please contact me.

Yours sincerely



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Paddy Nolan  
Programme Manager

Cc: Mr Marcin Libicki, Chairman of the Committee on Petitions, European Parliament,  
Brussels, Belgium