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 Submission to the Board by the
 Programme Manger Frank Clinton
 Signed: Frank Clinton Date: 19/03/09

**OFFICE OF CLIMATE,
 LICENSING &
 RESOURCE USE**



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

TO:	Directors
FROM:	Technical Committee - LICENSING UNIT
DATE:	10-3-09
RE:	Objections to Proposed Decision for the Bord na Mona, Drehid Waste Management Facility, Waste Register W0201-02

Application Details	
Type of facility:	Integrated waste facility comprising Non-Hazardous Landfill & Composting
Class(es) of Activity (P = principal activity):	3 rd Schedule: 1, 4, 5 (P), 6, 13 4 th Schedule: 2, 11, 13
Quantity of waste managed per annum:	385,000 tonnes (for years 2009-2014 to revert to 145,000 tonnes post 2014)
Classes of Waste:	Municipal, commercial and industrial derived bio-wastes for composting and residual non-hazardous waste (i.e. pre-treated) from municipal, commercial and industrial sources, for landfilling.
Location of facility:	Parsonstown, Loughnacush, Kilkeaskin, Drummond, Timahoe West, Coolcarrigan, Killinagh Lower and Killinagh Upper, Co Kildare.
Licence application received:	17/06/2008
Proposed Decision issued:	7 /11/2008

Company

This application related to an existing waste facility located on the site of previously worked Bord na Móna peatland (Timahoe Bog). The Timahoe bog comprises c. 2,544ha of substantially worked peatland. The area was subject to peat harvesting activities for nearly 50 years and has been extensively drained. Peat harvesting has now ceased.

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The existing waste operation comprises an area of 179ha within the Timahoe bog. Construction of the facility commenced in August 2006 and acceptance of waste began in February 2008. The current activity is licensed for a composting operation accepting 25,000tpa bio-wastes for processing, and a 120,000tpa residual waste landfill, incorporating the associated infrastructure.

The residual waste operation sources material from non-hazardous municipal, commercial and industrial waste streams, while the composting activity has yet to commence. The landfill accepts residual waste only, i.e., it has been subjected to pre-treatment in accordance with the requirements of the Landfill Directive.

The nearest residential dwelling is c. 0.98km from the proposed landfill footprint, while planning permission has been granted for a dwelling c. 0.94km to the northeast of the proposed landfill extension.

This review of waste licence Reg. No. W0201-01, issued on 03/08/2005, is being sought in order to accommodate the intensification and extension of the activities licensed. The proposal is to increase waste intake for a period of seven years from the current 120,000tpa to 360,000tpa, after which time the intake will revert to the original 120,000tpa. The proposed operational life of the facility will remain at c. 20 years. Composting levels throughout this period are to remain at 25,000tpa. The landfill footprint will increase from c. 21ha to 39ha and will have a capacity of c.4.1Mt waste (c. 5.0Mm³ void space), which is an increase on the c.2.3Mt waste (2.86Mm³ available void) authorised in the original licence (W0201-01).

The Agency issued a Proposed Determination in respect of the Review application on 7/11/2008. Further information on the detail of the review application is available in the Inspectors Report to the Board accompanying the Recommended Decision for this review (report dated 2/09/2008)

Consideration of the Objection

The Technical Committee, comprising of Dr Jonathan Derham (Chair) and Ms Ewa Babiarczyk, 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, Mr Breen Higgins, who also provided comments on the points raised. The Technical Committee consulted OEE records in relation to enforcement aspects of objections raised.

This report considers the five valid third party objections, the first party objection, as well as three Submissions on Objections received.

First Party Objection

The applicant makes 14 points of objection, a number of which are clarifications.

For clarity any Submissions on Objections made by the Third Party in relation to the First Party objections are dealt with in association with the objection to which they relate.

A.1 Glossary 'Incident'

The applicant queries the interpretation of the 'cessation of flare operation' clause in the definition of incident.

Technical Committee's Evaluation: The definition of Incident in the Glossary is connected with the operation of Conditions 9 and 11 of the Proposed Determination, specifically Conditions 9.3, 11.1(iv), 11.2 and 11.3. It is reasonable to query the meaning of 'cessation' in the context of flare operation. Clearly, the outage of a flare for 10 minutes represents an entirely different risk profile to an outage that lasts a day. Not all short term outages should be classed as an incident. However, if such short term outages were repeated at high frequency, this could be symptomatic of gas extraction design/operation problems meriting attention and thereby perhaps qualifying as an incident. The text defining an 'incident' in the Glossary could be improved in that regard.

Recommendation: Replace clause (vi) of definition of 'Incident' in the Glossary with the following:

(vi) Any outage of the landfill gas flare lasting more than 60 minutes (continuously), or a any outage over a 24hr period lasting more than 100 minutes (cumulatively).

A.2 Condition 1.5

The applicant objects to this the inclusion of the new condition limiting hours of waste acceptance and operation.

Submission(s) on Objection: *M & P Corcoran & Others (refer Third Party Objection Reference B below) in a submission on this objection believe that the First Party is not considerate of local residents.*

Technical Committee's Evaluation: The original licence did not include any limitation on waste acceptance and operation hours. This was based on the very isolated nature of the activity (the nearest residence is c.1km from the footprint of the landfill). The issue of traffic impact/use on surrounding roads is dealt with in the planning restrictions (c.f. Planning Permission and An Board Pleanala decision) where operational hours are restricted to those specified in the EIS. There is no environmental justification advanced in the Agency documentation in relation to the application in hand to restrict the operational hours and waste acceptance beyond that specified in the EIS (and approved by the Planning Authorities); being 8am to 6:30pm Monday to Saturday (operations), and 8am to 6pm Monday to Saturday (waste acceptance). The EPA should only act to restrict hours at a facility where environmentally

justified. None of the submissions on this application raise an issue in relation to operational hours.

Recommendation: Delete condition 1.5 and re-number accordingly.

A.3 Conditions 3.3 & 3.9

The applicant notes a duplication of conditions and recommends deletion of one.

Technical Committee's Evaluation: Agreed.

Recommendation: Delete Condition 3.9 and re-number accordingly.

A.4 Conditions 5.2 & 5.4

The applicant objects to the subjectivity of these conditions and requests an amendment that introduces the term 'significant' before the condition terms 'impairment' and 'interference'.

Submission(s) on Objection: *M & P Corcoran & Others (refer Third Party Objection Reference B below) and Ms B Logan (Third Party Objection Reference C below) in submissions on this objection do not support the First Party objection. Alternative wording is suggested by Ms Logan.*

Technical Committee's Evaluation: The term 'significant' was removed from the definition of environmental pollution in the Waste Management Acts 1996-2008 via Article of SI 113 of 2008. So it is appropriate for the EPA to reflect such in its licence conditions where relevant.

Chambers English dictionary defines significant as:

Significant - *adj.* having a meaning: full of meaning: important: worthy of consideration: worthy: --- *n.* that which carries a meaning: sign.

The term 'significant' does not in itself have a magnitude, duration or extent, it is just a term to denote something as being worthy of note. In the licence condition, the phrase 'significant impairment' though comprehensible in plain English would suffer under legal challenge: being in fact a nonsense, a tautology; as any impairment of the environment would be significant in itself. Whether or not it would be worthy of enforcement action would depend on the magnitude, duration, extent and consequence of any impairment: i.e. an EPA assessment of the environmental impact. Accordingly, whether the 'impairment' event was environmentally unacceptable is a matter for the Agency to establish, and the operator to defend as may be necessary, in relation to any enforcement action or before a court of law as appropriate.

Recommendation: No change.

A.5 Conditions 8.1.1 & 8.1.2

The applicant objects to the inclusion of the new condition on waste pre-treatment in advance of EPA guidance on its meaning. The applicant also comments that the reference to the Landfill Directive date of 16th July 2009 is confusing in it's licence as this date does not apply to this licence. The applicant requests the EPA to revert to the pre-treatment condition (also 8.1.1) in the existing licence (W0201-02).

In relation to the general pre-treatment conditions the applicant suggests that the EPA pre-treatment guidance may fall under the scope of the Strategic Environmental Assessment Regulations ((SI 435 of 2004). Additionally the applicant suggests that the approach is novel and not in place in any other waste licence, they believe this to be unfair.

The objection goes on to outline at length elements of concern regarding the pre-treatment conditions and ambition, viz, landfill applied or national biodegradable limits; diversion versus treatment; ability for co-operative approach to meeting requirements; legal basis for the guidance; and clarity of text. The last point made in this part of the objection relates to the conditions on treatment 'defeating' the case for the review.

Submission(s) on Objection: *M & P Corcoran & Others (refer Third Party Objection Reference B below) in a submission on this objection believe that financial reward is the main motivator for the operator. The submission on objection also notes that waste is coming to this facility from areas outside the county/region.*

CEWEP (refer Third Party objection Reference E below) in a submission on this objection – specifically to the First Party's objection to Condition 8.1.2 - sets out in some detail the CEWEP view that there is no legal impediment to the imposition of the condition in question. The Submission on objection believes that the proposed condition is 'a crucial step by the Agency as an emanation of the State, in ensuring that the amount of biodegradable municipal solid waste going to landfill is reduced'. CEWED state that the proposed condition is not premature, and rejects the First Party assertion that such new conditions are not within the power of the EPA to impose. The CEWEP submission on objection follows with a detailed set of legal and technical arguments that support the decision of the Agency in respect of the use of Condition 8.1.2. viz, the EU Landfill Directive does not prohibit the achievement of its biodegradable waste diversion obligations via waste acceptance controls at landfill sites; the inclusion of 'diversion' into the concept of 'pre-treatment' is legitimate; the landfill operators are obliged under the terms of their licence to know the character of the waste they are accepting; any postponement of the diversion obligation could lead to enforcement action by the Commission; the EPA does not need to rely on the text of the Guidance Document on waste pre-treatment for its legal mandate to impose conditions, it has the absolute right to attach to any licence it may grant such conditions as it considers necessary; the EPA Technical Guidance on pre-treatment is not subject to SEA as it is not a plan or programme, but rather a guide to assist the Agency in the discharge of its functions, and licence holders in the operation of their facilities; the existing stature provides for the attachment of conditions – e.g. Section 41(2) of the WMAs; the obligations in Article 5 of the EU Landfill Directive bind Ireland to targets, and landfill operators must be part of the solution in respect of that

amount of BMW going to landfill; Condition 8.1.2 will assist incentivising investment in alternative treatment infrastructure; the imposition of the proposed condition does not prejudice future licence reviews to embrace other initiatives; the proposed condition is not unconstitutional, and perceived business interference is greatly outweighed by the environmental protection imperative; Ireland's large reliance on landfill justifies the landfill centric approach adopted by the EPA's conditions, moreover other Member States have similar if not more restrictive policy in place such as landfill bans and high taxes. The CEWEP Ireland submission on objection comments that there is a surplus of landfill capacity available in Ireland undermining alternative treatments. They are satisfied that the terminology employed by the EPA includes 'diversion' as a form of 'treatment'. CEWEPs submission supports the EPA role in waste forecasting, and in relation to the availability of treatment capacity, they observe that non-availability is not in-itself a good enough reason to landfill – there are alternatives. The submission on objection closes by insisting that the waste pre-treatment condition 8.1.2 should prevail.

Technical Committee's Evaluation: The Technical Committee acknowledge the submissions on objection made and is cognisant of those arguments in the formulation of the following response.

It was the EPAs original intention to publish the waste pre-treatment guidance note around the time of the publication of the Drehid PD (Nov 2008). However the complexity of the submissions of the consultation note and changes arising therefrom has resulted in the publication date being extended. The reference to the Landfill Directive compliance date is accepted: this date speaks to landfills existing in 2001, which is not applicable to the Drehid facility. The condition in the PD is a compound condition that is seeks to capture all landfills old and recent. Other than the issue with the referenced date this condition is not dependent on the EPA pre-treatment note. This condition is directly informed by EU Landfill Directive obligations.

There is nothing illegal about the 'at landfill' requirement to prove pre-treatment of biodegradables. There is a national strategy on biodegradable waste diversion from landfill. This broad strategy is not the responsibility of the landfill operators. However landfill operators are responsible for what is disposed to their landfills, and EU law places limits on the amount of BMW that can be disposed to landfill. The EPA MSW Pre-Treatment guidance gives effect to the statutory obligations falling to landfill operators under Article 49(5) of the Waste Management (Licensing) Regulations 2004 (SI 395) by specifying how waste is to be treated prior to disposal in a landfill, as well as the associated obligations falling due under Article 6(a) of the EU Landfill Directive (1999/31/EC). Moreover, Section 41(2)(a)(i) of the Waste Management Acts permits the EPA to attach conditions to a licence that relate to the types of waste to be accepted. The objection is incorrect in asserting that such matters are not a matter dealt with in primary state legislation. I would also draw attention to Article 3(i) of the Waste Management (Licensing) Regulations 2004 (SI 395). In any case, EU case law has provided that where national law is deficient (in transposition), EU law has primacy: so the requirement for provisions in a national Act are moot.

Waste minimisation (including recovery) is a key aspect of the national and EU legal concept of BAT. The proposed guidance is consistent with that policy.

Under Section 40(4) of the Waste Management Acts (WMAs) the EPA is prohibited from granting a waste licence unless it is satisfied that:-

(bb) if the activity concerned involves the landfill of waste, the activity, carried on in accordance with such conditions as may be attached to the licence, will comply with Council Directive 1999/31/EC on the landfill of waste,

and,

(c) the best available techniques will be used to prevent or eliminate or, where that is not practicable, to limit, abate or reduce an emission from the activity concerned.

The pre-treatment guidance also gives effect to the first and fourth Strategy Principles as articulated in the *National Biodegradable Waste Strategy* (DoEHLG, 2006). The EPA in exercising its functions under the WMAs in relation to assessing a waste licence application is required to have regard to *the policies and objectives of the Minister or the Government in relation to waste management for the time being extant* (c.f. Section 40(2)(iv) of the WMA). The EPA waste pre-treatment guidance also assists in delivering on Member State obligations articulated in Article 22 of the revised Waste Framework Directive 2008/98/EC.

As to the matter of the pre-treatment conditions 'defeating' the purpose of the review (stated as fulfilling a pressing need for regional capacity), this objection is devoid of logic given that (i) the review does not refuse the additional intake requested; (ii) in any case the existing licence requires pre-treatment of all waste prior to disposal in the landfill, the new pre-treatment in fact as stated gives greater relief to the operators in relation to a strict enforcement of the existing position (not all biodegradables have to be treated under the new text); and (iii) there is not a shortage of biodegradables treatment capacity as implied by the objection (e.g. reported national capacity in rendering plants of 400,000t).

In relation to biodegradable waste, co-operative arrangements will be entertained by the EPA, subject to assessment and site suitability.

Notwithstanding the views of the Technical Committee articulated above, as well as those in the Third Party Submission on Objections, the principal objection – prematurity – is accepted: in that all landfill licences should have the conditions imposed at the same time. In view of the fact that the EPA pre-treatment conditions review programme for all landfills is not finalised, the Technical Committee recommend that Conditions 8.1.1 & 8.1.2 of the final licence for W0201-02 be amended. This text reflects the wording of the existing First Party licence (W0201-01).

Recommendation: Delete text 'after 16th July 2009' at end of the first line of Condition 8.1.1.

Replace Condition 8.1.2 with the following:

8.1.2 The pre-treatment referred to in Condition 8.1.1 must include treatment of Biodegradable Municipal Waste (BMW) component of the waste accepted for disposal at the facility to the extent necessary (and proportionate to municipal solid waste disposal intake) to ensure achievement of Article 5 of the EU Landfill Directive (1999/31/EC).

A.6 Conditions 8.1.3

The applicant objects to the requirement to achieve a standard not yet finalised.

Technical Committee's Evaluation: The Technical Committee note that the stability standard referenced in the EPA Pre-Treatment Consultation Document is a stability standard for treated biowastes that has been articulated in EPA licences for a number of years. There should therefore be little uncertainty. The operators' assertion that the standard identified in the glossary is not yet final is a nonsense: by inclusion of same in the licence for this facility the EPA has deemed it an appropriate standard for this facility. Similar to other standards of operation set out in the licence. Similar conditions are in the operators' existing licence and did not provoke such an objection (e.g. Conditions 3.24.1, or 8.3.2 of W0201-01). The applicant's objection on this point indicates an unwillingness to engage with the Agency to operate such standards considered protective of the environment.

Recommendation: No change.

A.7 Conditions 8.1.4, 8.1.5

The applicant objects to the inclusion of these conditions as they relate to Conditions 8.1.1, 8.1.2 and 8.1.3 objected to above.

Technical Committee's Evaluation: Conditions 8.1.1 and 8.1.2 though amended still survive in purpose and intent. Accordingly Conditions 8.1.4 & 8.1.5 which are supportive (record keeping, protocols, etc) should prevail. Such requirements are essential waste acceptance controls and are independent of the waste pre-treatment guidance.

Recommendation: No change.

A.8 Condition 8.1.15

The applicant objects to the requirement to notify without delay the EPA of all waste received at the site that does not meet the acceptance criteria.

Technical Committee's Evaluation: The Technical Committee accept the applicants point regarding the administrative burden of the effective notification of 'each occurrence' and 'without delay' implications of the condition as drafted. The condition reflects the text of Article 11(1)(d) of the Landfill Directive. This condition could be amended to require the annual notification as part of the AER as well as inclusion of certain waste tracking details. The Technical Committee believe this amendment does not diminish the regulatory imperative required by the Directive, and will be more administratively efficient from the perspective of both the operator and the EPA.

Recommendation: Replace Condition 8.1.15 with the following:

8.1.15 The licensee shall maintain a register of any waste received at the facility that does not meet the waste acceptance criteria. The register shall include a description of the waste, details of its provenance, and details of the carrier. The licensee shall as part of their AER notify this register to the Agency, and include information on the off-site disposal/recovery of such non-conforming wastes.

A.9 Condition 8.8

The applicant believes that Condition 8.8 is unclear in its scope.

Technical Committee's Evaluation: Agreed. Minor amendment of the condition will assist.

Recommendation: Add the text 'potentially polluting' before the term 'materials' in condition 8.8.

A.10 Condition 8.9

The applicant believes that Condition 8.9 is unclear in its scope. They suggest a clarification.

Technical Committee's Evaluation: Agreed.

Recommendation: Add the text 'destined for off-site disposal/recovery' after the first appearance of the word 'Waste' in Condition 8.9.

A.11 Condition 8.11

The applicant believes that Condition 8.11 is unclear in its construction.

Technical Committee's Evaluation: Agreed.

Recommendation: Add the following table to the end of Schedule C of the Final Licence.

C.5 Waste Monitoring

Waste Class	Frequency	Parameter	Method
Waste sent off-site for Disposal/Recovery ^{Note 1}			

Note 1: Analytical requirements to be determined on a case by case basis

A.12 Schedule A.2.2

The applicant objects to the use of a cubic meter (m³) limitation in the schedule for the capacity of the site, and suggests a tonnage limit instead.

Technical Committee's Evaluation: The EU Landfill Directive requires the licence for a landfill to specify capacity. The specification of this capacity as consented air space is the most logical way, and indeed is better solution for operators. Tonnage based total capacity limits can be problematic on account of the varying densities of waste accepted, as well as the compaction effort. Moreover, a facility could reach its tonnage limit, however settlement could result in the finished profile not being achieved. Capacity expressed as void space avoids these complications and better serves the commercial interests of the operator.

Recommendation: No change.

A.13 Schedule C.3 Ambient Monitoring

The applicant believes that the requirement to change visual inspection down stream in the receiving water from weekly to daily is not justified. They suggest that any concern can be addressed by the provisions in Schedule C.2.2.

Technical Committee's Evaluation: Agreed.

Recommendation: Amend Visual Inspection monitoring frequency from Daily to Weekly in the *Receiving Water Monitoring* table of Schedule C.2.3.

A.14 Schedule C.2.2

The applicant notes that this Schedule does not have a reference to an emission location.

Technical Committee's Evaluation: Agreed. Use location reference from existing licence.

Recommendation: Add the following text to the top of Schedule C.2.2.

Emission Point Reference No.: Outlet from Sedimentation Lagoons

Third Party Objections

Five Third Party Objections are considered, for convenience they are labelled:

- B. P & M Corcoran & Others, Kilkeaskin, Carbury, Co Kildare
- C. B Logan, Killina, Carbury, Co Kildare
- D. Greenstar, Unit 6 Ballyogan Business Park, Sandyford, Dublin
- E. CEWEP Ireland, PO Box 10285, Dublin 1
- F. K Cashen, Director of Services, North Tipperary Co Co, Nenagh, Co Tipperary

For clarity any Submission on Objections made by the First Party in relation to the Third Party objections are dealt with in association with the objection to which they relate.

B. P & M Corcoran & Others, Kilkeaskin, Carbury, Co Kildare

The objection outlines a number of general concerns regarding the landfill facility and none in relation to any specific condition of the proposed licence. Some of the objections related to matters of planning which are beyond the ability of the EPA to influence.

B.1 Odour & Fly nuisance

The objection comments that they suffer odour and fly nuisance at their houses from the landfill. The objection comments that there are no clear procedures for local community to address problems at the site.

Technical Committee's Evaluation: The objectors house is located over 2 km to the south west of the landfill. There is no national finally published set-back distance (in draft landfill BAT and also in forthcoming guidance on site selection). That said, the 2km in place would be considered a good set-back distance. The prevailing wind direction is west-southwest-south (residences are up prevailing wind). It is notable that another EPA licenced waste facility (Carbury Compost W0124-01) is located up prevailing wind of the objectors townland.

The landfill started to accept waste in February 2008 and commissioned its first gas extraction wells with flare stack over Christmas 2008. This should result in a reduction in landfill gas odour nuisance potential. In addition, and following on from EPA enforcement inspections and follow-up action (October 2008) the licensee was requested to improve the cover management (e.g. avoid using biodegradable fines as cover).

As to the matter of the fly infestation, this was a phenomenon noted around the country in September following favourable weather conditions. This factor allied to a food source (though 2km down wind of the residences) would be problematic for any area. The local community complained about flies at the time and this was followed up and satisfactorily closed off by the EPA enforcement team.

As to the matter of the community raising issues and concerns, the Technical Committee are satisfied that the complaints procedure in place and operated by the EPA enforcement team are more than satisfactory. The EPA has a range of powers in relation to the resolution of complaints regarding landfill operation, including suspension and revocation of licences. The community can also complain directly to the licensee (contact details on site notice board). Condition 2.2.2.7 of the Proposed Decision requires the licensee to operate a public communications programme including access to site information. The condition could be improved by asking the licensee to establish a public liaison committee to provide a regular forum for discussion of issues.

Recommendation: Add the following sentence to the end of Condition 2.2.2.7,

This programme shall in particular provide for periodic meetings with local interested groups to provide a forum for information exchange and issue management.

C. B Logan, Killina, Carbury, Co Kildare

The objection outlines general concerns regarding the landfill facility and none in relation to any specific condition of the proposed licence. Ms Lonigan states that she lives c.4km from the landfill facility

C.1 Fly Nuisance

The objection raises similar concerns to those raised in Objection B.1 above. The objection suggests that any expansion in waste intake should be prohibited until the operator can prove effective management of the facility. The objection comments that the licence does not require the operators to monitor fly infestation or report on daily conditions at the landfill (in relation to flies), including a public communication element.

Technical Committee's Evaluation: Refer to comments and recommendation on objection B.1 above. As to the matter of the effective management of fly populations Conditions 5.4, 6.26 and 9 do provide some control. The Technical Committee see the benefit of an addition to Condition 6.

Recommendation: Insert new condition 6.31.

6.31 The licensee shall establish and operate a fly population/infestation monitoring and control programme. This programme shall be supported by documented procedures which shall be available on-site for inspection by the EPA as part of the EMP. The procedures shall include recording of use of any pesticides. The scope of the programme shall be risk based and subject to periodic review.

D. Greenstar, Unit 6 Ballyogan Business Park, Sandyford, Dublin

The objection outlines a number of general concerns regarding the pre-treatment conditions in the proposed licence. The objection appends another Greenstar document which was a non-Drehid specific submission made on the EPA MSW Pre-Treatment Consultation document published in September 2008. This submission is included into the objection as a background document. Greenstar also requested an Oral Hearing of objections to the Drehid Landfill proposed licence. This request was considered by the Board on 13th January 2009 and refused.

D.1 Condition 8.1.2

The objection states that its main concern is with the construction of Condition 8.1.2. The objection comments that national biological treatment capacity for waste is limited. It notes that the recent collapse in the international market for recyclates has impacted on the financing of waste treatment facilities. The objection comments that the landfill licensee has no control of the up-stream (prior to receipt at the landfill) waste treatment/market, and believes it is not legally correct to place a national responsibility for biodegradable waste management solely on the landfill operators.

Technical Committee's Evaluation: The substance of this objection is broadly similar to matters raised in the First Party objection. Refer to consideration of Objection A.5 above.

Recommendation: No change.

E. CEWEP Ireland, PO Box 10285, Dublin 1.

CEWEP (Confederation of European Waste-to-Energy Plants) Ireland introduces who they are and whom they represent. CEWEP state that their 'objection' comprises a supporting statement for the waste pre-treatment conditions in the draft licence for the Drehid facility, and believe that the Landfill Directive obligations require urgent attention.

E.1 Legal Basis for BMW Pre-Treatment Condition (specifically, it is assumed, Condition 8.1.2).

CEWEP outline their view of the legal and policy basis for the waste pre-treatment conditions (including 'direct effect' obligations), and go on to discuss – and support – the EPA MSW Pre-treatment consultation document issued in September 2008. CEWEP further comment that EPA enforcement policy will have to ensure compliance with the national and EU legal requirements.

Technical Committee's Evaluation: No comment on the general points made. See also the Technical Committee comments in relation to Objection A.5 above.

Recommendation: No change

E.2 Reliance on Landfill / Landfill Capacity

CEWEP outline certain national statistics in relation to waste produced and targets to be achieved. In addition CEWEP observe that there is more approved landfill capacity than annual waste arisings. CEWEP comment that cheap landfill is undermining the development of alternative waste infrastructure.

Technical Committee's Evaluation: The comments raised for the most part do not relate specifically to any aspect of the Proposed Decision for the Drehid Landfill, accordingly no response is required. In relation to capacity (and the possible relationship to the increased annual intake approved in the proposed Drehid decision) see the Technical Committee comments on Objection F.1 below. Policy measures promoting alternative waste infrastructure/technologies that are outside the licensing remit of the EPA (e.g. landfill levy) are not a matter for the EPA.

Recommendation: No change

F. K Cashen, Director of Services, North Tipperary Co Co, Nenagh, Co Tipperary

F.1 Capacity & Proximity Principle

The objection suggests that the revised capacity of the facility means that waste will have to be imported into the region. This is contrary to the proximity principle. The objection states that waste is moving out of their region (Midlands Waste Management Region - MWMR) to cheaper private sector landfills.

Submission on Objection: *M & P Corcoran & Others (refer Third Party Objection Reference B below) in a submission on this objection support the views expressed in the Objection.*

Technical Committee's Evaluation: Firstly, the EPA has no role in relation to market control of waste movement. Such commercial matters are for the MWMR.

Article 5 of the Waste Framework Directive¹ establishes the obligation on Member States to establish a network of disposal operations, for the purposes of becoming self-sufficient. This obligation was articulated as the proximity principle in the 1989 EU Commission *Community Waste Strategy* and in the revision of that strategy in 1996.² In its simplest form, the principle requires that waste for disposal should be dealt with in one of the nearest appropriate installations. This principle is also reflected in the Basel Convention.

¹ 2006/12/EC.

² Community Strategy for Waste Management. EU Commission communication COM(96)399final. August 1996.

The Technical Committee does not believe the proximity principle is best served by examination on a county by county level in all circumstances. A regional and national perspective is appropriate in some circumstances. Government policy also holds that the political boundaries of waste regional planning areas should not be applied restrictively in relation to waste movement. The following is an extract from DoEHLG Circular WIR 04/05, dated 3/5/2005:-

The Minister confirms that one of the fundamental components of policy in regard to the regulation of the movement of waste is the application of the proximity principle. However, relevant authorities, in preparing waste management plans, determining the necessary statutory authorisations and in regard to other associated waste management functions, should recognise that the application of the proximity principle does not entail interpreting administrative waste management planning boundaries in such a manner as to inhibit the development of waste infrastructure which will support the attainment of national waste management policy objectives through the rational development and use of such infrastructure.

For this discussion it is relevant to consider that neither Dublin City Council, Dún Laoghaire Rathdown County Council or South Dublin County Council have any municipal solid waste disposal capacity within their districts. Moreover in the Dublin Metropolitan Region (four Dublin authorities, as well as Wicklow, Meath, Kildare and Louth County Councils have very limited waste disposal capacity. By the end of 2010 it is expected that the KTK, Arthurstown, Balleally, and Rampare Landfills will be full. This will remove over 1,000,000 tonnes of annual MSW disposal capacity from the region, which produces a similar amount of MSW per annum. The increased capacity at the Drehid landfill facility will likely be employed to address a portion of this forthcoming deficit. EPA statistical modelling would suggest that the State will run out of landfill capacity around 2016 to 2018 if alternative waste management capacity (including WtE incineration) is not brought on stream (based on current approved landfill capacity – EPA approval and Planning Approval, unappealed).

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



Dr J Derham

for and on behalf of the Technical Committee

