



Ms. Suzanne Wylde,
Inspector,
Office of Climate, Licensing & Resource Use,
Environmental Protection Agency,
Headquarters P.O. Box 3000,
Johnstown Castle Estate,
County Wexford

2nd September 2009

RE: Application for Waste Licence Ref. No. W0263-01 Irish Packaging Recycling Ltd,
Walkinstown, Dublin 12


Dear Ms. Wylde,

On behalf of Irish Packaging Recycling Ltd, I enclose one original and one hard copy of the response from South Dublin County Council in relation to the need for an EIS for the IPR facility. This was received after the Article 14 response was submitted to the Agency. I also enclose two electronic copies on a CD-ROM in searchable pdf format. The content of the electronic files is a true copy of the original.

Consent of O'Callaghan Moran & Associates required for any other use.

If you have any queries, please call me.

Yours sincerely,


Jim O' Callaghan

09013801/JOC/MC

Encs.

c.c. Mr David Naughton, PANDA Waste Services.

Report on requirement for an EIS for PANDA Waste Transfer Station at Ballymount Road, Walkinstown, Dublin 12.

Introduction

Whilst there is an EPA Licence Application submitted by the PANDA, this report confines itself to issues regarding Planning legislation and procedure.

Has a planning application been made?

Section 172(1) of the Planning and Development Act 2000 states:

***Where a planning application is made** in respect of a development or class of development referred to in regulations under section 176, that application shall, in addition to meeting the requirements of the permission regulations, be accompanied by an environmental impact statement.*

As no planning application has been made, the issue of an EIS does not arise. However, if a planning application were to be submitted based on the details on the EPA website the question of whether an EIS is required is examined below.

Does recovery/reuse/recycling constitute disposal?

On the EPA website the document 'Project Description' dated 12th Feb 2009 states in Section 1.1

PANDA has focused on recovery/reuse/recycling rather than disposal and has invested significant financial resources in developing and continually expanding its capacity in these areas.

So the question arises, does recovery/reuse/recycling constitute disposal? 'Disposal' is not defined in the planning legislation. Under Schedule 5, Part 1 class 3(b) of the Planning and Development Regulations 2001 (as amended) the term 'final disposal' is used. This would suggest that there can be interim disposal prior to 'final disposal'. It is considered that disposal is a general term and that recovery / reuse / recycling falls within the umbrella of disposal. Thus, recovery/reuse/recycling does constitute disposal.

This view is supported by the European Court of justice ruling (Case C-486/04). In Part 1 of the Summary of the Judgement it states:

*The **concept of waste disposal** for the purpose of Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11, **is an independent concept which must be given a meaning which fully satisfies the objective pursued by that measure, which, as is clear from Article 2(1), is that, before consent is given, projects likely to have significant effects on the environment** by virtue, inter alia, of their nature, size or location **should be made subject to an assessment with regard to their effects**. Accordingly, that concept, which is not equivalent to that of waste disposal for the purpose of Directive 75/442 on waste, as amended by Directive 91/156 and by Decision 96/350, **must be construed in the wider sense as covering all operations leading either to waste disposal, in the strict sense of the term, or to waste recovery.** **

What is the amount of annual waste?

There is an inconsistency with the maximum annual tonnage of waste to be handled at the site. On the EPA website the document 'Project Description' dated 12th Feb 2009 states in Section 1 in the introduction that the total annual waste intake is greater than 50,000 tonnes. However the applicants, on the same website, in the Waste Licence Application form state that the maximum annual tonnage of waste to be handled at the site, is 150,000.

As the capacity does not exceed 100 tonnes per day, then Schedule 5, Part 1 class 10 of the Planning and Development Regulations 2001 (as amended) does not apply.

However, Part 2 Class 11(b) of the Planning and Development Regulations 2001 (as amended) refers to installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule. It is considered that the proposal would fall into this category and therefore an EIS would be required.

Conclusion

As no planning application has been made, the issue of an EIS does not arise. It is considered that recovery/reuse/recycling does constitute disposal. This view is supported by the European Court of justice ruling (Case C-486/04).

However, if a planning application were to be submitted conforming to the details on the EPA website then an EIS would be required. This is based on the proposal having a total annual waste intake greater than 50,000 tonnes which means it would fall within Part 2 Class 11(b) of the Planning and Development Regulations 2001 (as amended) which refers to installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

*Commission of the European Communities v Italian Republic. (Failure of a Member State to fulfil obligations – Assessment of the effects of certain projects on the environment – Waste recovery – Installation for the production of electricity by the incineration of combustible materials derived from waste and biomass in Massafra (Taranto) – Directives 75/442/EEC and 85/337/EEC)

Jim Johnston
Senior Executive Planner
27th Aug 2009