

Ms Yvonne Furlong,
Waste Licensing Unit
Office of Climate, Licensing & Resource Use
Environmental Protection Agency
PO Box 3000
Johnstown Castle Estate
Co. Wexford

Date: 2nd September, 2009
Our Ref: JSPE 175_L03
Your Ref: W0264-01

Re: Waste Licence Application by Sand and Gravel Merchants Ltd for the continued operation of its existing Waste Recovery Facility on lands at Thornberry Townland, Kill, Co. Kildare (National Grid Reference 295986E 221275N).

Dear Ms Furlong,

Following a conversation with EPA inspector, Aoife Loughnane, we consider that prior to preparing a formal response to the Article 14 Notice issued on 17th June 2009 that clarification is required with respect to a number of concerns that have arisen regarding the proposed Waste Management Licensing of the above facility i.e.

- i. Implications of EU Directive 2008/98/EC
- ii. Cost implications for implementation of a Waste Management Licence
- iii. Enforcement of Inert Waste Management Facilities

i. Implications of EU Directive 2008/98/EC

Following review of the "*EU Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on Waste and Repealing Certain Directives*" it is considered that there is a need for clarification as to "*the waste status of uncontaminated excavated soils and other naturally occurring material which are used on sites other than the one from which they were excavated*".

The Directive (Articles 5 & 6) also provides for developing '*by-product*' and '*end-of-waste*' specific criteria that could be applied to uncontaminated excavated soils and other naturally occurring material, and construction and development waste.

There is also provision for member states to exempt “*recovery of waste*” operations from permit requirements (Article 24) subject to meeting certain conditions of exemption (Article 25) and compliance with a registration process (Article 26).

It is noted that Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2008/98/EC by 12 December 2010.

Given the time frame for implementation of this Directive, the concern is that our client and the industry are being required to comply with existing waste management legislation that in effect will be amended or superseded by new legislation within the near future. It is also considered that the new directive provides a number of mechanisms to simplify the regulation of sites importing uncontaminated excavated soils and other naturally occurring material for reclamation of lands and recovery of construction and demolition waste.

ii. Cost implications for implementation of a Waste Management Licence

The cost implications in terms of preparation and submission of the Waste Management Licence application, providing further information as deemed necessary, and implementation of the licence as currently envisaged are considered onerous. This is on the basis of a review of the costs incurred to date in relation to this application and the recent decision by the EPA to grant a licence for a similar facility (W0247-01).

It is considered that licensed facilities may have to absorb significant costs over and above Local Authority permitted/certified facilities that will affect the future viability of their operations. This is particularly the case with respect to soil testing required for a licence versus a permitted site. It could be contended that smaller sites present the greater risk due to lower levels of control/enforcement. If anything, the existing regulatory system goes against the principle of economies of scale, whereby it would appear that unit costs increase accordingly as the volume being handled increases (thereby reducing competitiveness).

There is a need to ensure permitted/certified facilities are subject to the same relative level of environmental control and management as licensed facilities to ensure a level playing field.

iii. Enforcement of Waste Management Facilities

There is also concern that since the introduction of the current Waste Management (Facility Permit and Registration) Regulations that the situation has arisen where there are a number of existing permitted facilities operating that should have applied for waste management licensing.

It is considered that without proper enforcement of all inert waste management facilities the legitimate licensed facilities will be placed at a commercial disadvantage, if not made unviable.

Given the above, our clients are hesitant to incur further costs with respect to proceeding with the licence application process until clarification is provided in relation to these matters.

We have also consulted with the Department of the Environment (Waste Review & Regulation Section) and they are aware of our concerns. It is our understanding that The Department of the Environment is seeking a meeting with the EPA to discuss the implications with respect to the EU Directive 2008/98/EC and implementation of the existing Waste Management (Facility Permit and Registration) Regulations.

We consider a meeting between the Department of Environment, EPA and concerned stakeholders/interested parties would be a way to progress this matter.

We would be grateful if you could contact us at your earliest convenience with respect to this matter.

Yours Sincerely,

For J Sheils Planning & Environmental Ltd.

John Sheils ASCS MRICS

Cc. Ms Aoife Loughnane, EPA Inspector
Mr Brian Meeney, EPA Senior Inspector

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