

Moate,
Ballinakill,
Portlaoise
Co. Laois.

Objection by the Applicant to the Proposed Determination in Reg. No P0 710 - 03.

Type of Objection: Applicant against some conditions.
Objector Name: Mr. Paul Tully
Location of the activity: Moate, Ballinakill, County Laois.
Fee due for Objection: €253.

The subject matter and grounds of objections, together with the reasons, considerations or arguments on which the objections are based, are as set down below.

Dear Sir /Madam,

Please see attached the objection that I make to the Proposed Determination as issued by your Office on 28th October 2010. I also attach a copy of comments in relation to the Inspectors Report for my Licence Application.

Introduction:

I do not recover manure by "landspreading" or otherwise, not in the installation and not anywhere else. I believe that the Agency and its relevant staff know that the producers of pig manure and suppliers of that pig manure to farmers who want it for their holdings, are required by separate legislation that is independent of the IPPC system, to store it, manage it and use it in accordance with prescribed standards binding on them in the context of their holdings.

For the avoidance of doubt, I state that the system for the management of manure in this installation to be licensed and for the lawful transfer of manure to customers who seek a supply from the installation is:

- Collect all manure in tanks in the manner required under S.I.101 of 2009
- Store all manure temporarily in the tanks pending sale or supply and transfer to customers, in response to customer demand, as by-product fertiliser, as is provided for and authorised under S.I. 252 of 2008 and S.I. 253 of 2008, in the knowledge that use by customers is required to be in compliance with standards prescribed in S.I. 253 of 2008 and S.I. 101 of 2009, and
- Record all transfers of manure from the installation as is required by Article 23(1)(g) in S.I. 101 of 2009 and maintain the records for inspectors.

I respectfully ask that the Agency respond to the issues raised in this submission.

Condition 6 – Control and Monitoring

Condition 6.3 (i) & table headed "*Lands Used for Landspreading*" in Schedule C.6.2

I object to this proposed condition as set down in proposed condition 6.3 (i). This objection is limited to the implied requirement for me to monitor and control customers' farmlands and holdings as proposed in condition 6.2 and in the table headed "*Lands Used for Landspreading*" in "Schedule C.6.2 – Ambient Monitoring" in the Proposed Determination. This is the same proposed requirement as is set down in more specific terms in proposed condition 8.12.4. This is a very important matter, as it is not at all based on anything in the application that either states or suggests that I "used" or "use" any land for "landspreading" or for any action associated with the deposition of manure or any other fertiliser on farmland. The matter to which I object in the strongest possible terms is entirely based on the misunderstanding and/or misinterpretation of the relevant facts in relation to the lawful supply of manure to customers for their use and benefit, as was clearly stated in the application for a licence and as is fully provided for in Article 3(b) in S.I. 252 of 2008 and Article 20 in Regulation EC 1774/2002 (as amended), and in S.I. 253 of 2008 (including Article 7). Condition 6.3 and the associated Schedule should be removed from the licence because it is not relevant to me and is not applicable to me or my installation.

The implied requirement for me to monitor and control customers' farmlands and holdings by reference to Schedule C.6.2, either pretends or asserts that I can access and control the lands that my customers' may fertilise with pig manure that they acquire from the installation, and that I could do that as if the lands were in my ownership or were otherwise under my control and within the installation, when, in fact, they are not my lands, are not subject to my control, are not my responsibility, and of course are not in or connected with the installation. I have no authority to **either access or control or monitor** lands in other farmers' / customers' holdings. I cannot perform the soil sampling and testing indicated in that table in Schedule C.6.2 as being required of me by the proposed licence. I cannot require any customer to carry out such sampling and testing. Such sampling and testing and interpretation of the results of any such sampling or testing that a customer may do are all matters for that customer for pig manure. The records and documents in relation to fertiliser movements (including animal manure movements) into and/or out of the holding that are required to be maintained by the occupier of each and every holding in the State are prescribed in Article 23(1) in S.I. 101 of 2009. I believe that the Agency knows that conditions of my licence cannot impose any burden on persons who are lawful customers for manure and that it is wrong for the Agency to propose or include any such conditions in this proposed licence. Management of fertiliser acquisitions and the use of fertilisers on customers' holdings is a matter for each customer. That is clear state policy as provided for in S.I. 252 of

2008, S.I. 253 of 2008 and S.I. 101 of 2009. Those are not matters for either control or influence by conditions in the licence when granted. Such conditions cannot be complied with by a licensee. The matters referred to in Condition 6.3 and the associated Schedule are not matters for either control or monitoring by me as the applicant/licensee.

With regard to the Schedule C.6.2 table headed "*Lands Used for Landspreading*" I have already stated my objection to the pretence or assertion that I can do soil sampling and testing that is specified in that table, **when in fact** I cannot do so, as I am not authorised or entitled to do so, and it is not my responsibility to do so.

I also object to the implication in the title/heading of that table, "*Lands Used for Landspreading*", that I, as operator of the installation for which a licence is sought, does or somehow can, use customers' lands for landspreading (that is for "*the application of slurry/manure to farmland*"), **when in fact**, because of basic practical and legislative considerations and constraints that must be known to the Agency and which the Agency must be required to respect, I do not do so, and cannot do so. Indeed, I very much doubt if any land on which farmers use any animal manure is perceived or considered by the farmer to be "*land used for landspreading*". In fact, such land is used to grow a crop and if the crop is grass, it is used to support livestock. The land is never used "*for landspreading*" even by the occupier, and certainly is never used for any purpose whatsoever by me the applicant in this case. That is a basic fact that must be understood and respected by all.

Furthermore, the sub-title of the table, that is "*All lands included in the Landbank*" across from "*Monitoring location:*" clearly implies that farmer customers' lands are part of a "landbank" that is controlled by and/or is accessible by me from the installation, and would be controlled under the licence applied for in this application for a licence, **when in fact**, I have no such "landbank" entity, and the lands indicated as comprising the alleged "landbank" are simply customers' lands that are not part of the installation, and are not subject to any management or monitoring control by myself who in this instance is the applicant for this licence either from the installation or otherwise, because management and control of fertiliser acquisition and the use and recording of fertiliser use is the prescribed responsibility of the customers who are the occupiers of the lands on which fertiliser including manure is deposited, under Regulations in S.I. 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009.

I draw attention to misplaced suggestions to the applicant in Notes 2 and 5 at the bottom of the Schedule C.6.2 table headed "*Lands Used for Landspreading*". Contrary to the suggestion or proposed provision in the text of Note 2, I state as a matter of fact that I am not required, authorised or entitled to produce a nutrient management plan of the type inferred in Note 2 for any lands that are not my holding, and that I am not authorised or entitled to assume anything at all in relation the production of the nutrient management plans referred to. In any case, the Agency must know that all matters that are referred to in Note 2 are matters addressed to the

persons who are the "occupier" of each "holding" in the state, including any farmer who may decide on the basis of rules and criteria in the Regulations relevant to their/her holding, to acquire pig manure from this pig rearing installation.

The option suggested in Note 5 is a matter for any farmer who decides to acquire pig manure and avail of the provision available to them under Article 34 in S.I. 101 of 2009 in relation to the calculation of his plan or fertiliser estimate, and in relation to his implementation of his plan or estimate in his holding.

The last table in Schedule C.6 to which I object needs to be either deleted from the licence, or be changed so as to make it clear to all that it applies only to land fertilised by myself the licensee in the installation. That is necessary so as to respect relevant responsibilities as prescribed in the relevant legislation known to the Agency, and so as to remove ambiguity and to be consistent with the Scope of the licence as described in Conditions 1.1, 1.2 and 1.3,

It is appropriate here to comment on and object to **Condition 8.12.4, re monitoring of customers land**, as the subject matter of that proposed condition is identical to the part of proposed condition 6.3 (i) (Table C.6.2 in Schedule C) as objected to above. The monitoring of soil outside the installation on customers holdings is not a matter for me as the licensee. The same arguments apply as were advanced earlier in relation to proposed condition 6.3 (i). Reference to section 52(2)(a) and section 83(3)(d) of the EPA Acts 1992 and 2003 indicates to me as the applicant/licensee that the EPA knows or should know that these and similar "landspreading" conditions clearly conflict with legislation in force by denying and disregarding provisions in S.I. 252 of 2008 and S.I. 253 of 2008 and in S.I. 101 of 2009 that classify manure as Category 2 by-product, authorise sale or supply and transfer of manure from producers for use as organic fertiliser or soil improver and assigns responsibility for all aspects of the use of the manure/fertiliser to the occupier of the holding on which it is deposited. In relation to manure produced in the installation the governing legislation prescribes that the user is the person responsible for matters like fertiliser plans and compliance with P and N limits, but that these and the other "landspreading" conditions in the Proposed Determination in "speaking" to me as the applicant / licensee seek to impose responsibility on me for matters that are the prescribed responsibility of customers for manure sold or supplied from the installation, and so are not within my realm of control or responsibility. This has to be seen as being contrary to government policy as expressed in relevant legislation in force, and so should not be in this PD or licence when granted.

Condition 6.4. Groundwater sampling equipment to Agency specifications. I am not aware of the nature or cost of the groundwater sampling equipment that would be to Agency specification for my well. I consider that the standard good practice for periodically taking grab samples of water from the wells should be adequate for purpose in this site, and I request that the condition be amended accordingly to make it clear that sophisticated equipment not generally installed on pig farms will not be required in this installation.

Condition 6.10. Freeboard. I object to the unreasonable interpretation of the statutory requirement in relation to freeboard as set down in this proposed condition. Storage capacity in any individual tank under pig accommodation is not always related to and equivalent to the storage capacity required in respect of the pigs accommodated over that tank. Indeed, it normally is not. On that account, the proposal that

"The licensee shall ensure that a freeboard of at least 200 mm from the top of each covered slurry storage tanks is maintained, as a minimum, at all times" and that

"The required freeboard shall be clearly indicated in the tank."

is not practical, is not in accordance with the relevant prescribed requirement, and is unreasonable when considered in the context of the statutory regulations under which freeboard requirement is prescribed. The last sentence of the proposed condition (that is, to clearly indicate the required freeboard in the tank), is not part of the relevant statutory requirement in relation to freeboard. It is totally impractical and unworkable in practice.

The clear intention in the relevant articles and schedules in S.I. 101 of 2009 in which the statutory requirement is prescribed, is that the gross manure storage capacity within a holding, calculated for pigs as prescribed in Articles 5, 7 and 9, and Schedule 2, Table 1, of S.I. 101 of 2009, shall include in the holding a provision for the equivalent of 200mm freeboard in all covered manure storage tanks and 300mm freeboard in all uncovered tanks in the holding. Included in the legislation is a general requirement that storage tanks are managed so that no tank ever leaks or over-flows. That does not mean that individual tanks may not be filled to within less than 200mm of the top on occasions, although in general good practice individual tanks are and will be managed so that any covered tank will rarely be allowed fill within 50 mm of the top.

The requirement for inclusion of the equivalent of 200mm freeboard in the gross slurry storage capacity **in the holding** is a statutory requirement. That requirement is fully acceptable to me in relation to **the installation**.

I request that the condition be revised to fully reflect the statutory requirement that the 200mm freeboard be included in the calculation of the statutory 26 weeks storage capacity required in the installation. A requirement that the reserve slurry storage capacity to be available in the installation be equivalent to at least the total freeboard required for the installation would be fully acceptable and would be practical. While the requirement to maintain 300mm freeboard at all times on uncovered tanks is reasonable the requirement to maintain 200mm freeboard at all times in each and every covered tank in pig houses at all times is not reasonable, is not as prescribed, and imposes an unnecessarily rigid management regime that is not necessary for any purpose. The proposed requirement for clear indication of required freeboard in the tank needs to be deleted as it is not required by the relevant statutory control system, is not necessary and is feasible in practical terms.

Condition 6.14. Noise. I object to a requirement to carry out a noise survey at the installation. Reasons are that noise from the installation does not interfere with amenity in the vicinity of the installation, and the normal limits of 55dB(A)/ 45dB(A) daytime / night time are acceptable and are not likely to be ever exceeded beyond the boundary by the activity in the installation.

Condition 8 – Materials Handling

Condition 8.11. Slurry/Manure as fertiliser or as waste. I object to this proposed condition in the strongest possible terms. I believe the proposed requirement that:

Slurry/manure shall be considered to be a manure or fertilizer when recovered as defined in the Waste Management Acts 1996 to 2010 and as agreed by the Agency.

is a wrong and inappropriate text that I cannot assess or administer. It is a statement rather than a condition, and it has no place as a condition of the licence.

There is no manure discarded from the installation. I understand that the deposition of waste on land with benefit to agriculture is a waste recovery operation. However, in relation to pig manure that is by-product by reference to the Animal By-products Regulations (S.I. 252 of 2008 and Regulation EC/1774/2002) and to the Directive on waste (2008/98/EC; Recitals 12 and 22 and Articles 2 and 5), the deposition of by-product pig manure on land to supply fertiliser nutrients as provided for and as controlled under the Nitrates Regulations (S.I. 101 of 2009 and Directive 91/676/EEC) is lawful use of the manure and is not a waste recovery activity. Those Regulations, not the Waste Management Acts referred to in the proposed condition 8.11 are the basis of the system under which the deposition and use of pig manure on farmland by farmers in general (including customers for pig manure), is governed. I respectfully put it to the Agency that neither the Waste Management Acts nor "as agreed by the Agency" apply to the deposition and use of pig manure from this installation on customers' land. Such deposition and use is required to be in accordance with the terms prescribed in Fertilisers and Soil Improvers Order (S.I. 253 of 2008) and the Nitrates Regulations (S.I. 101 of 2009). The statement that " *Slurry/manure shall be considered to be a manure or fertilizer when recovered as defined in the Waste Management Acts 1996 to 2010 and as agreed by the Agency*" is not relevant to me or to this pig rearing installation because it is wrong to infer that the use of manure of any farmed animals by deposition on farmland is subject to control under the Waste Management Acts. Accordingly, it is necessary that Condition 8.11 either be deleted from the licence, or be replaced with the reference to the Waste Management Acts substituted by a reference requiring that manure transferred from the installation for use, be in accordance with terms and standards prescribed in S.I 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009.

All the manure produced in the site is collected and stored for a short time (generally much less than 4 months) pending sale or supply and transfer to farmer customers who purchase / acquire

it for use in fertilising land in their holdings. Farmer demand is always more than adequate to ensure that there is no surplus accumulated in the installation.

A condition requiring that the sale or supply and transfer of pig manure to farmers and that the recording of all such transfers be in accordance with terms prescribed in The Animal By-products Regulations (S.I. 252 of 2008), and the related Regulations in S.I. 253 of 2008, and in the Nitrates Regulations (S.I. 101 of 2009) would be appropriate, practical, and fully workable.

Condition 8.12. Slurry/Manure recovery by landspreading. I object to the inclusion of this proposed condition in my licence because most of what it contains is not relevant or applicable to me or to my installation or the licensable activity. Please read and analyse:

8.12 Slurry/manure shall only be recovered by landspreading subject to the prior agreement of the Agency and the following conditions:

by reference to the following very relevant facts:

- The proposed condition, like all other conditions, must "speak to the licensee",
- Interpretation of the condition has to have regard to Condition 1 – Scope,
- Interpretation of the condition has to have regard to relevant statutory obligations, as is acknowledged in condition 1.6,
- Interpretation of the condition has to have regard to the Regulations referred to in proposed condition 8.12.5 that are binding on all those who engage in and are responsible for "landspreading" which is "The application of slurry/manure to farmland", irrespective of whether that proposed condition 8.12.5 is in this licence or is not in it,
- The proposed condition may or would be applicable to slurry/manure recovered by me only if "landspreading" occurred in the installation,
- The proposed condition if included in the licence is not and shall not be applicable to me as the licensee in relation to slurry/manure sold or supplied and transferred to customers as is provided for in relevant European and National legislation (S.I. 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009), because the "landspreading", that is the application of slurry/manure to farmland" is by the customers and is on their farmlands that are obviously and necessarily outside the installation, and so are outside the scope of the licensee and all conditions of the licence,
- The use and the application of slurry/manure to fertilise farmland outside the installation by farmer customers, which use is regulated under the legislation referred to in the previous indent, is not a matter for either control or additional control by me, or through my licence,
- I do not engage in any "landspreading" in the installation and I am not the responsible party in relation to the application to farmland of any fertilisers, including fertiliser / pig manure produced in the installation and sold or supplied by me from the installation to customers in

compliance with the governing legislation in S.I. 252 of 2008, and S.I. 253 of 2008 and recorded as required under Article 23(1)(g) in S.I. 101 of 2009.

I do not recover manure by "landspreading" or otherwise, not in the installation and not anywhere else. **That is a fact.**

As I do not recover manure by "landspreading" or otherwise, not in the installation and not anywhere else, the proposed constituent parts of condition 8.12 are not relevant or applicable to the me or to this installation.

I believe that the Agency and its relevant staff know that the producers of pig manure / fertiliser and suppliers of that pig manure / fertiliser to farmers who want it for their holdings, are required by separate legislation that is independent of the IPPC system, to store it, manage it and use it in accordance with prescribed standards binding on them in the context of their holdings. Equally, the Agency and its staff know that I do not use in the installation any of the manure produced as an animal by-product along with the pigs that is main product for sale. In those circumstances, proposed condition 8.12 would not serve any function in this licence. It is necessary that the proposed content of condition 8.12 be deleted and not be part of the licence.

In making this request I recognise that if circumstances were to change and that I wanted to engage in any manure use or recovery or disposal activity in the site, such change would require Agency approval in advance by reference to "Condition 1 – Scope". Also, I recognise that if I were to want in the future (which is unlikely) to dispatch any manure from the installation to any destination other than to (a) farmers for their use to fertilise farmland or to (b) a biogas plant or a composting plant approved under the Animal By-products Regulations, I would have to get prior agreement from the Agency. I am very concerned about the implications for me of the kind of impossible regime in relation to "landspreading" that the EPA has been trying to impose on licensees and that the Agency has been trying to have applicants for a licence and licensees voluntarily accept not only on their own behalf but also on behalf of their customers for pig manure. I am equally aware of the long history of conflict and confusion in relation to those "landspreading" and related conditions in licences that refer to and relate to *"the application of slurry/manure to farmland"* where the application referred to is the statutory responsibility of, and is under the statutory control of, the **occupier of the holding** on which the slurry/manure is applied. Against that background, I request that the Agency engage with me, or with persons who I would have represent me, so as to finally agree a resolution that will be to the satisfaction of all parties concerned (including the farmers who acquire and use manure), as it shall have to be when it will be firmly grounded on the relevant separate legislation under which the distribution and use of animal manure is so comprehensively regulated and controlled.

It is relevant to note that the basis in the EPA Licensing Regulations under which the EPA asserts that it can demand from me the customer farmer information demanded is not known to me.

I could write similar well founded objections to the individual component parts of proposed condition 8.12, that is, 8.12.1, 8.12.2, 8.12.3, 8.12.4 (as done in the objection to part of 6.2), 8.12.5, 8.12.6, 8.12.7 and 8.12.8, but I have already done so in general terms in relation to the entire of 8.12, for reasons given.

I am also concerned that the Glossary line in the Proposed Determination:

"Facility ; Any site or premises used for the purpose of the recovery or disposal of waste" when read along with *" Lands Used For Landspreading"* in Schedule C.6.2, would implicate me in a non-statutory and quite inappropriate labelling as waste recovery sites any customers' lands that may be fertilised with manure acquired from my installation, lands that are not otherwise so classified or labelled. That is not proper and is not fair or acceptable to either myself or my customers.

Directive 2008/98/EC of the European Parliament and of the Council of 19th November 2008 on Waste and repealing certain Directives clearly defines "waste" as *"any substance or object which the holder discards or intends or is required to discard"*. There has not ever been any proposal or intention to discard any pig manure from the activity/ installation that is the subject of this application for an IPPC licence. I do not intend or propose to discard any pig manure from this pig rearing installation. I propose to sell or supply and to transfer all animal manure produced by the activity in the installation to customers for their lawful use and benefit in accordance with rules and standards prescribed in the Animal By-products Regulations (S.I. 252 of 2008), and the related Regulations in S.I. 253 of 2008, and in the Nitrates Regulations (S.I. 101 of 2009). These Regulations speak to the producer and user (as occupier of a holding) of the animal by-product that in this case is pig manure. **I request that the Agency respect this current European and National legislation and the Directive on Waste (2008/98/EC) or explain the basis upon which Agency Personnel/Inspectors chose to ignore those regulations and Directive in the technical report to be submitted to Agency Directors during the processing of this Proposed Determination, before it proceeds to allow these conditions be imposed upon me. I request that the Directors of the Agency are formally made aware of this request by the Agency personnel dealing with this Proposed Determination and that the minutes of such a Board Meeting be made available to me pending their decision.**

Re: IPPC Licence application Reg No P0710 - 03. Mr. Paul Tully.
Important comment in relation to content in Inspector's Report.

I refer to an "**Inspectors Report on a Licence Application**" from Mr. Patrick Byrne to Directors, dated 20th October 2010 in relation to my current application Reg No P0710 - 03 for an IPPC licence, and stamped as "... cleared for submission to the Board by Programme Manager, Frank Clinton" on 20/10/10, and to the "**Proposed Determination**" referred to in the Inspector's Report that the IPPC Licence I as applicant have received from the EPA website.

The Inspector's report contains brief but wholly inadequate and incorrect passages that purport to describe the system in place for the management of pig manure in the installation to be licensed. I do not discard (and have no intention to do so in the future) any pig manure from the installation. The Inspector's report completely ignores the references in my application to the Animal By-products Regulations (S.I. 252 of 2008 and S.I. 253 of 2008) under which the pig manure is classified as Category 2 Animal By-product, and under which the sale or supply of manure to customers as fertiliser for their use and benefit is authorised and is lawful. The content of the Inspector's report does not properly inform the Directors with regard to the relevant legislation under which the transfer of manure of farmed animals to users is governed, and with regard to the system for manure management in the installation leading to its lawful transfer to customers and to the recording of all such transfers in accordance with the requirement prescribed at Article 23(1)(g) in S.I. 10 of 2009.

I am concerned that the incorrect description and references to the system for the management of manure in the installation in the Inspector's Report is being improperly relied upon, or may or will be improperly relied upon to justify inclusion in a licence of conditions beginning with the word "Landspreading" or containing the word "landspreading", as can be seen under "**Condition 8 Materials Handling**" in the Recommended Determination referred to in the Report. I believe that such "landspreading" conditions are not appropriate or justifiable in a licence for this installation, unless it is made clear that such conditions are applicable only to landspreading under the control me as the licensee and carried out in the installation.

I am similarly concerned that the Inspector's misrepresentation and flawed interpretation of my manure management system was used to wrongly justify or underpin inclusion in the Proposed Determination of "*Schedule C.6.2. Lands Used For Landspreading*", when in fact I do not use and shall not use any land for landspreading, either in the installation or elsewhere.

In relation to the sub-title on that Schedule I want the inspector and the Directors to note and know that I do not claim or pretend to claim that any lands farmed by persons who are customers who acquire pig manure from the installation are part of a "**landbank**" that links to or associates in any way with my pig rearing installation.

In addition to the Title of Schedule C.6.2 discussed above, I also note and wish to draw attention of the **Inspector and the Directors** to the content in the body of the Schedule table and the 5 Notes under the table, beginning with Note 5 which refers to Article 16(2) in S.I. 101 of 2009. The Agency needs to note and accept that all matters to do with the deposition of pig manure or any other fertiliser on farmland, including all matters referred to in Schedule C.6.2, including :

- (a) choice between soil sampling / testing and the assumed P Index 3 option referred to in Footnote 2,
- (b) preparation of a nutrient management plan,
- (c) implementation of a nutrient management plan,
- (d) availing of the option in Article 16(2) in S.I. 101 of 2009 as referred to in Note 5 (which is just a repeat of Note 2),

are matters for the Occupier of the Holding on which the manure or fertiliser is deposited. They are not matters over which the supplier of the manure or other fertilisers has or can have, or can assume or pretend to take, either authority or responsibility. In this regard, please note and accept Article 16(1) in the same S.I.101 of 2009 as well as the article 16(2) in S.I. 101 of 2009 that is referred to in Note 5. It is in S.I.101 of 2009 under the heading "*Duty of occupier in relation to nutrient management*". I reproduce it below:

Duty of occupier in relation to nutrient management

16. (1) An occupier of a holding shall take all such reasonable steps as are necessary for the purposes of preventing or minimising the application to land of fertilisers in excess of crop requirement on the holding.

In this context it is also relevant to note Article 22(1) in the same S.I. 101 of 2009:

General duty of occupier

22. (1) An occupier of a holding shall ensure compliance with the provisions of these Regulations in relation to that holding.

Compliance with rules in relation to manure use (or "recovery", if that is what use is") on customers' lands is not a matter for the supplier of the manure.

The second paragraph under "Process Description" on page 2 of the Inspector's report is.

The applicant identified 21 farms (customer farms) on which there is a nutrient demand, and where slurry generated on-site is recovered by landspreading... The applicant submitted a nutrient management plan, in a confidential format, in respect of the 21 farms on which pig slurry may be recovered as fertiliser. Where pig slurry is used as a fertiliser on agricultural land, in accordance with European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2009 and the Conditions of the Recommended Determination (R.D.), it is not expected that such application would cause pollution.

The Inspector's text does not give a true and fair impression of the practical and lawful system in place in the installation. I wish to point out that I sell or supply the manure to farmers who seek to purchase / acquire a supply for their lands. Whether the deposition of the manure on land is "recovery" or "use", the recovery or use is not done in the installation and is not done by me, the applicant for a licence in this case. The deposition on land is required to be controlled by the farmer using the manure (or "recovering" it, if that is what use in accordance with legislation in force amounts to).

The second paragraph under "*Manure Management and Recovery*" on page 4 of the Inspector's Report is:

The applicant has identified 21 farmers who are available/seeking to accept slurry/manure from the installation as fertiliser for their farms. The applicant has calculated that these farms have a need for up to 17,431 m³ of pig slurry/manure per annum based on the nitrogen balance for the farms (nutrient management plan).

Again the message to the Directors as I see it in the above text is not the accurate description of my manure management system contained in my application.

As an applicant for a licence I control and am responsible for the installation and for all that is carried on in the installation. I do not, and I do not propose to recover or to use any manure in the installation.

I have not identified 21 farms that are "available" or are seeking to "accept" anything from me. I identified 21 farmers who have been customers, who are customers, and who may or may not be future customers who may acquire manure from the installation for their own benefit. There is and always has been strong demand for manure from the installation. I do not require anyone to "accept" manure or any product from them other than on commercial terms, and I do not rely on any such "acceptance" as is suggested by the Inspector.

I have not calculated anything in relation to "*these farms*" as claimed by the Inspector.

Calculations of the class referred to are dependent on and are the responsibility of the "occupiers of the respective holdings"/farms referred to, as is prescribed in S.I. 101 of 2009. The result of such calculations is subject to changes on the farms in any of the factors that the occupiers are required to have regard to in calculating and in updating their fertiliser plans and requirements during a year and from year to year. The Agency must or should know that and accept it as a matter of fact, and as a matter of law, as well as I know it, and as well as those non-licensable customers for fertiliser know it too.

Under "*Compliance with EU Directives*" and under "*Directive 2008/1/EEC*" on page 5 of the Inspectors Report it is stated by the Inspector that :

BAT is taken to be represented by guidance given in the IPPC reference document on BAT for Intensive Rearing of Poultry and Pigs, July 2003.

The applicant/licensee maintains that the landspreading and related conditions and demands of the Agency in relation to customers for manure and in relation to their use of the manure on

lands that are not part of the installation are **not** based on or derived from " *guidance given in the IPPC reference document on BAT for Intensive Rearing of Poultry and Pigs, July 2003*". I can supervise works within the installation only.

During the recent review and re-cast of the IPPC Directive there was a proposal to extend control of pig manure to the farms on which the manure is used. That proposal was rejected, indicating that control of pig manure outside the licensed pig rearing installation never was intended to be controlled by IPPC licence conditions and is not to be controlled now either by "landspreading" conditions in IPPC licences. No reference is made to this decision and other EU Directives as discussed below. This is clearly an oversight which should not be ignored by the Directors.

Below is very important qualifying text from the BREF Document (pages xxxix and xl):

"For the scope of this work, the TWG included some techniques that they considered relevant but that are not always applied on installations covered by IPPC. For example, landspreading of manure is considered in great detail, although it is acknowledged that landspreading is often carried out by contractors and often not on land belonging to the farm where the manure has been generated."

*The following relevant **farm activities** are described, although it is acknowledged that not all of the activities will be found on every farm:*

- *farm management (including maintenance and cleaning of equipment)*
- *feeding strategy (and feed preparation)*
- *rearing of animals*
- *collection and storage of manure*
- *on-site treatment of manure*
- ***landspreading of manure***
- *waste water treatment."*

Note that for "farm" above one should read installation", as it is not "farms" that are licensable or licensed.

Landspreading of manure is not found in the applicants' installation.

Even if that extracted text did not occur in the BREF document, the laws of Europe and Ireland prescribe that the only person who has responsibility for, or can take responsibility under the legislation for the deposition on land of any fertiliser (whether chemical or organic fertiliser from any source) is the Occupier of the Holding on which it is deposited.

The Agency seems to seek to have applicants for a licence to wrongly volunteer to replace the responsibility part of the relevant legislation in relation to customers' use of pig manure on customer's holdings, so as to provide a false basis for "landspreading" conditions in a licence, some conditions of which will be at variance with the relevant legislation. That is not fair to any farmers and is not possible for me as applicant/licensee in this instance.

References to "the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations, 2009 (S.I. No. 101 of 2009) under the Report headings "Water Framework Directive (2000/60/EC" and "EU Nitrates Regulations (91/676/EEC)" in relation to the use (or recovery, if that is what it is) of pig manure are fully acceptable as references to a relevant part of the "law of the land". However, the implication in the manner in which the references are written suggests that the use (or recovery, if that is what it is) is or will be the responsibility of me as the applicant /licensee under the terms of the licence, and that would not be true or lawful, and so is not acceptable, on account of the fact that use (or recovery, if that is what it is) in accordance with the Regulations is the prescribed responsibility of the "occupier of the holding" on which the pig manure is deposited. I believe that it is a fact that the only way that pig manure produced in his installation or in any other place may be lawfully deposited on land in Ireland is in compliance with the terms and standards contained in S.I. 101 of 2009 and S.I. 253 of 2008, both of which speak to the user rather than the producer of the fertiliser/manure.

Under the Report heading "Compliance with EU Directives" on pages 5 and 6 of the Inspectors Report there is (strangely) no reference at all to Regulation EC/1774/2002 under which manure of farmed animals is classified as Category 2 animal by-product (ABP) and under which it is authorised to be placed on the market and transferred to another person as fertiliser. It is ignored even though the Application as submitted contained several references to the role and relevance of the ABP Regulations to the classification of manure and authorisation of manure for use on terms that have as their purpose the protection of animal health and human health. Also there is no reference to Directive 2008/98/EC on waste under which manure that is regulated under Regulation EC/ 1774/2002 is excluded from the scope of the Directive on waste [Article 2(2)(b)], and under which [Article 5.1] manure may be by-product subject to 4 test criteria, all of which are satisfied by all manure transferred from my installation.

Under the Report heading "Cross Office Liaison" I note the reference to guidance from the Office of Environmental Enforcement and question the role of the OEE in determining applications. I expect that my application will be determined by reference to the Licensing Regulations and relevant legislation and not by reference to any non-statutory arrangement between the OEE and any third party that may have claimed to represent me and others in relation to the collection of customers' data for the Agency.

It has already been stated and I repeat for the sake of clarity that there is no emission of pig manure to land and there is no landspreading or application of pig manure to land in the installation.

For the avoidance of doubt, I state that the system for the management of manure in this installation to be licensed and for the lawful transfer of manure to customers who seek a supply from the installation is:

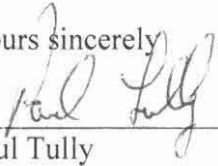
- Collect all manure in tanks in the manner required under S.I.101 of 2009
- Store all manure temporarily in the tanks pending sale or supply and transfer to customers, in response to customer demand, as by-product fertiliser, as is provided for

and authorised under S.I. 252 of 2008 and S.I. 253 of 2008, in the knowledge that use by customers is required to be in compliance with standards prescribed in S.I. 253 of 2008 and S.I. 101 of 2009, and

- Record all transfers of manure from the installation as is required by Article 23(1)(g) in S.I. 101 of 2009 and maintain the records for inspectors.

Two hard copies of this submission and a copy in pdf file format on each of two CD-ROMs are enclosed.

Yours sincerely,


Paul Tully

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