

objection no 3



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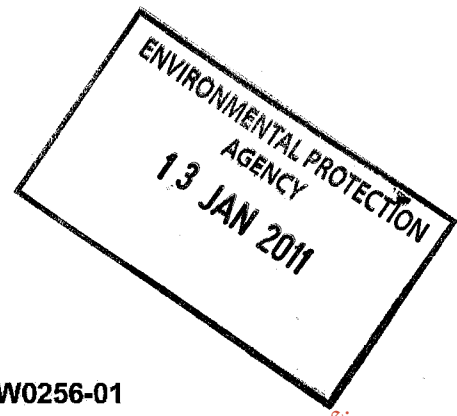
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Our Ref: ES/MMcD 2084/1a

13 January, 2011

Environmental Protection Agency
Headquarters
PO Box 3000
Johnstown Castle Estate
County Wexford



Re: Waste Licence Application - W0256-01
Lennon Quarries Ltd. - Material Recovery Facility, Tallagh, Belmullet, County Mayo
W0256-01 EPA Proposed Decision - 09 December 2010 - In Accordance with Section
42(2) of the Waste Management Acts, 1996 to 2010
Objection to Proposed Decision - In Accordance with Section 42 of the Waste
Management Acts, 1996 to 2010

Dear Sir/Madam,

I am writing on behalf of our client *Lennon Quarries Ltd., Glencastle, Bunnahowen, Ballina, Co. Mayo*. TOBIN (acting on behalf of *Lennon Quarries Ltd.* – the 'Applicant') lodged an 'Application for a Waste Licence' with the EPA on 29 January 2009 - EPA Waste Licence Reference No. W0256-01 (i.e. EPA WLA W0256-01). The application relates to continuation of recovery activities at an existing Inert Material Recovery Facility, at Tallagh, Belmullet, County Mayo, which has operated since January 2006 and continues to operate under Mayo County Council Waste Permit PER 144.

TOBIN received a '*Notification in Accordance with Section 42(2) of the Waste Management Acts, 1996 to 2010, of a Proposed Decision*' on EPA WLA W0256-01, dated 09 December 2010.

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The Notification and the accompanying copy of the Proposed Decision set out the details of the Proposed Decision, in accordance with Section 42 of the *Waste Management Acts, 1996 to 2010* and the relevant *Waste Management (Licensing) Regulations*.

The Notification stated that – ‘Any person may object to the Proposed Decision, in accordance with Section 42 of the *Waste Management Acts, 1996 to 2010*’ and that ‘In accordance with Sections 42(12) and 42A of the *Waste Management Acts, 1996 to 2010*, objections must be received at any time, no later than 5.00pm on 14 January 2011’.

TOBIN (acting on behalf of *Lennon Quarries Ltd.* – the ‘Applicant’) wish to object to the EPA W0256-01 Proposed Decision, to ‘*Refuse to Grant a Waste Licence*’, dated 09 December 2010.

This Objection complies with all Statutory Requirements set out in the *Waste Management Acts, 1996 to 2010*, and the relevant *Waste Management (Licensing) Regulations*.

This Objection is based on the following grounds:

- We believe that the EPA have misunderstood the purpose of EPA WLA W0256-01, in particular the ‘Nature of the Development’, which they query as being ‘Disposal’, rather than ‘Recovery’. EPA WLA W0256-01 was made in good faith for the purpose of ‘Material Recovery’, to allow reclamation of a plot of marginal agricultural land, to bring it to suitable agricultural land, whilst also allowing recovery of waste soil & stones, which otherwise may have to be sent for disposal (not recovery) to a landfill site. Indeed, the site in question is presently operating as an inert ‘Material Recovery Facility’, under existing/active Mayo County Council Waste Permit PER 144. This ground for objection will be discussed in further detail (reasons, considerations & arguments) below.
- We disagree with the EPA’s ‘*Reasons for the Proposed Decision*’, all of which will be discussed in further detail (reasons, considerations & arguments) below.

This Objection is accompanied by the Appropriate Fee for the Applicant of €500.00.

EPA Waste Licence (W0256-01) Proposed Decision:

The EPA Waste Licence (W0256-01) Proposed Decision, dated 09 December 2010 states:

‘On the basis of the information available to it, the Environmental Protection Agency (the Agency) pursuant to its powers under Section 40(1) of the *Waste Management Acts, 1996 to 2010*, proposes to refuse to grant a waste licence to *Lennon Quarries Limited, Glencastle, Bunnahowen, Ballina,*

County Mayo to carry out the waste activities that are the subject of Waste Licence Application Register Number W00256-01 at Tallagh, Belmullet, County Mayo.

In reaching this decision, the Agency has considered the application and supporting documentation received from the applicant, all submissions received from other parties, the objectives of the Connaught Waste Management Plan (2006 – 2011), and the report of its inspector.

Reason for the Proposed Decision

Having regard to:-

- The proposed timescale for the activity;
- The proposal to allow the site to revegetate naturally;
- The proposal to leave the settlement ponds in place after cessation of activity;
- The absence of any proposed change of use of the site; and
- The absence of a demonstrated benefit for the land from the deposit of waste on the site;

the Agency considers that the purpose of the proposed activity is the disposal of waste, and not the recovery of waste, and would not, therefore, be in accordance with the licence application. In the absence of any proposal addressing the disposal of waste on the site, the Agency is not satisfied that such disposal would not cause environmental pollution and has decided to issue a Proposed Decision to refuse to grant a licence'.

In completing this Objection (on behalf of Lennon Quarries Ltd. – the 'Applicant') to the EPA Waste Licence (W0256-01) Proposed Decision, TOBIN intend to firstly look at/respond to each of the 'Documents' considered by the Agency (in reaching their Proposed Decision) and then to look at/respond to each of the Agency's 'Reasons' for the Proposed Decision

Documents Considered by the Agency (in reaching their Proposed Decision):

1. Application and Supporting Documentation Received from the Applicant

TOBIN (acting on behalf of their client - Lennon Quarries Ltd. – the 'Applicant') lodged EPA WLA W0256-01 with the EPA on 29 January 2009, for an inert 'Material Recovery Facility' at Tallagh, Belmullet, Co. Mayo. EPA WLA W0256-01 applied for the following classes of activity in accordance with the 'Fourth Schedule – Waste Recovery Activities' of the Waste Management Acts 1996 to 2003:

- Class 4 of the Fourth Schedule of the Waste Management Acts 1996 - 2003: -

"Recycling or reclamation of other inorganic materials".

(= 'Principle Activity')

and

- Class 13 of the Fourth Schedule of the *Waste Management Acts 1996 - 2003*:

"Storage of waste intended for submission to any activity referred to in a preceding paragraph of this Schedule, other than temporary storage, pending collection, on the premises where such waste is produced".

TOBIN received a 'Notice in Accordance with Article 14(2)(b)(ii) of the *Waste Management (Licensing) Regulations, 2004 to 2008*' in relation to EPA WLA W0256-01 from the EPA, dated 20 April 2009. The notice stated that the documentation submitted for the Waste Licence Application did 'Not Comply with Article 12 of the *Waste Management (Licensing) Regulations*' and as such requested that TOBIN, in compliance with Article 12 of the relevant *Waste Management (Licensing) Regulations*, supply additional information to the EPA.

TOBIN issued a first response to the above request by letter on 17 June 2009 (having agreed to this extended submission date with Ms Aoife Loughnane, EPA Inspector for EPA WLA W0256-01).

As all additional information required by the EPA was not available at the time of the above response (17 June 2009), a second response to the EPA was issued by letter on 08 December 2009, as agreed with Ms Aoife Loughnane, EPA Inspector for EPA WLA W0256-01.

TOBIN received a call from Ms Aoife Loughnane, EPA Inspector for EPA WLA W0256-01 on 13 April 2010, with regards to EPA WLA W0256-01. Ms. Loughnane requested that a number of the Application Drawings, which had site levels surveyed to/drawn to a local arbitrary datum, would be updated to show site levels to National Grid (mOD Malin Head).

TOBIN responded to the above request by revising the relevant application drawings and reissuing these drawings to the EPA (with accompanying letter) on 15 April 2010.

Finally, having received a query from the EPA with regards to *Lennon Quarries Ltd.*'s lease holding of the site subject to EPA WLA W0256-01, TOBIN responded by letter to the EPA on 26 May 2010, 25 June 2010 and 28 June 2010, providing details of the 'Binding Contract for Sale of the Land', between the Directors of *Lennon Quarries Ltd.* (Purchaser) and *Erris Farm Services Co-Operative Society Limited* (Vendor).

TOBIN believe that EPA WLA W0256-01 and all supporting documentation, including all of the submissions listed above were thorough and accurate and fully satisfied the requirements of the relevant *Waste Management (Licensing) Regulations* and the requirements of Ms Aoife Loughnane,

EPA Inspector for EPA WLA W0256-01, allowing her to produce a thorough and accurate 'Inspectors Report' on EPA WLA W0256-01.

At no time was there any suggestion that there was an absence of information or outstanding issues, which would predicate against grant of a Waste Licence.

2. All Submissions Received from Other Parties

TOBIN received a letter from the EPA, dated 11 February 2010, stating that EPA WLA W0256-01 documentation complied with the requirements of Article 12 and Article 13(1) of the relevant *Waste Management (Licensing) Regulations*, from 14 December 2009 and that as such the application was acknowledged by the EPA in accordance with Article 14(2)(a) of the Regulations.

Based on the above application acknowledgement (in accordance with Article 14(2)(a) of the Regulations), the EPA letter advised that that any person could make a submission to the Agency, in writing, in respect of the application, pursuant to Article 15 of the Regulations, which limits the timeframe for a Proposed Decision from the EPA to one month following the Article 14(2)(a) acknowledgement (i.e. the EPA could not give notice of a Proposed Decision, until after 11 March 2010).

The 'Proposed Decision' of the EPA was not issued until 09 December 2010, allowing almost ten months, from the date of issue of the EPA's Article 14(2)(a) Acknowledgement.

One Third Party Submission was received by the EPA on EPA WLA W0256-01 (following the EPA's Article 14(2)(a) Acknowledgement).

The Third Party Submission was issued by email by Ms. Maura Harrington, Doohoma, Ballina, Co. Mayo on 08 July 2010. This submission related to TOBIN's additional information letter, dated 26 May 2010, with regards to the purchase of the site, subject to EPA WLA W0256-01 and stated: *'Please be advised that it is of material interest to your consideration of the application before you that the vendors do not have undisputed ownership - as either lessees of vendors - of Plot H as outlined in the documents submitted to you on 27/05/2010'*.

The matters raised in the above submission were fully addresses by TOBIN's letters to the EPA dated 25 June 2010 and 28 June 2010, providing details of the *'Binding Contract for Sale of the Land'*, between the Directors of *Lennon Quarries Ltd.* (Purchasers) and *Erris Farm Services Co-Operative Society Limited* (Vendors).

No other third party submissions were received by the EPA on EPA WLA W0256-01. The applicant regards this as a very positive outcome, indicating that local residents & land owners or other third parties did not have any concerns with regards to the existing recovery operations or the proposed recovery activities, outlined in EPA WLA W0256-01 or concerning the potential environmental impacts from the existing and/or proposed waste activities.

Finally, upon receipt of EPA WLA W0256-01, the EPA issued (in accordance with Article 18(1) of the relevant *Waste Management (Licensing) Regulations*) 8 no. notifications of the Waste Licence Application (and welcomed submissions), to the following specified bodies:

- Teagasc;
- Health & Safety Authority;
- Fáilte Ireland;
- Development Applications Unit - Department of Environment, Heritage & Local Government (ultimately, the National Parks & Wildlife Service);
- Department of Communications, Energy & Natural Resources;
- Central Fisheries Board;
- An Taisce - The National Trust for Ireland;
- Health Service Executive (West).

None of the above Specified Bodies issued submissions to the EPA with regards to EPA WLA W0256-01. The applicant regards this as a very positive outcome, indicating that the Specified Bodies contacted did not have any concerns with regards to or concerning the potential environmental impacts from the existing and/or proposed waste activities.

3. The Objectives of the Connaught Waste Management Plan (2006 – 2011)

The recovery activities proposed under EPA WLA W0256-01 positively satisfy the objectives of the Connaught Waste Management Plan (2006 - 2011).

This assertion is supported by Ms Aoife Loughnane, EPA Inspector for EPA WLA W0256-01, who referred to the Connaught Waste Management Plan (2006 - 2011) in Section 7 of her Inspector's Report, dated 22 April 2010 (to be discussed below), where she states:

'The applicant's proposal satisfies the objectives of the Plan insofar as they have provided evidence from an agricultural advisor that the recovery of waste soil and stones to land is of agricultural benefit. The RD addresses the environmental concerns associated with the proposed activity. The applicant is required to implement robust waste acceptance & inspection procedures to ensure that

only uncontaminated natural soil and stones are used in the waste deposition works. The applicant has undertaken ecological assessments, which have found the site to be of low ecological value, with the exception of the lowland river habitat. A buffer zone is proposed as a mitigation measure to protect this habitat'.

The 'Replacement Waste Management Plan for the Connaught Region, 2006-2011' (the 'Plan') was developed by the Local Authorities of Galway City & County, County Leitrim, County Mayo, County Roscommon and County Sligo.

This 'Plan' follows on from the previous Plan for the area (2001), which adopted a regional approach to integrated waste management, based on the waste hierarchy established in the EU Framework Directive on Waste:

- Prevention;
- Minimisation;
- Reuse;
- Recycling & Energy Recovery;
- Disposal

The 'Plan' sets the following Targets for the Region for 2013:

- | | |
|---------------------------|-----|
| • Recycling | 48% |
| • Recovery (Energy) | 33% |
| • Residual Waste Disposal | 19% |

The General Objectives of the Plan, relevant to EPA WLA W0256-01 are:

- An integrated management approach will be applied to waste generated, respecting the EU waste hierarchy of treatment solutions - reuse, maximum recycling, energy recovery & minimum landfill disposal;
- Local Authorities will work in partnership with the private sector to deliver waste infrastructure required in the region.

The existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01, by *Lennon Quarries Ltd.* (private sector) satisfies the above General Objectives of the 'Plan'.

In relation to 'Construction & Demolition Waste' (i.e. C&D Waste) the Overall C&D Waste Objective of the 'Plan' is to - *'Maximise the reuse and recycling of C&D waste through the implementation of the*

voluntary NCDWC initiative, improved regulation of the C&D waste sector and encouraging the private sector to develop C&D waste recycling facilities'.

The existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01, by *Lennon Quarries Ltd.* (private sector) satisfies the above Overall C&D Waste Objective in the 'Plan'.

According to the 'Plan', **C&D Waste arisings generated in the Connaught Region in 2004** were estimated at 1,107,735 tonnes (500,000 tonnes in County Mayo), **comprising 500,000 tonnes / ca. 45% Soil & Stones**, ca. 52% Mixed C&D Waste and ca. 3% Wood, Rubble & Metal. These high levels of C&D Waste arisings in 2004, were due to economic growth and the level of activity in construction industry at the time.

In order to ensure, such large quantities of Soil & Stone C&D Waste is reused/recycled, Soil & Stone Recovery Facilities (such as the existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01) must be looked upon positively. Otherwise, these Soil & Stone Wastes may end up being disposed of in an unauthorised manner or at Landfill sites, contrary to the objectives of the 'Plan'.

In her 'Inspectors Report', dated 22 April 2010 (to be discussed below), Ms Loughnane, EPA Inspector for EPA WLA W0256-01 refers to the following text from Section 15.1 - Waste Policy for Construction and Demolition Waste of the 'Plan':

Soil & stones, the largest proportions that make C&D waste is currently deposited on agricultural land under waste permit, the activity being classified as 'waste recovery'. Nominally, the soil is being used to improve agricultural lands, but this may not be the main objective in many cases. While the current practice is a relative low-cost option for the building industry, there are some concerns for the practice:

- *Regulating a large no. of small sites is more challenging and costly for the local authority, and the risk of illegal deposits at these sites is potentially higher;*
- *There is a risk that 'marginal land' high in biodiversity and ecological values (but low in economic value) will be damaged in a piecemeal fashion (wetlands, marshy land, hedgerows, natural grasslands,) and*
- *The opportunity to re-instate existing quarries, landfills and other Brownfield sites is being lost.*

In relation to the above:

- The site subject to EPA WLA W0256-01 is presently a plot of poor quality marginal agricultural land, which requires reclamation to bring it to suitable agricultural land, whilst also allowing recovery of waste soil & stones, to ensure compliance with the 'Plan'. The reclamation of the site to suitable agricultural land is the main objective of EPA WLA W0256-01;
- The existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01 do not relate to a small site, under regulation by the Local Authority, but to a 27.22 hectare site, which if granted a Waste Licence would be under the regulation of the EPA.
- **There are presently no EPA Waste Licensed 'Soil & Stone Recovery Facilities' within the Connaught Region. Moreover, this is the only facility in Connaught that fulfils the requirements of a 'Large Scale Soil & Stone Recovery Facility', in compliance with the 'Plan';**
- The recovery site subject to EPA WLA W0256-01 was ecologically assessed and found to be of low ecological value, with the exception of a lowland river habitat, which will be protected from the proposed deposition area by a buffer zone. Therefore, there will be no risk to marginal land high in biodiversity and ecological values, in compliance with the 'Plan';
- EPA WLA W0256-01 proposes to accept a maximum of 24,900 tonnes of waste soil & stones on an annual basis. As stated above, in 2004, 500,000 tonnes of waste soil & stones were produced in County Mayo. The site subject to EPA WLA W0256-01 would therefore have been in a position to accept <5% of these wastes for recovery, leaving ample waste soil & stones to be used in re-instatement of quarries, landfills and other brownfield sites in the Mayo/Connaught Region.

4. The Report of the EPA Inspector

Ms Aoife Loughnane, EPA Regional Inspectorate, Dublin, was the acting EPA Inspector for EPA WLA W0256-01. Having reviewed EPA WLA W0256-01 and all supporting documentation (including all submissions from the applicant and the one third party submission) and having carried out a Site Inspection on 20 March 2009, Ms. Loughnane issued:

- 'Inspectors Report on Licence Application', dated 22 April 2010;
- 'Addendum to Inspectors Report on Waste Licence Application', dated 28 June 2010;
- 'Addendum to Inspectors Report on Waste Licence Application', dated 12 July 2010.

'Inspectors Report on Licence Application', dated 22 April 2010:

TOBIN has reviewed the above 'Inspectors Report' in detail and has the following remarks to make:

- The Report at all times refers to the facility as a 'Soils Recovery Facility';
- The Report acknowledges that the facility currently operates under Mayo County Council Waste Permit PER 144, which will continue to remain active until such a time as a decision is made on EPA WLA W0256-01, in accordance with the transitional arrangements under the *Waste Management (Facility Permit & Registration) Regulations, 2007 & 2008*;
- The Report states that to date, ca. 25,000 tonnes of inert waste has been recovered on the site under Mayo County Council Waste Permit PER 144;
- The Report states that the only Class of Waste to be recovered at the facility under EPA WLA W0256-01 are Soil & Stones (EWC Code 17 05 04 - Soil & Stones, other than those mentioned in 17 05 03);
- The Report states that the proposed recovery activities, outlined in EPA WLA W0256-01 involves the acceptance and deposition of 24,900 tonnes per annum of waste soil and stones (EWC Code 17 05 04 - Soil & Stones, other than those mentioned in 17 05 03), that the soils will originate from construction sites where the natural overburden is being excavated and removed; and that the applicant proposes to raise the level of the site by two metres, by placing the waste over the surface of the deposition area;
- The Report states - **'Given the proposed waste types comprise natural earth-forming material which are non-leachate forming, the activity presents low risk to the soil and water environment. I am satisfied on this basis that there is no requirement for an engineered liner or leachate management system at this facility'**.
(Please see NOTE 1 below);
- The Report states that EPA WLA W0256-01 Applicant - *Lennon Quarries Ltd.*, has an active 'Waste Collection Permit' (WCP-MO-09-0276-01) for the Connaught Region;
- The Report states that the nearest residences are located 350m south-west and 650m north-east of the site;
- The Report states that:
'The EPA consider that in order for a waste soils facility to classify as waste recovery, there needs to be a planning, amenity, further development, safety or landscaping imperative supporting the need for the waste filling/deposition works, i.e. beneficial use'.
(Please see NOTE 2 below);
- The Report refers to a letter issued as part of EPA WLA W0256-01, by an independent agricultural advisor, which stated that the acceptance of inert material and its recovery by spreading over the site deposition area, to a depth of 2m would have a consequential benefit of improving the land for agricultural purposes;

- The Report refers to a letter issued as part of EPA WLA W0256-01, by the then site owners - *Erris Farm Services Co-Op Society Limited*, which stated that they understood the nature, scale and duration of the proposed development and that acceptance of inert material and its recovery by spreading over the site deposition are, to a depth of 2m would have a consequential benefit of improving the land for agricultural purposes;
- The Report refers to a letter issued as part of EPA WLA W0256-01, by Mayo County Council Planning Authority on 18 November 2009 confirming - *'The deposition of natural soil and stones for the purposes of reclamation for agricultural purposes does not constitute a material change of use of the land and as such deposition would be regarded as exempt development under Class 11 of the 2001 Planning and Development Regulations'*;
- Based on the fact that the proposed development was deemed exempt from Planning Permission, the Report stated that the EPA were presented with a number of issues:
 - (i) *Is the proposed development appropriate in this location? Will a market or demand exist for the improved agricultural land that will result from this long term (24 years) land restoration project?*

The proposed development satisfies the criteria specified in Section 40(4) and the Recommended Decision (RD) conditions the development and restoration of the site from an environmental perspective.

(Please see **NOTE 3** below);

- (ii) *The basis for licensing soil recovery facilities as waste recovery activities is taken, inter alia, to be consistent with European case law in that "The essential characteristics of a waste recovery facility operation is that its principle objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources"*

It can be asked whether the land would be improved for agricultural purposes if there were no waste soil and stone available for filling purposes and whether the developer would import non-waste materials to develop the site. It is more likely to be the case here that it is the availability of waste soils and stones that creates the opportunity for developing the land for agricultural purposes. The supporting statement from the applicant's agricultural advisor states that the activity will have a consequential benefit of improving the land for agricultural purposes. In the absence of any concerns raised by the Planning Authority regarding the need for improved agricultural lands in the area, it is reasonable to consider that the proposal is a soil recovery activity and can be licensed as such by the Agency, subject to the requirements of Section 40(4) of the Waste Management Acts 1996 to 2010.

(Please see **NOTE 4** below);

- (iii) *The applicant's proposal for natural revegetation does not support their case for the need to recover the land for improved agricultural purposes. However, the applicant's ecological assessment recommends that the deposited wastes be allowed to re-colonise naturally to keep in character with the surrounding area.*

In accordance with other licences issued by the Agency for soil recovery facilities, Condition 10.2 of the RD requires a final capping layer of 150 to 300mm topsoil above the deposited wastes. Condition 6.11 (dust control) requires developed areas to be seeded as soon as practicable after placement of cover soils, in a manner appropriate to the surrounding area. Condition 10.2 also specifies that within twelve months of completion of each phase of waste deposition, the phase shall be completed and progressively restored to agricultural use.

(Please see **NOTE 5** below);

- Although the applicant had outlined 'Waste Acceptance Procedures' (including testing) in EPA WLA W0256-01, the Report recommends conditions in the Waste Licence Recommended Decision (RD), to ensure that the levels of waste testing are in accordance with 'Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of an Annex II to Directive 1999/31/EC'.

(Please see **NOTE 6** below);

- The Report states - 'In addition to monitoring of the incoming waste, Schedule C.4 Waste monitoring of the RD requires the applicant to undertake monitoring of the deposited wastes a maximum of five times per year. A representative sample of the deposited wastes shall be taken by trial pit or other appropriate method, at least every 3,000m² area of fill and to a depth of 1.5 metres, or at an equivalent frequency as may be agreed with the Agency'.

(Please see **NOTE 6A** below);

- The Report states - 'The applicant proposes that all perimeter surface water drains will remain untouched, with a slope of 3:1 (18.5 degrees) rising from the drains to the top of the deposited waste. They also propose to raise the open drains, which traverse the site by two metres, in line with the deposition of waste across this area. This proposal is not considered appropriate as it may lead to flooding of areas where surface water following in the perimeter drain currently enters the internal site drains, particularly along the southern site boundary. The existing waste permit prohibits the filling or reclamation of land within 15m of any drain and/or stream. Condition 3.13 of the Waste Licence - RD specifies this limitation'.

(Please see **NOTE 7** below);

- The Report states that the lack of a proposal for a weighbridge at the facility is satisfactory, as all wastes will be delivered to the site in *Lennon Quarries Ltd.* haulage trucks, the weight of which will be known to the Facility Operator and recorded. The Report recommends a condition in the Waste Licence - RD (Condition 6.7), which requires the weight of one in every 25 loads to be verified at an off-site weighbridge (e.g. at applicants Quarry) and these weight recorded to be recorded at the Waste Licence facility.

(Please see **NOTE 8** below);

- Although not proposed in EPA WLA W0256-01, the Report states the requirement for a site office to be provided on the site, within 3 months of the date of grant of the Waste Licence (Waste Licence - RD Condition 3.6).

(Please see **NOTE 9** below);

- The Report includes a section on 'Emissions' from the facility (including Air - atmosphere, odour & dust), Sewer, Surface Water, Groundwater, Wastes & Noise). The Report states that due to the inert (non-polluting) nature of the soils & stones to be recovered at the facility, that should recommended mitigation measures (recommended in EPA WLA W0256-01) be put in place (including regular monitoring), that there should be no negative impact on the environment;
- The Report recommends the applicant to submit a 'Method Statement' to the Regional Fisheries Board for approval, prior to the construction of the proposed 5 no Settlement Ponds, in order to protect the fisheries habitats (Condition 3.13 of Waste Licence - RD).
(Please see NOTE 10 below);
- The Report refers to the applicants proposal to leave the 5 no. Settlement Ponds in place, following completion of the waste deposition works and states that the OEE may require the settlement ponds to be decommissioned, but that the fate of the ponds could be determined though the 'Closure, Restoration & Aftercare Management Plan' (CRAMP), which was required under Condition 10 of the Waste Licence - RD.
(Please see NOTE 11 below);
- The Report refers to the 'Ecological Assessment' which was completed as part of EPA WLA W0256-01 and concludes that once the mitigation measure proposed in the assessment are put in place- *'It is not anticipated that there will be any impact on the designated sites (i.e. downstream Broadhaven Bay SAC and Blacksod Bay/Broadhaven SPA) arising from the waste activities at the facility'*.
- As stated in Section 3 above, the Report reviews EPA WLA W0256-01 with reference to the 'Connaught Waste Regional Plan 2006-2011' and states: *'The applicant's proposal satisfies the objectives of the Plan insofar as they have provided evidence from an agricultural advisor that the recovery of waste soil and stones to land is of agricultural benefit'*;
- The Report states - *'I am satisfied that the site, technologies and techniques specified in the application and as confirmed, modified or specified in the attached Recommended Decision comply with the requirements and principles of BAT'*;
- The Report states - *'It is my view that the applicant can be deemed a Fit & Proper Person for the purpose of this licence application'*;
- Finally, the Report makes the following Recommendation:
'I have considered all the documentation submitted in relation to the application and recommend that the Agency grant a licence subject to conditions set out in the attached RD and for the reasons as drafted. I am satisfied that the conditions set out in the RD will adequately address all emissions from the facility and will ensure that the carrying on of the activities in accordance with the conditions will not cause environmental pollution'.
(Please see NOTE 12 below).

NOTE 1:

The Inspector's Report agrees with the conclusion of EPA WLA W0256-01, that the materials proposed to be accepted and recovered at the facility under EPA WLA W0256-01 (i.e. inert soil & stones) are non-polluting substances and pose low risk to the surrounding soil and water environment.

We note that the EPA Inspector refers to *'No requirement for an engineered liner or leachate management system at this facility'*. We wish to state for the record that these terms refer to 'Landfill Facility Infrastructure' and that 'Waste Soil & Stone Recovery Facilities' are NOT Landfills and therefore mention of these terms is not relevant, to EPA WLA W0256-01.

NOTE 2:

TOBIN wish to set out that 'Recovery' is clearly defined under European Law (Directive 2008/98/EC of the European Parliaments and of the Council, of 19 November 2008, on Waste and Repealing Certain Directives) and soon to be enacted Irish Law as:

'Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy',

TOBIN understand that under law, there is no requirement for 'Recovery' operations to have a 'Planning, amenity, further development, safety or landscaping imperative'.

Notwithstanding this, this application was made on the grounds that the site subject to the application is presently classified as 'Cut-Away Bog', with marginal agricultural value, and that by raising the land with 2 metres of imported waste soil/stones and seeding the land as 'Grassland'; the site would become valuable agricultural grazing land, which is much needed in the area. The applicant sees this as an 'Further Development' imperative with an obvious 'Beneficial Use' of providing much needed good quality agricultural land in the Tallagh, Belmullet area.

NOTE 3:

The existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01 (i.e. a 'Material Recovery Facility' (for waste soil & stones), with a consequential benefit of improving the land for agricultural purposes) is appropriate at this location. As will be discussed in Sections below, the area surrounding the site is agricultural in nature, with scattered residential housing. The main agricultural activity in the area is livestock grazing. Much of the land in Belmullet DED and in particular in the Tallagh area, surrounding the site subject to EPA WLA W0256-01 is unsuitable for intensive/economic agriculture, being of poor soil quality and badly drained. Only reclamation of these lands will allow the land to become good quality agricultural land. Indeed, there

is widespread evidence of other lands in the vicinity of the site having been reclaimed in the past, to productive agricultural grazing plots. Drawing No. 2084-2616, Drawing No. 2084-2617 & Drawing No. 2084-2618 (attached in Appendix A) indicate the lands, which have been reclaimed in the immediate area surrounding the site subject to EPA WLA W0256-01.

Based on the present economic climate, with associated reduced construction works, this project will be a long-term restoration project. However, as will be discussed below, the land reclamation will be phased, with subplots of each phase being seeded on an annual basis, allowing the site reclamation to be completed on a progressive basis.

Two Auctioneers Letters attached to 'Agronomy Report on Land Reclamation Activity, at Tallagh, Belmullet, Co. Mayo', completed by Carton Rural Consultants, Mullingar, Co. Westmeath (attached in Appendix B) endorse the need for high quality reclaimed agricultural land in the area.

NOTE 4:

The existing recovery operations and the proposed recovery activities, outlined in EPA WLA W0256-01 (i.e. 'Material Recovery Facility' (for waste soil & stones), with a consequential benefit of improving the land for agricultural purposes) is consistent with the definition for 'Recovery' under European Law (Directive 2008/98/EC of the European Parliament and of the Council, of 19 November 2008, on Waste and Repealing Certain Directives) and soon to be enacted Irish Law, which is:

'Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy',

The existing and proposed recovery activities are consistent in that the waste soils and stone proposed to be used in reclaiming the land replace the need to import non-waste virgin rock and aggregates, thus conserving natural resources.

Finally, even within the present economic climate and associated reduction in construction projects, there will always be a requirement for sites authorised for the disposal of waste soil & stones.

NOTE 5:

The proposed development is for a 'Material Recovery Facility' (for waste soil & stones), with a consequential benefit of improving the land for agricultural purposes.

It is agreed that the recommended mitigation measure within the 'Ecological Assessment' (submitted as part of EPA WLA W0256-01) - *'The deposited material should be allowed to re-colonise naturally*

to keep in character with the surrounding area' is misleading and would not necessarily support the case for the need to recover the land for improved agricultural purposes.

We are pleased to clarify this matter & stress that it was always the intention of the applicant (*Lennon Quarries Ltd.*), that once deposition of waste soil & stones was complete, that the deposition area would be covered with a layer of topsoil and professionally seeded, to bring it to prime agricultural grazing land.

The applicant is fully supportive of the Inspectors recommended inclusion of a condition in the Waste Licence for the facility that would require a topsoil layer of 150 to 300mm topsoil above the deposited wastes and that developed areas to be seeded as soon as practicable after placement of cover soils, in a manner appropriate to the surrounding area and that within twelve months of completion of each phase of waste deposition, the phase shall be completed and progressively restored to agricultural use.

NOTE 6:

'Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant top Article 16 of an Annex II to Directive 1999/31/EC' refers to 'Landfill Facilities' and 'Waste Soil & Stone Recovery Facilities' are NOT Landfills. Therefore compliance with the above EU Decision is not relevant, to EPA WLA W0256-01.

However, the applicant would welcome any 'Waste Testing' conditioned under a Waste Licence for the facility, as long as it is equitable and relevant to the quantity of waste soil & stones to be recovered at the facility and relevant to the risk associated with these inert materials.

NOTE 6A:

The applicant would welcome 'Monitoring of Deposited Wastes' conditioned under a Waste Licence for the facility, as long as it is equitable and relevant to the quantity of waste soil & stones to be recovered at the facility and relevant to the risk associated with these inert materials.

NOTE 7:

The applicant would be satisfied to revise the proposed waste deposition plan for the site to include:

- The open surface water drains which traverse the site will remain untouched, with a slope of 3:1 (18.5 degrees) rising from the drains to the top of the deposited waste;
- No waste shall be deposited within 15 metres of any open surface water drain or stream.

The applicant would welcome the above limitations conditioned under q Waste Licence for the facility.

NOTE 8:

The applicant would welcome any condition under the Waste Licence for the facility for the weight of one in every 25 loads of waste soil & stones to be verified at an off-site weighbridge and these weights recorded at the Waste Licence facility.

NOTE 9:

Should the EPA require a site office to be provided on the site, within 3 months of the date of grant of Waste Licence for the facility; the applicant would be in a position to provide it.

NOTE 10:

The applicant would be happy to submit a 'Method Statement' to the Regional Fisheries Board for approval, prior to the construction of the proposed 5 no. Settlement Ponds, in order to protect the fisheries habitats. The applicant would ensure that all authorisations are in order before construction of the 5 no. Settlement Ponds begin.

NOTE 11:

Within EPA WLA W0256-01, it was proposed to leave the 5 no. Settlement Ponds (proposed to be installed on the outlets from the 5 no. surface water drainage emission points from the facility) in place, following completion of the waste deposition works. The objective of the proposed 5 no. Settlement Ponds are to allow settlement of any Suspended Solids in the surface water run-off from the recovery/reclamation site, prior to the surface water release into the Cloned River. It was concluded that Suspended Solids may be released into the surface water drains during deposition of waste soil & stones, but also during seeding of the reclaimed land and settlement of the reclaimed land. It was therefore seen as best practice to leave the settlement ponds in place. In any case, the 5 no. Settlement Ponds proposed are simply an expansion of the existing natural drainage streams and will blend in to the surrounding environment.

The applicant agrees with the Inspector's recommendation that the fate of the ponds could be determined through the 'Closure, Restoration & Aftercare Management Plan' (CRAMP), which would be conditioned under a Waste Licence for the facility.

NOTE 12:

The Inspector concludes her report by recommending that the EPA grant a Waste Licence for the facility, subject to conditions, which she sets out in a 'Waste Licence - Recommended Decision'.

She stated that she was - *'Satisfied that the conditions set out in the RD will adequately address all emissions from the facility and will ensure that the carrying on of the activities in accordance with the conditions will not cause environmental pollution'*.

Based on such a positive recommendation from their own EPA Inspector, the applicant was very shocked that the EPA Board of Directors issued a Proposed Decision to Refuse a Waste Licence for the facility.

'Addendum to Inspectors Report on Waste Licence Application', dated 28 June 2010:

TOBIN have reviewed the above 'Addendum to Inspectors Report' in detail and have the following remarks to make:

- The Addendum Report related to the EPA Board of Directors query as to whether the Agency could issue a licence for a long-term activity when there is only a short-term lease in place. The Addendum Report referred to legal advice sought and received on the matter, which concluded that - *'Where the lease ends, the landlord cannot carry on the activity without obtaining a transfer of the licence; and the licensee should continue to be liable for any environmental pollution resulting from acts or omissions while he/she/it was in occupation'*. Based on the above legal advice, the Inspector recommended the inclusion of the following condition in the Waste Licence - Recommended Decision:
'Waste activities at the facility shall cease upon expiry of the lease unless the licensee has, in the meantime, purchased the freehold of the site or secured a new lease, or unless the lessor has secured a transfer to him/her of the lease'.

'Addendum to Inspectors Report on Waste Licence Application', dated 12 July 2010:

TOBIN have reviewed the above 'Addendum to Inspectors Report' in detail and have the following remarks to make:

- The Addendum Report related to the only third party submission received by the EPA - from Ms. Maura Harrington - 08 July 2010, relating to 'Lack of Undisputed Ownership' of the site subject to EPA WLA-W0256-01 (as discussed in Section above). The Inspector's response to the submission was - *'Ms. Harrington has not given any evidence that another party is contesting (or might contest) the ownership of the land'*;
- The Addendum Report refers to further unsolicited additional information from the applicant, dated 28 June 2010 (as discussed in Section above) which consisted of a letter from *Cahill & Cahill Lawyers*, which attached a binding contract for sale of the land (including site subject to EPA WLSA W0256-01) signed on behalf of the vendor and the purchaser (i.e. Mr. & Mrs. Lennon - Directors of Lennon Quarries Ltd.). The Inspector, again recommended the inclusion of the following condition in the Waste Licence - Recommended Decision:

'Waste activities at the facility shall cease upon expiry of the lease unless the licensee has, in the meantime, purchased the freehold of the site or secured a new lease, or unless the lessor has secured a transfer to him/her of the lease';

- The Addendum Report recommends no further change to the Recommended Decision on foot of the above submission.

Agency's Reasons for the Proposed Decision:

1. The Proposed Timescale for the Activity

As stated in EPA WLA W0256-01 and as acknowledged in the EPA 'Inspectors Report' dated 22 April 2010, the facility (subject to EPA WLA W0256-01) currently operates under Mayo County Council Waste Permit PER 144. The Permit was granted on 30 January 2006, in accordance with the relevant legislation at that time (*Waste Management Act 1996* and the *Waste Management (Permit) Regulations 1998*).

The permitted Waste Recovery Activity under Waste Permit 144 is:

- Activity 5, First Schedule, *Waste Management (Permit) Regulations, 1998*:
'The recovery of waste (other than hazardous waste) at a facility (other than a facility for composting of waste) where the waste held at the facility exceeds 1000 cubic meters at any time.'

The Waste Recovery Activity under Waste Permit PER 144 is:

- Fourth Schedule, *Waste Management Act, 1996*:
'Spreading of any waste on land with a consequential benefit for an agricultural activity or ecological system, including composting and other biological transformation processes'

Condition 2.1 of Waste Permit PER 144 states:

'The Permit Holder shall be responsible for ensuring that the waste activities shall be controlled, operated and maintained in strict accordance with the terms of the application, as modified and/or controlled by the conditions attached to the permit'

The Waste Permit Application allowed for a maximum of 162,000m³ of inert material (sourced from local sites) to be recovered on the application site, in order to raise the site level by 1m to reinstate the land for agricultural activity. Using a density for natural soil & stones of 1.6 Tonnes/m³, it is calculated that 259,200 tonnes of inert waste would have to be accepted at the facility for recovery/reclamation. Based on an annual intake of 24,900 Tonnes/Annum, it is calculated that the

facility would have to be active for a minimum 10 Years (i.e. 2006 - 2016), to complete the proposed recovery quantities.

This, along with the requirement to renew the Waste Permit every 3 years, would mean that Waste Permit PER 144 would have to have been renewed ca. 3-4 times, to complete the proposed recovery quantities.

However, the 1998 Waste Permit Regulations were revoked and replaced by the *Waste Management (Facility Permit and Registration) Regulations 2007* and the *Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008 ('New Legislation')*, which came into effect on 01 June 2008.

Under the *New Legislation*, the activity permitted under existing Mayo County Council Waste Permit PER 144 did not fall within Part I of the Third Schedule (of the *New Legislation*), and therefore now required a Waste Licence, in accordance with the relevant *Waste Management (Licensing) Regulations*.

The Applicant (Lennon Quarries Ltd.) chose to submit a Waste Licence Application (EPA WLA W0256-01), rather than review existing Mayo County Council Waste Permit 144, which would only have allowed a limited additional amount of inert material to be recovered onsite.

The *New Legislation* required that the Waste Licence Application for the facility was lodged with the EPA within 180 working days of the coming into operation of the *Waste Management (Facility Permit and Registration) Regulations 2007* (i.e. 13 February 2009), or before/on the expiry date of the existing Waste Permit (i.e. 29 January 2009), whichever was sooner.

By lodging the application within this timeframe (on 29 January 2009), the existing Mayo County Council Waste Permit PER 144 for the site remains valid until such a time as the EPA either grant or refuse a Waste Licence for EPA WLA W00256-01. This interpretation of the legislation has been confirmed by the EPA.

EPA WLA W0256-01 states:

'To allow for a proposed 2m Land Raise, it was calculated that a total of 373,039m³ of material would have to be accepted/recovered at the facility. Using a density for natural soil & stones of 1.6 Tonnes/m³, it was calculated that 596,862.5 Tonnes Waste would have to be accepted at the facility for recovery/reclamation. Based on an annual intake of 24,900 Tonnes/Annum, it is calculated that the facility will be active for 24 Years (i.e. 2010 - 2033).'

TOBIN do not see an issue with this proposed timescale. Indeed, many Waste Licences, IPPC Licence and Waste Water Discharge Licences issued by the EPA would permit activities on a site for a greater period than that proposed under EPA WLA W0256-01 (i.e. ca. 24 years).

Based on the present economic climate, with associated reduced construction works, this project will be a long term restoration project, however, as will be discussed in the Section below, **the land reclamation will be phased and subplots of the site seeded on an annual basis, allowing the site reclamation to be completed on a progressive basis.**

Should a Waste Licence be granted for the facility, the EPA (as licensing body) would be in a position to inspect and confirm on a regular basis, that the land (subject to the Waste Licence) was being reclaimed and reseeded on a phased basis.

2. The Proposal to Allow the Site to Revegetate Naturally

EPA WLA W0256-01 proposes a 'Material Recovery Facility' (for waste soil & stones), with a consequential benefit of improving the land for agricultural purposes.

As discussed above, it is agreed that the recommended mitigation measure within the 'Ecological Assessment' (submitted as part of EPA WLA W0256-01) - '*The deposited material should be allowed to re-colonise naturally to keep in character with the surrounding area*' is misleading and would not necessarily support the case for the need to recover the land for improved agricultural purposes.

We are pleased to clarify this matter & stress that it was always the intention of the applicant (*Lennon Quarries Ltd.*), that once deposition of waste soil & stones was complete, that the deposition area would be covered with a layer of topsoil and professionally seeded, to bring it to prime agricultural grazing land.

EPA WLA W0256-01 (First response to *Notice in Accordance with Article 14(2)(b)(ii) of the Waste Management (Licensing) Regulations, 2004 to 2008*, dated 17 June 2009 - 'Request No. 9') states:

'The waste deposition at the site is proposed to be carried out in 3 No. Phases, as shown on Drawing No. 2084-2615 Rev. A (Copy attached in Appendix C). During Phase 1, the waste will be spread over the eastern area of the site. As discussed above, the waste will be deposited close to the site entrance by the haulage trucks and the machine driver will fan out the acceptable material concentrically over the area of Phase 1.'

Once Phase 1 is complete, the acceptable material will be fanned out over Phase 2, for a 2m lift. Finally, when Phase 2 is complete, the incoming material will be transported over the area of Phase 1 & 2, to be deposited over the Phase 3 area, again to be fanned out for a 2m lift'.

The applicant would be fully supportive of the Inspectors recommended inclusion (Inspector's Report, dated 22 April 2010) of a condition in the Waste Licence for the facility that would require a final capping layer of 150 to 300mm topsoil above the deposited wastes and that developed areas to be seeded as soon as practicable after placement of cover soils, in a manner appropriate to the surrounding area and that within twelve months of completion of each phase of waste deposition, the phase shall be completed and progressively restored to agricultural use.

Indeed, this recommendation is mirrored in the independent 'Agronomy Report on Land Reclamation Activity, at Tallagh, Belmullet, Co. Mayo', completed by Carton Rural Consultants, Mullingar, Co. Westmeath, attached in Appendix B. Section 4.1 of this report, states:

'Due to the long time scale of this project, it is recommended that the site will be divided into 3 no. Phases, as proposed in the Waste Licence Application, with a number of subplots and that the site will then be filled and recovered in a structured fashion with no more than one subplot being reclaimed at any one time. Each subplot will be fully restored and reseeded prior to filling commencement on the next subplot. The individual area infilled and reclaimed each year is to be reseeded with a good quality grass seed mixture, suitable for grazing sheep and cattle and the land returned to full agricultural production as soon as possible the following spring'.

3. The Proposal to Leave the Settlement Ponds in Place after Cessation of Activity

Within EPA WLA W0256-01, it was proposed to construct 5 no. Settlement Ponds on the site, along each of the 5 no. drainage channels that run along the perimeter or cut through the proposed deposition area, prior to their discharge to the Clooneen River. The objective of the proposed settlement ponds are to allow settlement of any Suspended Solids in the surface water run-off from the proposed recovery/reclamation site, prior to the surface water release into the Clooneen River. The proposed 5 no. Settlement Pond locations and their associated 'Zones of Contribution' are shown on EPA WLA W0256-01 Drawing No. 2084-2614 (copy attached in Appendix D).

EPA WLA W0256-01 proposed to leave the above 5 no. Settlement Ponds in place, following completion of the waste deposition works. It was concluded that Suspended Solids may be released into the surface water drains during deposition of waste soil & stones, but also during seeding of the reclaimed land and settlement of the reclaimed land. It was therefore seen as best practice to leave

the settlement ponds in place. In any case, the 5 no. Settlement Ponds proposed are simply an expansion of the existing natural drainage streams and will blend in to the surrounding environment.

The applicant agrees with the Inspector's recommendation (Inspectors Report, 22 April 2010) that the fate of the ponds could be determined through the 'Closure, Restoration & Aftercare Management Plan' (CRAMP), which would be conditioned under a Waste Licence for the facility.

4. The Absence of any Proposed Change of Use of the Site

TOBIN wish to set out that 'Recovery' is clearly defined under European Law (Directive 2008/98/EC of the European Parliaments and of the Council, of 19 November 2008, on Waste and Repealing Certain Directives) and soon to be enacted Irish Law as:

'Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy'.

TOBIN understand that under law, there is no requirement for 'Recovery' operations to have a 'Proposed Change of Use of the Site'.

Notwithstanding this, the site subject to EPA WLA W0256-01, is located at Tallagh, 3km north of Belmullet, Co. Mayo. The site has a total area of 27.22 Ha, which includes the site access road, the proposed area of deposition (20.22 Ha) and a proposed buffer zone in the northern section of the site (4.46 Ha), which separates the proposed area of deposition from the Clooneen River, which flows in an easterly direction, along the northern boundary of the site. EPA WLA W0256-01 Drawing No. 2084-2603 shows the 'Site Layout Plan' (Copy attached in Appendix E).

The site is presently dominated by cutover peat land, which has been recolonised naturally with mosses, rushes, knot grass and other herbaceous weed species. The site has been used in the past for peat cutting, small-scale sheep grazing and as a firing range for the local gun club. The site is currently unsuitable for intensive/economic agriculture, as the soil type is poor, vegetation present is of poor nutritional value, and the historic peat extraction on the site has left the topography of the ground uneven and unsuitable for agricultural machinery.

The land reclamation proposed by EPA WLA W0256-01, including raising the land by 2m with waste soil & stones, land levelling, reinstatement of topsoil and reseeding with a good quality grass seed mixture, would have the end result of producing good quality agricultural land for livestock grazing and the production of hay and silage.

Therefore, the 'Proposed Improved Use of the Site' is one from a site unsuitable for intensive/economic agriculture (with a history of peat cutting, small-scale sheep grazing and use as a firing range) to a site of good quality agricultural land for livestock grazing and the production of hay and silage.

5. The Absence of a Demonstrated Benefit for the Land from the Deposit of Waste on the Site

Agriculture is a very important industry in Co. Mayo, with 12,493 farms identified in the County in the 2000 'Census of Agriculture'. This Census identified 156 no. farms in the Belmullet DED, mainly family run and predominantly grassland based in nature, with 64% cows/cattle livestock and 36% sheep livestock.

Much of the land in Belmullet DED and in particular in the Tallagh area, surrounding the site subject to EPA WLA W0256-01 is unsuitable for intensive/economic agriculture, being of poor soil quality and badly drained. Only reclamation of these lands will allow the land to become good quality agricultural land. Indeed, **there is widespread evidence of other lands in the vicinity of the site having been reclaimed in the past, to productive agricultural grazing plots.** Drawing No. 2084-2616, Drawing No. 2084-2617 & Drawing No. 2084-2618 (attached in Appendix A) indicate the lands, which have been reclaimed in the immediate area surrounding the site subject to EPA WLA W0256-01.

The reclamation of the site proposed under EPA WLA W0256-01 would have a beneficial impact on agriculture and agronomy in the Belmullet area, providing additional and much needed good quality agricultural land for livestock grazing and the production of hay and silage.

As stated above, the site subject to EPA WLA W0256-01 is currently unsuitable for intensive/economic agriculture, as the soil type is poor, vegetation present is of poor nutritional value, and the historic peat extraction on the site has left the topography of the ground uneven and unsuitable for agricultural machinery. The land reclamation proposed by EPA WLA W0256-01, including raising the land by 2m with waste soil & stones, land levelling, reinstatement of topsoil and reseeding with a good quality grass seed mixture, would have the end result of producing good quality agricultural land for livestock grazing and the production of hay and silage.

This is the main benefit for the land from the deposition/recovery of waste soil & stones on the land.

Other beneficial impacts from the reclamation of the land will include:

- As a result of a more productive agricultural land, there will be a higher potential stocking rate of livestock, greater grass yields and therefore greater agricultural benefit;
- An increased rental value for the land, due to the land reclamation to good quality agricultural land for livestock grazing and the production of hay and silage;
- An increased value for the land, due to the land reclamation to good quality agricultural land for livestock grazing and the production of hay and silage.

As part of the EPA WLA W0256-01, the applicant commissioned an independent agricultural advisor - Joe Earley, Agricultural Consultants, to comment on the proposed use of the site, under the EPA WLA W0256-01. Joe Earley studied the plans for the site under EPA WLA W0256-01, visited and inspected to the site and wrote a letter/report on his findings. His letter/report concluded:

"To conclude, we believe that by granting the pending Waste Licence Application, the 'Continued acceptance of 24,900 Tonnes per annum of non-hazardous/inert material and its recovery, by spreading the material over the site deposition area' (to a depth of 2m) will have a consequential benefit of improving the land for agricultural purposes".

EPA WLA W0256-01 included a letter by the then site owners - *Erris Farm Services Co-Op Society Limited*, which stated that they understood the nature, scale and duration of the proposed development and that acceptance of inert material and its recovery by spreading over the site deposition area, to a depth of 2m would have a consequential benefit of improving the land for agricultural purposes.

James Carton, Carton Rural Consultants, Mullingar, Co. Westmeath was commissioned to complete an independent 'Agronomy Report on Land Reclamation Activity' for the site subject to EPA WLA W0256-01. A copy of this report (which endorses the conclusions of the previous Agricultural Adviser), dated 07 January 2010, is attached in Appendix B. The report concludes:

'I am satisfied that the works carried out to date are recovery works for the benefit to agriculture and that the proposed works (i.e. filling of the rest of the site as proposed in the waste licence application) will in my professional opinion have a consequential benefit to agriculture by virtue of the improved land and its increased agronomic vale, as it is progressively reclaimed'.

6. The Agency Considers that the Purpose of the Proposed Activity is the Disposal of Waste, and not the Recovery of Waste, and would not, therefore, be in Accordance with the Licence Application

As of 09 December 2010, when the Agency issued the Proposed Decision on EPA WLA W0256-01, the legal definition of 'Recovery' in Irish Law was:

'An activity carried out for the purpose of reclaiming, recycling or re-using the waste'.

'Recovery' is defined as – *'Any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy'*, under Directive 2008/98/EC of the European Parliaments and of the Council, of 19 November 2008, on Waste and Repealing Certain Directives and soon to be enacted Irish Law.

'Disposal' is defined as – *'Any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy'*, under Directive 2008/98/EC of the European Parliaments and of the Council, of 19 November 2008, on Waste and Repealing Certain Directives and soon to be enacted Irish Law.

EPA WLA W0256-01 refers to a 'Material Recovery Facility' for waste soil & stones. This application and the definition of the proposed waste activity as 'Recovery' was made in good faith by the applicant, on the grounds that the site subject to the application is presently classified as 'Cut-Away Bog', with poor agricultural potential. However, by raising the land with 2 metres of imported waste soil/stones and seeding the land as 'Grassland'; the site would become valuable agricultural grazing land, which is much needed in the area.

The proposed waste activity (i.e. a 'Material Recovery Facility' (for waste soil & stones), with a consequential benefit of improving the land for agricultural purposes) is consistent with the above definitions for 'Recovery', in that the waste soils and stone proposed to be used in reclaiming the land, replace the need to import non-waste soils and stones.

The site subject to EPA WLA W0256-01 was at the time of the application submission to the EPA (29 January 2009) operating as a 'Material Recovery Facility', under the existing Mayo County Council Waste Permit PER 144 for the site, which was granted on 30 January 2006, in accordance with the relevant legislation at that time (*Waste Management Act 1996* and the *Waste Management (Permit) Regulations 1998*). This permit was due to expire on 29 January 2009.

The 1998 Waste Permit Regulations were revoked and replaced by the *Waste Management (Facility Permit and Registration) Regulations 2007* and the *Waste Management (Facility Permit and Registration) (Amendment) Regulations 2008* ('New Legislation'), which came into effect on 01 June 2008.

Under the *New Legislation*, the activity permitted under existing Mayo County Council Waste Permit PER 144 (i.e. the recovery of a maximum of 24,900 Tonnes/annum, to a total of 259,200 Tonnes of inert material for the reclamation of land) did not fall within Part I of the Third Schedule (of the *New Legislation*), and therefore now required a Waste Licence, in accordance with the relevant *Waste Management (Licensing) Regulations*.

Therefore, rather than submitting a 'Waste Permit Review Application' with Mayo County Council, *Lennon Quarries Ltd.* (in compliance with the *New Legislation*) submitted Waste Licence Application W0256-01 with the EPA. The *New Legislation* required that the Waste Licence Application was lodged with the EPA within 180 working days of the coming into operation of the *Waste Management (Facility Permit and Registration) Regulations 2007* (i.e. 13 February 2009), or before/on the expiry date of the existing Mayo County Council Waste Permit PER 144 (i.e. 29 January 2009), whichever was sooner.

By lodging the application within this timeframe (on 29 January 2009), the existing Mayo County Council Waste Permit PER 144 for the site remains valid until such a time as the EPA either grant or refuse a Waste Licence for Waste Licence Application W00256-01. This interpretation of the legislation has been confirmed by the EPA.

The permitted Waste Recovery Activity under existing Mayo County Council Waste Permit PER 144 for the site is:

- Activity 5, First Schedule, *Waste Management (Permit) Regulations, 1998*:
'The recovery of waste (other than hazardous waste) at a facility (other than a facility for composting of waste) where the waste held at the facility exceeds 1000 cubic meters at any time'.

The Waste Recovery Activity under existing Mayo County Council Waste Permit PER 144 for the site is:

- Fourth Schedule, *Waste Management Act, 1996*:
'Spreading of any waste on land with a consequential benefit for an agricultural activity or ecological system, including composting and other biological transformation processes'.

The applicant strongly states that the site subject to EPA WLA W0256-01 is presently acknowledged and permitted to act as a 'Waste Recovery Facility' by Mayo County Council and must remain classified as a 'Waste Recovery Facility' under the EPA Waste Licensing system.

If anything, the proposal under EPA WLA W0256-01 to only accept Waste Soil & Stones, further emphasises the Recovery proposal.

The waste activities presently ongoing on the site (under Mayo County Council Waste Permit PER 144 and those proposed for the future (under EPA WLA W0256-01) are not and cannot be defined as 'Disposal', but as 'Recovery'.

7. In the Absence of any Proposal Addressing the Disposal of Waste on the Site, the Agency is not Satisfied that such Disposal would not cause Environmental Pollution

As stated above, the waste activities presently ongoing on the site (under Mayo County Council Waste Permit PER 144 and those proposed for the future (under EPA WLA W0256-01) are not and cannot be defined as 'Disposal', but as 'Recovery'.

Since Mayo County Council Waste Permit PER 144 was granted for the facility on 30 January 2006, the Permit Holder has not received any 'Non-Compliances' from the Permitting Authority – Mayo County Council, with regards to any operational or environmental incidents or complaints.

EPA WLA W0256-01 proposes to continue Waste Recovery activities on the site, but to limit the material recovered at the site to:

- Waste Soil & Stones
(EWC Code 17 05 04 - Soil & Stones, other than those mentioned in 17 05 03).

The EPA Inspector's Report (dated 22 April 2010) agrees with the conclusion of EPA WLA W0256-01, that the waste soil & stones proposed to be accepted and recovered at the facility are non-polluting substances and pose low risk to the surrounding soil and water environment.

EPA WLA W0256-01 addressed all possible environmental impacts associated with the proposed Waste Recovery Activities for the site and concluded that due to the non-polluting nature of the waste soil & stones to be recovered at the facility and that once all mitigation measures proposed were put in place, that Waste Recovery Activities at the site would have no negative/polluting impact on the environment.

The EPA Inspector's Report (dated 22 April 2010) concluded:

'I have considered all the documentation submitted in relation to the application and recommend that the Agency grant a licence subject to conditions set out in the attached RD and for the reasons as drafted. I am satisfied that the conditions set out in the RD will adequately address all emissions from the facility and will ensure that the carrying on of the activities in accordance with the conditions will not cause environmental pollution'.

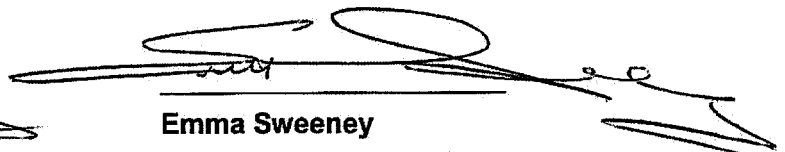
We understand that the EPA WLA W0256-01 for a 'Waste Soil & Stones, Material Recovery Facility' is a new type of waste activity being lodged with the Agency for licensing and that the EPA until now have only dealt with disposal activities under Landfill Waste Licence Applications. We trust that the EPA will look upon and treat 'Waste Soil & Stones, Material Recovery Facilities' for Recovery in a totally new light and new category to 'Landfill Facilities' for disposal.

We do hope the above clearly presents our objection to EPA W0256-01 Proposed Decision (dated 09 December 2010). Should you require any additional information, with regards to any subject discussed above, please feel free to contact me at any time.

Yours Sincerely,



Sean Finlay
Director
TOBIN Consulting Engineers



Emma Sweeney
Senior Environmental Scientist
TOBIN Consulting Engineers

(On behalf of Lennon Quarries Ltd.)

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Lennon Quarries Ltd.
Glencastle, Bunnahowen, Ballina, Co. Mayo

PROJECT NO:	2084
SHEET:	1

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Government Organisation	EPA	Waste Licence Section			2			2	2	4	1														
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STATUS: D=DRAFT, P=PLANNING, DS=DESIGN STAGE, T=TENDER, C=CONSTRUCTION				DATE OF ISSUE																										
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					12	01	01	05	06	12	04	01																		
					08	09	09	09	09	09	10	11																		
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2084-2600	Site Location - Map 1	A3		A	D-01	A	A																							
2084-2601	Site Location - Map 2	A3		A	D-01	D-01	A	A																						
2084-2602	Site Ownership Map	A3		A	D-01	A	A																							
2084-2603	Site Layout Plan	A3		B	D-01	A	A				B	B																		
2084-2604	Services Plan	A3		A	D-01	A																								
2084-2605	Location of Site Notice	A3		A	D-01	A																								
2084-2606	Proposed Environmental Monitoring Locations	A3		B	D-01	D-01	A	A	B																					
2084-2607	Existing Topographic Map of Application Site	A3		B	D-01	A	A				B																			
2084-2608	Proposed Topographic Map of Application Site, Showing Final Ground Levels	A3		B		A	A				B																			
2084-2609	Cross Sections A-A & B-B	A3		B		A	A				B																			
2084-2610	Cross Sections C-C & D-D	A3		B		A	A				B																			
2084-2611	Cross Section E-E	A3		B		A	A				B																			
2084-2612	Existing & Proposed Site Infrastructure	A3		B		A	A			B																				
2084-2613	Proposed Emission Points	A3		B		A	A			B																				
2084-2614	Surface Water Drainage System Including Treatment / Abatement System	A3		B		A	A	B			B																			
2084-2615	Phasing Sequence For Waste Deposition	A3		A			A				A																			
2084-2616	Photos Showing Waste Licence Application Site & Surrounding Lands	A3		A																										
2084-2617	Existing Landuse Map Showing Application Site & Other Reclaimed Surrounding Lands	A3		A																										
2084-2018	Proposed Landuse Map Showing Application Site & Other Reclaimed Surrounding Lands	A3		A																										