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

TO:	Directors
FROM:	Technical Committee ENVIRONMENTAL LICENSING PROGRAMME
DATE:	5 th May 2011
RE:	Objection to a Proposed Decision (PD) issued to Oxigen Environmental Limited in relation to a facility at Lismagratty and Corranure Townlands, Cootehill Road, Cavan, County Cavan, Reg. No. W0248-01.

Application Details	
Classes of Activity (P = principal activity):	3 rd Schedule: 4, 5, 11, 12 & 13 4 th Schedule: 2, 3, 4(P), 9, 11, 12 & 13.
Location of activity:	Lismagratty and Corranure Townlands, Cootehill Road, Cavan, County Cavan.
Licence application received:	22 September 2008
PD issued:	15 December 2010
First Party Objection received:	None
Third Party Objection received:	14 January 2011, 19 January 2011 and 20 January 2011
Submission on Objection received:	23 February 2011

1. Company and background to this report

Since 2007, Oxigen Environmental Limited has been operating, under a concessionary agreement with Cavan County Council, an existing landfill at Corranure, Cootehill Road, Cavan. The landfill comprises of five cells (0, 1, 2, 3 and 4) and is at present licensed under and subject to the conditions contained in a reviewed Waste Licence (Reg. No. W0077-03) granted on 24th March 2010 and in the sole ownership of Cavan County Council.

In September 2008, Oxigen Environmental Limited submitted an application for a new waste licence (Reg. No. W0248-01) with a proposal to take responsibility and ownership of cells 3 and 4 associated with the Corranure Landfill, the existing civic amenity site and landfill

infrastructure. The licence application also contained a proposal for the establishment of a materials recovery facility (MRF) and a biological treatment facility at the facility.

In parallel, and also in September 2008, Cavan County Council applied for a review of the existing licence (Reg. No. W0077-03) for the purpose of disclaiming their responsibility and liability for the operational cells 3 and 4, associated landfill infrastructure and the associated facility land. Under a contract for sale agreement, these cells, infrastructure and land were to be sold to Oxigen Environmental Ltd along with the civic amenity site and all associated landfill infrastructure.

Following detailed discussions, the Directors of the Agency decided to issue a Proposed Decision (PD) to refuse to grant a waste licence, Reg. No. W0248-01, to the Oxigen Environmental Limited on the following grounds:

“The Agency is not satisfied that the activity concerned, carried on in accordance with such conditions as might be attached to a Licence, will not cause environmental pollution. The present landfill is an integrated unit and can be supervised as such. If the facility were to be made the subject of two separate licences it would not be possible to supervise the operation of both sections and assure the proper protection of the environment. In the event of pollution occurring it would be impossible to determine with any degree of certainty where the source of the pollution lay and which of the two licensees might be held responsible for such pollution with a view to enforcement of licence conditions. The effect of the landfill potentially extends beyond the site boundary and the source of and liability for any impacts on the external locations could not be determined as being attributable to one of the licensed areas as against the other.”

Accordingly, the Board of the Agency issued a Proposed Decision (Reg. No. W0077-04) to the Cavan County Council, for their facility, Corranure Landfill at Lismagratty and Corranure Townlands, Cootehill Road, Cavan, Co. Cavan retaining the Council’s responsibility as sole licensee for the entire facility, subject to the conditions as set out in the proposed licence.

This report relates to objections received by the Agency in relation to the Proposed Decision issued to Oxigen Environmental Ltd on the 15th December 2010 (Reg. No. W0248-01).

2. Consideration of the Objections and Submission on Objections by Technical Committee

This report considers three valid Third Party Objections and one valid Submission on the Third Party Objections made by one of the Third Parties. It is noted that no objection was submitted by the First Party. The main issues raised in the objections and the submission on the objections are summarised under various headings below. However, the original objections and the submission on the objection should be referred to at all times for greater detail and expansion of particular points.

The Technical Committee (TC), comprising of Michael Owens (Chair) and Ewa Babiarczyk, has considered all of the issues raised in the objections and this report details the Committee’s comments and recommendations following the examination of the objections and the submission on the objections.

2.1 Third Party Objection No. 1

Objector's name and Address	Date Received
Mr. Edmund McCabe, Kerley, Drumbo, Cavan.	14 th January 2011

Mr. McCabe submitted a letter addressed to the Agency in the form of a cover letter and a copy of a letter which was previously submitted to the Agency as Submission No. 135 on 16th November 2009. The Objector's observations are outlined below.

Mr. McCabe objects to the granting a licence to Oxigen Environmental Ltd and states that there have been on-going problems caused by the facility. He adds that none of those problems have been acknowledged or resolved to date and that "*this landfill should be closed immediately and monitored by the EPA.*". The Objector states that, over the years, he had to tolerate the "*terrible odour*" which has been increasing in recent times. In order to highlight this problem he refers to an article titled "*Worst weekend ever' with smell from Corranure*" that featured in the Anglo-Celt Newspaper on 12th November 2009. The Objector also states that there has been a "*dreadful*" problem with litter that seems to be without resolution and that there is "*an endless stream of trucks*" on a part of the road which is inadequate for such heavy traffic. The Objector also states that birds attracted by the landfill have done "*an endless amount of damage*" to his property and that, because of the landfill, there is a sump on his lands which frequently fills with landfill leachate that is poisonous to animals on Mr. McCabe's farm. The Objector adds that the leachate has turned a portion of his property into a wetland and that the management of the facility has to be called into question as the problems occurring when Cavan County Council were operating and prosecuted for same have still not been resolved and have magnified.

Technical Committee's Evaluation

The issues raised by McCabe are in relation to the waste activity that is currently authorised by waste licence Reg. No. W0077-03. The Proposed Decision (Reg. No. W0077-04) issued to Cavan County Council is currently subject to a separate Technical Committee assessment.

The information submitted previously as Submission No. 135 was considered by the Board of the Agency in making a decision to issue a PD to refuse Oxigen Environmental Ltd a waste licence.

Recommendation:

Recommendation: No Change

2.2 Third Party Objection No. 2

Objector's name and Address	Date Received
Mr. Peter Sexton, 'Cavan Better Waste Management Group', Killygoan, Cavan, County Cavan	19 th January 2011

This objection was submitted to the Agency by Mr. Peter Sexton on behalf of 'Cavan Better Waste Management Group' (CBWMG) representing the local community. The objection is in a form of a two page letter and its observations are outlined below.

Cavan Better Waste Management Group (CBWMG) welcomes the Proposed Decision of the Agency to refuse to grant a waste licence to Oxigen Environmental Ltd (Reg. No. W0248-01) and request that the Agency finalize the licence refusal. The objection states that CBWMG are satisfied that the potential for additional odour emissions from the operation of cell 4 and the proposed biological treatment plant have been limited due to the proposed refusal of the waste licence application. The objection also states that CBWMG support the Agency's stance that allowing for the operation of the landfill under two licences would create difficulty in enforcing licence conditions. Furthermore, the objection states that both Cavan County Council and the Oxigen Environmental Ltd have a poor history of compliance with respect to excessive and unacceptable odour emissions from the facility. It is added that the potential difficulty in proving the source of harmful emissions could result in considerable legal complications in relation to supervision of the facility and enforcement of conditions. Additionally, the objection states that CBWMG commend the Agency's Office of Environmental Enforcement (OEE) for identifying the facility as a high priority for enforcement and continuing to do so. The objection also stresses that the primary concern of the CBWMG relates to the health and safety of the people who reside in the vicinity of Corranure landfill and the Group are satisfied that the Proposed Decision to refuse to grant a waste licence to Oxigen Environmental Ltd will provide significant relief and re-assurance for the local community.

Technical Committee's Evaluation

The Technical Committee acknowledges the points raised in the objection. The issues raised are in relation to the waste activity that is currently authorised by waste licence Reg. No. W0077-03. The Proposed Decision (Reg. No. W0077-04) issued to Cavan County Council is currently subject to a separate Technical Committee assessment.

Recommendation:

Recommendation: No Change

2.3 Third Party Objection No. 3

Objector's name and Address	Date Received
Mr. J. Keyes, County Manager, Cavan County Council, Courthouse, Cavan.	20th January 2011

Cavan County Council submitted an objection in a form of a six page letter. The Objector's observations are outlined under various headings below.

(a) Waste management objectives and the proposed development

The Objector states that the proposals submitted by Oxigen Environmental Ltd for development at the facility will assist in meeting the objectives for waste management in Ireland which include maximum recycling, energy recovery and minimizing landfill disposal and refers to various government policies and legislation which set out these objectives.

The Objector adds that the proposed development would assist in meeting the *EU Landfill Directive (1993/31/EC)* targets for diversion of Biodegradable Municipal Waste (BMW) from landfill and states that the proposed development would make a significant contribution to meeting regional and national diversion, recycling and recovery targets. The Objector also refers to the *National Strategy on Biodegradable Waste (2006)* and states that it sets out measures to progressively divert BMW from landfill in accordance with the *EU Landfill Directive* and the proposed development supports national and local policy in meeting targets for waste diversion from landfill and pre-treatment prior to disposal. The objector also refers to the *National Development Plan (NDP) 2007-2013* and states that the *NDP* prioritizes environmental services, including waste management services and environmental infrastructure generally and makes particular reference to the need to reduce the reliance on landfill, partially through the increase of the recycling rate and an increased number of recycling centres. The Objector adds that the *National Spatial Strategy 2002-2020* stresses that efficient, effective and cost competitive waste management facilities are essential if industrial and enterprise activity is to thrive and develop in a balanced way. Furthermore, the Objector states that the development of an integrated waste management facility at Corranure is supported by Section 9.8.11 of the *Cavan Town and Environs Development Plan 2008-2014* and that the subject lands are also zoned under the current *Development Plan* for the specific purposes of Industry/Integrated Waste Management Facility. The Objector states that the proposed development also meets the objectives of the *Waste Management Plan for the North East Region 2005-2010* and makes a reference to the Section titled 'Waste Management Plans' of the Inspector's Report dated 29th September 2010 which acknowledges that the *Waste Management Plan for the North East Region 2005-2010* has identified that the North East Region will strive to implement a regional approach to waste management that is sustainable and based on National and EU legislation and policy.

(b) Advantages of the proposed development

The Objector states that the licence Applicant's proposal for an integrated waste management facility at Corranure would play a vital role in providing the necessary biological treatment capacity and assist in achieving recycling targets in the region in line with EU, national and regional waste policy. The Objector adds that the development would also contribute to a reduction in the emissions of landfill gases such as methane which can cause nuisance and contribute to greenhouse gases and therefore to climate change. The Objector also states that

the Agency's decision to refuse approval of the development of an integrated waste management facility is contrary to EU, national and regional waste policy and the promotion of higher level treatment options.

(c) Best Available Technologies (BAT), mitigation measures at the proposed Development and local economy

The Objector states that the processing plant will be designed and operated to BAT standards and that various mitigation measures will be in place to ensure that effective screening from nuisances caused by the facility will be provided. The Objector states that the proposed development constitutes a significant piece of infrastructural development for the county and the region. It would provide additional jobs in the area and would be a significant boost for the local economy. It also has the potential for facilitating the creation of 'off site green enterprises'. A refusal of the licence application would constitute a major blow to these plans and to the local economy. The Objector also states that he has been asked by the elected representatives for the Cavan Electoral area to emphasize the importance of the project for the region and their support for the creation of a "state of the art integrated waste management facility" in Corranure.

(d) Summary

Cavan County Council support the waste licence application by Oxigen Environmental Ltd. for the development of an integrated waste management facility at Corranure on the basis that the proposed development is consistent with EU, national and regional policies, is in line with national waste management policy, will address a deficit in biological waste processing capacity within the region, is in line with the EU waste hierarchy and higher level waste activities which are preferred, will result in a reduction in the quantity of residual waste for disposal at Corranure and elsewhere in the region, and will provide sustainable waste management infrastructure required to meet EU, national and regional waste policy.

Technical Committee's Evaluation

The Agency has regard to national policy documents highlighting the need for a decrease in the amount of waste being placed at landfill and promoting waste recycling. Meeting the targets for the diversion of biodegradable municipal waste from landfills as set in the *EU Landfill Directive (1993/31/EC)* is one of the Agency's objectives.

Notwithstanding the matters raised in the Objection above, the concerns of the Agency, as set out in the PD issued for licence application W0248-01, remain unchanged. Allowing the landfill to operate under two licences as proposed would create difficulty in enforcing licence conditions considering that the potential effect of the landfill extends beyond the site boundary and that any impacts detected at external locations would not easily be attributed to either licensee, operating, as proposed, at two contiguous but separate facilities. This could create difficulties in relation to supervision of the facilities and enforcement of conditions. As a result, there are concerns that the scenario as proposed would result in environmental pollution. The Objector has not provided any contrary evidence to demonstrate that these concerns will be addressed. Overall, the objector has not provided any compelling reason to change the Agency's proposed refusal to grant a waste licence to Oxigen Environmental Ltd (W0248-01).

Recommendation:

Recommendation: No Change

2.4. Submission on Objection

In response to the objections submitted by Mr. Edmund McCabe and Mr. Peter Sexton on behalf of Cavan Better Waste Management Group, Mr. Eoin Doyle, Director of Services, Cavan County Council, Courthouse, Cavan, submitted a letter received on 20th January 2011. The letter is in the form of a short introduction and the issues raised are listed under various headings below.

(a) Odour management

Cavan County Council in their submission on objections describes the landfill operations and procedures which are implemented at Corranure Landfill in relation to odour management. It is stated that a dedicated Landfill Gas Manager is employed at Corranure Landfill who is responsible for landfill gas management at the facility. And that Cavan County Council and Oxigen Environmental Ltd are willing to explore technical solutions with the EPA which are currently available to further assist in odour management. In relation to cell 3, it is stated that waste acceptance at this cell has ceased and that the cell is temporarily capped with proposals to provide a permanent capping system in 2011, resulting in a further reduction of the risk of odour emissions at the facility.

(b) Litter management

Cavan County Council state that litter management is carried out on a daily basis at Corranure Landfill and lists the measures for litter reduction which are in place at the facility.

(c) Road management

Cavan County Council state that significant improvement measures have been implemented to the R188 Regional Road at the landfill in the past number of years in accordance with An Bord Pleanála planning conditions. The improvement works conducted at the road are listed.

(d) Protection of adjacent lands

Cavan county Council state that stockproof fencing has been provided between the landfill and the boundary with Mr. McCabe's land and maintenance of this fencing is carried out when required. It is stated that improvement works have been carried out at the entrance to McCabe's land adjacent to the landfill and that Cavan County Council and Oxigen Environmental Ltd have been prepared at all times to resolve any reasonable issues raised by Mr. McCabe regarding the landfill facility.

(e) Bird control

Cavan County Council state that a bird control programme is currently implemented with the objective of making food sources inaccessible and living conditions as unattractive as possible for the birds. The measures implemented in relation to the bird control are listed.

(f) Leachate management

Cavan County Council states that there has been no evidence of leachate contamination associated with Corranure Landfill at or beyond the facility boundary. It is stated that the current monitoring programme shows no evidence of the landfill having a significant negative impact on either the ambient water quality in the Corranure and Lismagratty streams or on groundwater quality. Cavan County Council and Oxigen Environmental Ltd continue to be prepared to resolve any reasonable issues raised by Mr. McCabe regarding drainage on his lands.

(g) Cell 4 management

Cavan County Council state that Oxigen Environmental Ltd proposed to the Agency that a Site Agent be provided during the operation of cell 4 to oversee and report to the Agency on the management and operation of the facility. It is stated that Oxigen Environmental Ltd also committed to funding this position and adds that appointment of a Site Agent will provide the EPA with additional supervision and continuous presence at Corranure Landfill and will provide increased assurance on the standard of operation and compliance at the facility.

Furthermore, it is stated in the submission on objections that the Agency subsequently advertised this position and appointed three independent companies on a framework. Cavan County Council understand that the initial appointment under this framework has been made to White Young Green.

(h) Facility improvements

Cavan County Council state that an investment has been made at Corranure Landfill over the last number of years which has resulted in substantial infrastructural improvements and increased environmental compliance. It is added that both Cavan County Council and Oxigen Environmental Ltd would continue to work closely with the Agency and would implement the improvement measures in order to achieve a compliance of the facility with conditions of the waste licence.

(i) Diversion of Biodegradable Municipal Waste

Cavan County Council state that the Oxigen Environmental Ltd proposed development will assist in meeting the targets for the diversion of Biodegradable Municipal Waste (BMW) from landfill as listed in the EU Landfill Directive (1993/31/EC). Cavan County Council adds that the application by Oxigen Environmental Ltd to develop an integrated waste management facility at Corranure would provide the necessary recycling, processing and biological treatment capacity required to meet regional and national targets for waste pre-treatment prior to landfilling and for diversion of biodegradable waste from landfill. The achievement of the diversion rates will reduce the emissions of landfill gases and the potential for odour creation.

(j) Agency's decision

Cavan County Council state that they do not accept that allowing the landfill to operate under two separate licences would create difficulty in enforcing licence conditions. The difficulty with enforcement cannot be used as a justification for refusing the licences applied for. The extensive monitoring information available would allow for distinct and prompt identification of any potential sources of pollution and there is no restriction in the Waste Management Acts or Regulations on facilities being located adjacent to each other.

Cavan County Council continues that it was outlined in the two licence applications to the EPA made in September 2008 (W0077-04 and W0248-01) that both Cavan County Council and Oxigen Environmental Ltd entered into a contractual agreement to provide environmental indemnities to each other, which would become effective on the completion of the proposed sale of lands between the parties. Under this agreement the liability for Cells 0, 1 and 2 would remain with Cavan County Council while liability for Cells 3 and 4 would transfer to Oxigen Environmental Ltd.

In the submission on objections it is stated that in September 2008, at the request of and following discussions with the Agency, Cavan County Council and Oxigen Environmental Ltd. also entered into a separate legal contractual agreement whereby both parties agreed to offer the EPA joint liability in respect of any environmental issue relating to the Cell 2/Cell 3 interface area.

Technical Committee's Evaluation

(a) Odour Management

Notwithstanding any measures that have been implemented to date at the existing facility odour has been the subject of considerable complaint at the facility in the past. The licensee has demonstrated an inability to manage the facility effectively to prevent emissions of odorous landfill gases. Odour complaints only decreased since the cessation of landfilling at the facility.

The concerns of the Board are not related solely to the issue of odour. They remain unconvinced that the combined operation of the two separate sites in the manner proposed within the particular locality would not lead to environmental pollution and that the authorisation of operations at the sites by way of two separate licences would not provide for proper protection of the environment. The Board therefore also has concerns in relation to other potential significant environmental effects at the two facilities, e.g. groundwater, surface water and noise pollution, as well as the potential for nuisance. It is the view of the Technical Committee that the sources of (and responsibility for) such effects would be very difficult to determine in the scenario as proposed by the applicants.

Recommendation: No Change

(b) Litter Management

This issue was addressed in the Inspector's Report (W007-04 dated 29/09/10).

Recommendation: No Change

(c) Road Management

This issue was addressed in the Inspector's Report (W007-04 dated 29/09/10).

Recommendation: No Change

(d) Protection of Adjacent Lands

This issue was addressed in the Inspector's Report (W007-04 dated 29/09/10).

Recommendation: No Change

(e) Bird Control

This issue was addressed in the Inspector's Report (W007-04 dated 29/09/10).

Recommendation: No Change

(f) Leachate Control

This issue was addressed in the Inspector's Report (W007-04 dated 29/09/10).

Recommendation: No Change

(g) Cell 4 Management

The OEE has appointed and used Site Agents in the past to investigate odour complaints at landfills. The use of such agents has ensured a rapid and independent presence for the EPA at landfills. A Site Agent was appointed to Corranure landfill but never acted on the site as landfilling of waste ceased prior to his arrival. In any case the appointment of a Site Agent or otherwise has no bearing on the proposed decision of the Board.

Recommendation: No Change

(h) Facility Improvements

The investment made by Cavan County Council at the facility is noted by the Technical Committee. The matter will not have any bearing of the Proposed Decision of the Board.

Recommendation: No Change

(i) Diversion of BMW

Notwithstanding the matters raised in relation to this matter above, the concerns of the Agency, as set out in the PD issued for licence application W0248-01, remain unchanged. They do relate solely to odour. Allowing the landfill to operate under two licences as proposed would create difficulty in enforcing licence conditions considering that the potential effect of the landfill extends beyond the site boundary and that any impacts detected at external locations would not easily be attributed to either licensee, operating, as proposed, at two contiguous but separate facilities. This could create difficulties in relation to supervision of the facilities and enforcement of conditions. As a result, there are concerns that the scenario as proposed would result in environmental pollution.

Recommendation: No Change

(j) Agency's Decision

It is accepted that there is no specific legislation prohibiting the location of two waste facilities adjacent to each other. It is also accepted that the monitoring systems as described

above can be utilised to monitor odour emissions and can provide assistance in terms of pin-pointing sources of odour. However, the concerns of the Board are not related solely to odour systems as described above can be utilised to monitor odour emissions and can provide assistance in terms of pin-pointing sources of odour. However, the concerns of the Board are not related solely to the issue of odour. They remain unconvinced that the combined operation of the two separate sites in the manner proposed within the particular locality would not lead to environmental pollution and that the authorisation of operations at the sites by way of two separate licences would not provide for proper protection of the environment. The Board therefore also has concerns in relation to other potential significant environmental effects at the two facilities, e.g. groundwater, surface water and noise pollution, as well as the potential for nuisance.

On-going routine enforcement of many standard licence conditions is not regarded as a potential challenge for the Agency. However, it is the view of the Technical Committee that, given the complex nature of the proposal (i.e. two separately owned, operated and licensed adjacent facilities with a complex physical relationship and a poor compliance history), effective and clear enforcement of the licences in relation to any significant pollution event that may occur would prove challenging and ultimately potentially irresolvable. The complex physical relationship relates to the fact that should the two facilities operate separately, there would be a 3-dimensional interface at the boundary between the two facilities (between cells 2 and 3). This would present significant difficulties in terms of attributing responsibility (and therefore enforcing) a groundwater pollution event in that interface area. It therefore remains a concern that operations at the two separate facilities (in the manner as was proposed by the applicants) would not cause environmental pollution.

The nature of any legal or contractual agreements between the parties is a matter for those parties alone and has no bearing on the decision of the Agency.

Recommendation: No Change

3. Overall Recommendation

It is recommended that the Board of the Agency uphold its decision to refuse to grant a waste licence to Oxigen Environmental Limited for the reasons outlined in the Proposed Decision and having regard to the views of the Technical Committee as set out herein.

Signed:



Michael Owens, Inspector

for and on behalf of the Technical Committee

