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W0256-01



Department of Climate, Licensing &
Waste Licence use

Report of the Technical Committee on Objections to Licence Conditions

To: **Directors**

From: **Technical Committee** - LICENSING UNIT

Date: 27 April 2011

RE: Objection to a Proposed Decision for
Lennon Quarries Limited
in relation to a facility at Tallagh, Belmullet, Co. Mayo
Waste Licence Register Number **W0256-01**

Application Details	
Class of activity:	Fourth Schedule, class 4 [P], class 13.
Licence application received:	29/1/2009
Proposed Decision issued:	9/12/2010
First party objection received:	13/1/2011
Third party objections received:	2 no.: 12/1/2011, 13/1/2011
Submissions on objections:	3 no.: 16/2/2011, 17/2/2011
Article 24 notice issued to applicant:	18/2/2011
Article 24 response received:	11/3/2011

1. Introduction

This report relates to objections received by the Agency to a Proposed Decision (PD) issued to Lennon Quarries Limited on 9 December 2010 in relation to their soil recovery facility at Tallagh, Belmullet, Co. Mayo.

Lennon Quarries is authorised under Waste Facility Permit Register Number WPR 021-02 which was issued by Mayo County Council. This Waste Facility Permit authorises the deposit of concrete, brick, tiles, ceramics and soil and stones. There is no limit in the waste facility permit on the quantity of material that can be accepted at

the facility nor on the permitted depth of the deposit. The planned intake of waste soil and stone at the facility exceeds the threshold for a waste facility permit specified in the Waste Management (Facility Permit and Registration) Regulations 2007, as amended, and therefore the facility requires a waste licence to authorise the activity.

On 9 December 2010 a Proposed Decision to refuse the licence was issued. The grounds for the proposed refusal are as follows:

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.

Each of the first and third party objectors object in general and specific terms to the proposed decision.

2. Consideration of the objections by technical committee

The Technical Committee comprised of Brian Meaney (Chair) and Caroline Connell. This report contains the comments and recommendations of the technical committee following an examination of the objections. Discussions were held with the licensing inspector, Ms. Aoife Loughnane, and with Mr Kevin Motherway of the Office of Environmental Enforcement.

This report considers:

- one first party objection,
- two third party objections, supporting the applicant and objecting to the Agency's proposed refusal of the licence,
- three submissions on objections, and
- one further submission requested by the EPA from the applicant under article 24 of the Waste Management (Licensing) Regulations 2004.

The issues raised in the objections and submissions are summarised below. The original objections and submissions are lengthy and detailed documents that deal with a range of issues including national and European policy, legislative and enforcement issues, and provide considerable background information, not all of which are directly relevant to the Agency's consideration of the Lennon Quarries application. In consideration of the objections and submissions, the relevant issues have been grouped and are not necessarily cross-referenced to their source – be it one of the objections or a submission on objections.

The original objections and submissions should be referred to for greater detail.

3. Article 24 notice and response

On 18 February 2011, the Agency issued a notice under article 24 of the Waste Management (Licensing) Regulations 2004 seeking additional information as follows:

In accordance with the provisions of Article 24 of the Regulations, you are requested to make a further submission to the Agency **setting out the reasons why a depth of two metres of fill with waste soil and stones is required in order to meet the objective of creating agricultural land of improved quality.** In making this submission, please comment on the apparent parallel (from the perspective of site restoration) between Lennon Quarries Limited's proposals and the entry in table 4.3 of the document entitled *Landfill Manuals: Landfill Restoration and Aftercare*, EPA, 1999, dealing with inert landfills with no capping layer or gas control system with afteruse of intensive grazing.

Tobin (Patrick J. Tobin and Co. Ltd.), on behalf of the applicant, responded on 11 March 2011 and stated that the 2 metre depth was required to create a landform and terrain that is accessible to farm machinery, properly drained and suitable for livestock grazing. To achieve this, it is stated to be necessary to emplace substantial inert soil and stone materials into the irregular hollows and depressions currently on the land: hence the need for an average cover of 2 metres of fill, comprising 1.7m of inert soils and 0.3m of topsoil. The requirement for an average depth of 2m reflects the site specific conditions and topography of the site. No other reason was provided or justification given for needing 2 metres of fill to achieve the desired objective. The response does not better enable the technical committee to determine the reason or need for 2 metres of fill at the facility.

No comment was made on the apparent parallel to the aspect of the Landfill Restoration and Aftercare Manual referred to in the request. Rather, the applicant's response respectfully asked the Agency to desist from referring to the facility as a landfill and asserted that the facility is not a landfill. The technical committee would clarify that the article 24 notice in no way intended to infer the facility was a landfill, but simply sought to contrast the restoration guidelines for an inert landfill (<1m depth of material) against the claimed restoration need for the cut-away bog at the Lennon Quarries facility (2m depth of material).

The issue concerning depth of fill is discussed in detail below.

4. Overall recommendation of the technical committee

On 9 December 2010 the Agency issued a Proposed Decision to refuse a waste licence to Lennon Quarries Ltd for the reasons reproduced above.

The objections addressed these reasons and other matters in seeking the grant of a licence. The technical committee has considered the information presented in the objections and submissions and recommends granting a licence to Lennon Quarries Ltd, subject to amendment of a number of conditions in the Recommended Decision that was previously presented to the Board.

Overall, the presumption has been on the part of the applicant that the deposit of clean, uncontaminated soil and stone on land, regardless of scale, quantity and depth, is a recovery activity. The technical committee finds fault with this assumption as it does not take account of there having to be a reason for the development to take place in order for it to be classified as a recovery activity. The deliberations of the technical committee have lead to a recommendation on the manner in which the site could be

developed as a recovery activity under a waste licence, thereby addressing the reasons for the Proposed Decision.

The particulars of this recommendation are to follow in detailed discussions below.

Overall Recommendation:

Grant a waste licence subject to amendment of conditions previously presented to the Board in a Recommended Decision.

5. First party objection by Tobin (Patrick J. Tobin and Co. Ltd.), Co. Mayo, on behalf of the applicant

The applicant's agent (Tobin) submitted a 29-page letter plus appendices addressing a number of points of objection. The technical committee have not addressed the points of objection in any particular order and several points of objection have been grouped for convenience of evaluation and response. There is a lot of common ground between the first and third party objections and submissions. As a result, issues raised in the third party objections and submissions will be dealt with here, not necessarily with cross-reference to the third party objections or submissions.

Objection 1. Purpose of the waste licence application, 'depth of fill' and need for the development

It is the applicant's contention that the EPA has misunderstood the nature of the development under way at the Lennon Quarries site. The application was made in good faith as a recovery, not disposal, operation to allow reclamation of marginal agricultural land whilst also allowing recovery of waste soil and stones which otherwise may have to be sent for disposal to a landfill.

Technical committee's evaluation:

The applicant's choice of words is important in that the reclamation of marginal agricultural land is presented as the primary objective. This is a legitimate objective and it is consequently legitimate to apply for a soil recovery licence for a development involving the reclamation of land. Conversely and as a corollary, it is not legitimate to apply for a soil recovery licence to provide primarily a location for the deposit of waste soil and stone. It is however as it should be to say that under a soil recovery licence an operator will use waste soil and stone to pursue the development objective of a site. There must be a development objective, otherwise the development cannot constitute recovery, but disposal.

In their objection, the applicant provided an agronomic report which elaborated on an earlier report (submitted with the application). The new report establishes to the satisfaction of the technical committee that the development will have a positive impact on the agronomic value of the land in question. The proposal to improve the land from low grade sheep pasture to improved pasture is a legitimate development for which waste soil and stone is a useful material. It is not clear however from the objection as to why a full two metres of fill is required in order to meet this development objective. As a point of comparison, and in no way to imply for the purposes of this report that the Lennon Quarries site is a landfill, table 4.3 of the *Landfill Restoration and Aftercare Manual* (EPA, 1999) recommends a depth of 500mm subsoil and 150-300mm of topsoil in the restoration of an inert landfill. An

inert landfill is a disposal facility that would accept a much broader range of inert material than a soil recovery facility. Applying equivalent logic to the Lennon Quarries site, it may be that a fill of something less than one metre of waste soil and stone, including a top dressing of 300mm of topsoil, might satisfy the stated development objective for the site.

The obvious question to address is that of the underlying cut-away bog. It may be that the nature of a cut-away bog is such that a greater depth of material would be required because of such issues of underlying soft ground and potential for subsidence of land. The technical committee is in possession of no information that would suggest that a cut-away bog would require a greater depth of restoration material than an inert landfill.

In the context of the existing waste facility permit (granted by Mayo County Council), the technical committee would refer to the applicant's objection which states (on page 18):

“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.” [our emphasis]

The waste licence application, as stated in the inspector's report, is for a *two metre* land-raise, requiring some *373,039m³* of soil and stone. The volume of material applied for in the licence application, with the development objective remaining the same (reinstatement of land for agricultural purposes), has more than doubled since the original waste permit application was made (the permit was granted in January 2006). The proposed depth of material, with the development objective remaining the same, has doubled. There is no explanation provided in the objection for these changes.

The technical committee notes the original proposal (fill depth of one metre) and the fact that there is no evidence available to the technical committee that a fill of greater than one metre is necessary to satisfy the development objective of generating good quality agricultural land. For these reasons, the technical committee recommends that development of the soil recovery site be authorised, but to an average depth of one metre, subject to localised need for greater depth (see proposed amendment to condition below).

The technical committee does not accept that the Agency misunderstood the purpose of the waste licence application. The applicant made the presumption that, as stated in the objection, “recovery is recovery regardless of size or scale or depth of recovered material.” (The objection states that this presumption has been accepted by the EPA and DoEHLG). The technical committee accepts the validity of general guidelines but considers that each application must be dealt with individually and on its own merits and with exploration of the need for the recovery operation. The absence of a planning permission is not helpful in this regard. The local authority has deemed the development to be exempt from planning permission. Thus the Agency has no indication from a planning perspective as to the need for development in the area.

The technical committee does not accept the implied likelihood that lack of availability of a soil recovery facility would drive waste soil and stone into landfill for disposal. It would appear more likely that a landfill site operator will seek to keep good quality uncontaminated soil and stone for site development and restoration purposes. In any event, the lack of soil and stone recovery facilities in County Mayo

or the risk of unauthorised disposal of waste soil and stone is not alone a sufficient reason to grant authorisation for the facility.

Recommendation: Amend conditions as set out below

- a. The technical committee recommends deletion of condition 3.15:

Existing condition 3.15: No waste shall be deposited to a final profile depth greater than 2 metres while maintaining the need to comply with condition 10.2.3 of this licence.

- b. The technical committee recommends the following amendment to condition 10.2.1:

Existing condition 10.2.1: Unless otherwise required by the Planning Authority, the final ground levels at the facility shall be as shown on Drawing No. 2084-2608 (Revision B) *Proposed Topographic Map of Application Site Showing Final Ground Levels* of the application, submitted on 19th April 2010, with the exception of the existing open surface water drains which shall remain untouched.

Recommended condition 10.2.1: The final ground levels at the facility shall not exceed an average of one metre above existing (pre-fill) average ground level except as may be otherwise justified in order to comply with conditions 10.2.3 and 10.2.4. Revised topographic drawings showing final profiles shall be prepared and retained for inspection within six months of the date of grant of this licence or prior to commencement of waste activities under this licence, whichever is the later. These drawings shall form the basis for filling and profiling of material deposited at the facility.

- c. Consequential to the requirement in the recommended condition 10.2.1 to prepare revised drawings, the technical committee recommends adding the following text to conditions 3.13.2, 3.13.3 and 10.1 which all refer to drawings submitted with the licence application:

“(or a replacement drawing as may be produced on foot of condition 10.2.1)”.

Objection 2. EPA’s reason for proposed decision #1

The objection goes through the EPA’s reasons for the proposed decision. It would seem appropriate to address the objections to these reasons – set out in seven points by the applicant.

The Agency’s first reason for proposing refusal was the proposed timescale for the activity. The inspector calculated that some 596,862.5 tonnes of soil and stone would be required to satisfy the need for a two metre fill. At a maximum intake of 24,900 tonnes per annum (as applied for), this would take 24 years to complete. The applicant “do[es] not see an issue with this proposed timescale.” They recognise the project as long term restoration but state that 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.”

Technical committee's evaluation:

The technical committee accepts that a development can take a long-term view. Where there is scope, as there is at this facility, for progressive restoration of the reclaimed land for improved agricultural use, that should be exploited. Should the Board of the Agency accept the recommendation above to grant a licence subject to a reduced quantity of waste (in or around 50% reduction), the timescale for the development will decrease to a period of in or around 12 years if waste is accepted at the maximum rate of 24,900 tonnes per annum. Each of the three proposed phases of development might now take 4 years. The new agronomy report prepared for Lennon Quarries and submitted with the objection recommends that parcels of land are seeded and returned to improved agricultural use on an annual basis. Given that development might take longer if fill material is not available, the technical committee does not propose imposing a constraint of this nature.

The technical committee recommends amendment of condition 10.2.2 to ensure that filled areas are restored and seeded in a timely manner.

Recommendation: Amend condition 10.2.2 and condition 10.3 as set out below

- a. The technical committee recommends the following amendment to condition 10.2.2:

Existing condition 10.2.2: Within twelve months of completion of each phase of waste deposition, that phase shall be completed and progressively restored to agricultural use.

Recommended condition 10.2.2: Within twelve months of completion of each of **(a minimum of) three phases** of waste deposition, that phase shall be **professionally seeded and restored to agricultural use.**

- b. The technical committee recommends deleting condition 10.3.1 of the RD as it is in conflict with the recommended condition 10.2.2.

- c. The technical committee recommends the following amendment to condition 10.3.2:

Existing condition 10.3.2: Unless otherwise agreed by the Agency, the final capping shall consist of the following:

- (i) Top soil (150 – 300mm); and
- (ii) Subsoils, such that total thickness of top soil and subsoils is at least 1m.

Recommended condition 10.3 (renumbered following deletion of 10.3.1): Unless otherwise agreed by the Agency, the final capping shall consist of the following:

- (i) Top soil (150 – 300mm); and
- (ii) Subsoils, such that total thickness of top soil and subsoils is **in accordance with the requirements of condition 10.2.1.**

Objection 3. EPA's reason for proposed decision #2

The second reason for proposing refusal was the proposal to allow the site to revegetate naturally. The applicant addresses this point in the objection by stating:

“It is agreed that the recommended mitigation measure within the ‘Ecological Assessment’ [submitted as part of the licence application] – ‘*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.”

The objection clarifies it was always the intention of the applicant to cover the deposition area with a layer of topsoil and have it professionally seeded, “to bring it to prime agricultural grazing land.”

Technical committee's evaluation:

The technical committee accepts the clarification and recommends amendment of condition 10.2.2 as set out in Objection 2 above - to ensure implementation of recommendations of the agronomy report submitted with the objection.

Recommendation: Amend condition 10.2.2 as set out above

Objection 4. EPA's reason for proposed decision #3

The third reason for proposing refusal was the proposal to leave the settlement ponds in place after cessation of activity. The applicant proposed in the licence application to retain the ponds to capture suspended solids that might be released during seeding and settlement of the reclaimed land. It is proposed that the ponds are simply an expansion of the existing natural drainage system and will blend into the surrounding environment. The applicant agrees with the recommendation in the inspector's report that the fate of the ponds be determined as part of the closure, restoration and aftercare management plan (CRAMP).

Technical committee's evaluation:

Whatever of the merits of leaving the ponds in place long term, there appear to be advantages to leaving them in place for a period post-filling during which the deposited soil and stone will settle. It may be that during this period, post-filling, depressions may need to be filled and the carriage and manipulation of soil on the site might lead to run-off of sediment.

It would seem appropriate to require the removal of the settlement ponds except where they are, at an appropriate time in the future, deemed as advantageous from an environmental, habitat or other relevant perspective. Condition 3.13 is proposed for amendment accordingly.

Recommendation: Amend condition 3.13 as set out below

The technical committee recommends the following addition to condition 3.13:

Recommended condition 3.13.5: The licensee shall provide for the removal of the settlement ponds as part of the closure, restoration and aftercare management plan to be agreed under condition 10.8 of this licence. The settlement ponds shall be removed at an appropriate time with the agreement

of the Agency and the Regional Fisheries Board. Without prejudice to the obligation to remove the settlement ponds, the settlement ponds may be retained if there are environmental, habitat or other relevant reasons for their retention and these reasons are agreeable to the Agency and the Regional Fisheries Board.

Objection 5. EPA's reason for proposed decision #4

The fourth reason for proposing refusal was the absence of any proposed change of use of the site. The applicant refutes the reason by noting in the objection that the site is "dominated by cutover peat land which has been recolonised naturally with mosses, rushes, knot grass and other herbaceous weed species. ...[It is] 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." It is stated that the proposed land reclamation will produce "good quality agricultural land for livestock grazing and the production of hay and silage."

Technical committee's evaluation:

The technical committee accepts the applicant's assertion that the reclamation of the land, along with the proposal (above) to professionally seed the reclaimed land, provides for adequate improvement (change) in the quality of the agricultural land in question. This conclusion is supported by the new agronomy report submitted by the applicant with the objection (discussed under the next heading).

The technical committee considers that the recommended amendment of condition 10.2.2 adequately addresses this item.

Recommendation: Amend condition 10.2.2 as set out above

Objection 6. EPA's reason for proposed decision #5

The fifth reason for proposing refusal was the absence of a demonstrated benefit for the land from the deposit of waste on the site. This reason overlaps with reason #4 above. The applicant in the objection points to poor quality and poor drainage of much of the land surrounding the site of the proposed development. Reclamation of these lands is necessary to provide good quality agricultural land in the area and there is evidence (presented as a drawing with the objection but not otherwise confirmed) of other lands in the vicinity of the site having been reclaimed in the past to productive agricultural grazing plots. Beneficial effects of reclaiming the land, in addition to those mentioned above, include higher stocking rates for livestock, greater grass yields and increased rental and inherent value in the land. The newly commissioned agronomy report (prepared by James Carton, B.Agr.Sc., DipEIA(mgmt.)MACA, Carton Rural Consultants, Mullingar) submitted with the objection concludes as follows:

'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 value, as it is progressively reclaimed.'

Technical committee's evaluation:

The technical committee accepts the assertion that the proposed land reclamation will have a demonstrable benefit for agriculture on the site. There are no recommendations for amendment of conditions on foot of this item.

Recommendation: No change

Objection 7. EPA's reason for proposed decision #6

The sixth reason for proposing refusal was 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. The applicant states, as above, that the application for a recovery licence was made in good faith. The applicant points to the definition of recovery in the Waste Framework Directive (2008/98/EC), lately transposed into Irish law:

“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 applicant also quotes the definition of disposal:

“Any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy.”

The proposed activity is stated to be consistent with the definition of recovery in that the waste soil and stone proposed to be used in reclaiming the land replaces the need to import non-waste soil and stone. The applicant “strongly states that the site...is presently acknowledged and permitted as a ‘Waste Recovery Facility’ by Mayo County Council and must remain classified as a ‘Waste Recovery Facility’ under the EPA Waste Licensing system.” It is asserted that the proposal to accept only waste soil and stones “further emphasises the recovery proposal.”

Technical committee's evaluation:

The technical committee accepts that the application for a recovery licence was legitimately made and made on the understanding, as quoted in the objection, “that recovery is recovery regardless of size or scale or depth of recovered material.” As set out above, the technical committee does not accept that a general rule of this nature can be applied without question in all cases. Given the lack of justification for a two metre fill, a reduction to the originally proposed one metre depth of waste satisfies, in the opinion of the technical committee, the recovery objective. There are no further recommendations for amendment of conditions on foot of this item.

Recommendation: No change

Objection 8. EPA's reason for proposed decision #7

The seventh reason for proposing refusal was that 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. The applicant notes that the waste licence application addressed all possible environmental impacts associated with the proposed waste activity and concluded that due to the non-polluting nature of the waste and subject to implementation of proposed mitigation measures, waste activities

at the site would have no negative impact on the environment. The objection carries forward the assertion made under the previous heading that the activity is rightly classified as recovery, not disposal.

Technical committee's evaluation:

The technical committee accepts that the activity, subject to the amendments recommended in this report, is recovery. There is no further discussion required under this heading.

Recommendation: No change

Objection 9. Waste acceptance criteria and references to "landfill"

The applicant states that drawing on Council Directive 2003/33/EC (landfill waste acceptance criteria) for waste testing criteria (set out in the RD) is not appropriate as a soil recovery facility is not a landfill. The applicant accepts the need for waste testing conditions as long as they are equitable and relevant to the quantity of waste soil and stones to be recovered at the facility and relevant to the risk associated with these inert materials. The applicant makes the same statement regarding the monitoring of deposited waste.

More generally, the applicant refers on several occasions in the objection to the fact that the facility is not a landfill. The applicant asserts that the proposed activity is not a landfill and is not to be regulated as a landfill or in accordance with the Landfill Directive, the EPA's landfill manual series of any other document relating to landfill management. In the applicant's article 24 submission, the technical committee's drawing of a parallel between the activity and recommendations in a landfill manual is criticised.

Technical committee's evaluation:

The applicant does not elaborate on what is to be regarded as an appropriate testing regime. The technical committee notes from the RD that waste acceptance criteria are to be proposed by the licensee and there is considerable scope therein to devise a reasonable testing regime within the bounds of the licence. There is also scope under condition 6.4 of the RD for a licensee to seek a reduction in monitoring requirements generally. The technical committee therefore recommends no change.

In response to the comments in the second paragraph above, the technical committee agrees that soil recovery activities are not landfills (in the context of "landfills" being engineered, typically lined facilities used for the disposal of waste). However this does not preclude the Agency from making reference to relevant sections of legislation and guidance dealing with landfills where certain aspects of the soil recovery operation are similar in nature and subject to similar thinking. A number of good management practices are described in the legislation and the EPA's landfill manuals and those that are not relevant to soil recovery activities would not need to be drawn on for guidance. Condition 3.14 of the RD requires the licensee to have regard to the guidance given in the landfill manuals, to the extent that the guidance therein is relevant, in the development, operation and closure of the facility.

There remains no inference in drawing parallels to landfills that soil recovery activities are in fact landfills for the disposal of waste.

Recommendation: No change

6. First party objection – other issues

The applicant's objection raises a number of issues that cannot be read directly as objections, but provide background to the applicant's case why the licence should be granted. The following are issues which merit mention or response.

1. In taking the reader through the history of the applicant's correspondence with the Agency during the inspector's assessment of the application, it is stated that "at no time was there any suggestion [on the part of the Agency] that there was an absence of information or outstanding issues which would predicate against grant of a waste licence."
2. While providing justification for the facility in the context of the Connaught Regional Waste Management Plan the following comments were made:
 - "There are presently no EPA waste licensed soil and stone recovery facilities within the Connaught region. Moreover this is the only facility in Connaught that fulfils the requirements of a 'large scale soil and stone recovery facility', in compliance with the Plan."
 - "The site subject to [the waste licence application] would therefore have been in a position to accept <5% of [waste soil and stone] for recovery."

Contrasting the two statements – on the one hand suggesting that the proposal for a 24,900 tonne per annum facility is large scale (notwithstanding the total intake proposed) and on the other suggesting that it will accept less than 5% of the total waste soil and stone arisings in the Connaught Region – it is difficult to see that the site is regionally important. It is accepted by the technical committee that the site may well be locally important.

3. The applicant asserts that "*under law, there is no requirement for 'Recovery' operations to have a 'planning, amenity, further development, safety or landscaping imperative'.*" Whether there is an explicit link established under law is something to be teased out by others. However the technical committee does not accept that a soil recovery facility can be authorised without there being an objective or a reason to undertake the fill. In some ways, the term "soil recovery facility" is misleading. The principal objective of these facilities is not to recover soil, but to reclaim land. Such facilities could perhaps more thoroughly be described as "land reclamation activities where waste soil and stone is a medium used for reclaiming the land".

The applicant refers, as mentioned above, to the definition of recovery 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."

To parse the definition in the context of the Lennon Quarries proposal and soil recovery activities in general: There is no question but that the waste soil and stone can serve a useful purpose at Lennon Quarries (if used in accordance with the agronomic objectives of the site). Whether that waste soil and stone is

actually replacing other materials that would have been used to fulfil the site reclamation is questionable – in that the economics of purchasing subsoil and topsoil would surely be a considerable factor to consider in any reclamation proposal. Therefore in the absence of waste soil and stone, it would appear doubtful that the land reclamation would take place at all. So does this mean that soil recovery facilities are not meeting the definition of recovery? That may well be the case by a strict reading of the definition. However it must be recognised that:

- (a) there is a need for locations where waste soil and stone can serve a useful purpose; and
- (b) there are locations that need reclamation material, and the only affordable material is waste soil and stone.

It is sufficient, in the opinion of the technical committee, to consider the use of waste soil and stone in land reclamation as a legitimate recovery activity, recognising that the land reclamation will not in all likelihood take place without waste soil and stone being available, but subject to there being a defined need or function to be fulfilled (i.e. a “useful purpose”).

4. Two local auctioneers wrote letters on behalf of the applicant outlining their opinion that there is a vibrant demand for good quality grassland to rent in the Belmullet area; the market value of the applicant site will increase; and the normal quality of land that comes available in the area is very poor quality bogland unsuitable for grazing milk and beef cattle. Taken at face value, these declarations highlight the importance of returning the reclaimed land to productive use in the shortest possible time. Should the Board of the Agency decide to grant a licence, the amendments to conditions proposed above will assist in achieving this objective.

In submissions on the applicant’s objection:

- Mr Freddie Symmons of Kingfisher Environmental Consultants supports the finding of the objection that a licence should be granted. He reiterates the finding that the Agency blatantly ignored its inspector’s recommendation and notes the inspector’s finding that the proposal is in keeping with the Connaught Regional Waste Management Plan; and
- the Soil Recovery Association (SRA) states its belief that Lennon Quarries have been treated unfairly and the proposal to refuse a licence for an established activity with “no potential to create environmental pollution” is illogical and would discourage any person or organisation from applying for a waste licence to the Agency. The SRA believes that the objections clearly identify that there are stark contradictions between the Recommended Decision and the Proposed Decision and the SRA notes this to be a “common trend” at “DOE/EPA level”. The SRA believes the Proposed Decision is not based on any legal, scientific or environmental basis and should be reversed.

There are no further recommendations arising from issues raised in this section of our report.

7. Third party objection by Mr Freddie Symmons of Kingfisher Environmental Consultants, Co. Sligo

This section will deal principally with issues in the objection not already substantively addressed in sections 5 and 6 above.

The objection by Mr Symmons is generally supportive of the applicant and critical of the Agency's decision to propose refusal of a licence. Mr Symmons expresses surprise and disappointment at the proposed decision and urges the grant of a waste licence.

1. The objection first recounts the history of regulation for soil recovery activities and the introduction of waste licensing in 2008 for activities depositing more than 100,000 tonnes of material.
2. Mr Symmons then highlights some facts that he considers have been overlooked by the Agency:
 - a. The site is an existing established waste permitted facility for the purpose of the consequential benefit to agriculture.
 - b. Less than 30,000 tonnes of waste has been recovered at the site since operation commenced in 2006.

Mr Symmons suggests that Lennon Quarries were entitled to apply for a review of their waste facility permit as they have not yet exceeded the tonnage thresholds set out in classes 5 and 6 of Part I of the Third Schedule to the Waste Management (Waste Facility Permit and Registration) Regulations 2007, as amended in 2008. Lennon Quarries were entitled to a new waste facility permit until such time as the appropriate threshold tonnage was reached.

The technical committee considers Mr Symmons is incorrect in his interpretation of the Regulations. The preface to Part I of the Third Schedule states that the upper limits on the amount of waste which may be accepted shall relate to the total quantity of waste which has been received and is proposed to be accepted at the facility *at any time*. Thus, Lennon Quarries' proposal to accept almost 600,000 tonnes of waste soil and stones requires a waste licence for the entire project, subject to the transitional arrangements for previously permitted sites set out in the 2007 Regulations.

The technical committee would clarify that Lennon Quarries were entitled to apply for a revised waste facility permit if the development objective for the reclamation of the site was one that required less than 100,000 tonnes of waste soil and stone over the lifetime of the development. Lennon Quarries did not choose to revise their development objective to this level of intake. Instead, as discussed above, Lennon Quarries sought to more than double the quantity of waste proposed for acceptance at the facility.

3. Mr Symmons asserts that "recovery is recovery regardless of size or scale". He reproduces correspondence with the EPA in support of his point and suggests that "the EPA seem still to not have grasped this concept as demonstrated by this proposed determination."

The technical committee accepts that recovery *can be* recovery regardless of size or scale. Size and scale are relevant in considering the type of authorisation needed for a facility (be it certificate of registration, waste facility permit or waste licence). But there must be a reason for the fill, or an objective; otherwise the

definition of recovery – including “useful purpose”, discussed above – cannot be satisfied, regardless of size or scale.

4. Mr Symmons reiterates that soil recovery facilities are not landfills. He also asserts that an existing facility that has operated as a recovery facility under a waste facility permit *must* remain classified as a recovery activity when applying for a waste licence. Mr Symmons expresses the opinion that the Lennon Quarries development is a recovery activity. He draws parallels to earlier land reclamation projects in the area.

The technical committee accepts the distinction between soil recovery facilities and landfills, as discussed above. The technical committee also accepts that the Lennon Quarries facility can be classified as a recovery facility subject to amendment of the Recommended Decision, again as discussed above. However it is clear to the technical committee that the EPA is entitled to form an opinion without prejudice to any decision previously made by a local authority on whether an activity is classified as recovery or disposal.

5. On the Agency’s concern regarding the projected 24 year timescale for the development, Mr Symmons suggests it is illogical. He draws parallels to the hypothetical scenario whereby the Agency would refuse to authorise an IPPC facility to operate for such a period of time.

The technical committee suggests that the comparison is not valid. An industrial or manufacturing activity is not finite in the manner a soil recovery activity is, the latter being constrained by the amount of material required to meet the recovery objective.

6. Mr Symmons states the Agency is incorrect in suggesting the applicant has to “prove any proposed change of use of the site” and expresses bewilderment as to where the Agency got this assertion. The lands are marginal agricultural land and will be restored to agricultural lands during and after the land reclamation works.

The technical committee would reiterate that a recovery site must have an objective or a reason (“useful purpose”) for the fill, otherwise it cannot satisfy the definition of recovery.

7. Mr Symmons believes that the Agency, in making its decision, did not consider 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. He states that the Board of the Agency “blatantly ignored” the recommendations and advice of their own inspector.
8. Mr Symmons asserts that the proposed operation “cannot cause environmental pollution, with the safeguards which have been proposed in the waste licence application and the monitoring procedures which will follow.” The Agency’s comment that “the Agency is not satisfied that such disposal would not cause environmental pollution” has no substance and is incorrect.
9. Mr Symmons believes that Lennon Quarries have been treated unfairly in the issuing of the Proposed Decision. He considers Mr TJ Lennon of Lennon Quarries to be a competent and responsible operator and should be licensed to continue this recovery activity which is vital to the wider economic stability and growth of North Mayo.

In submissions on Mr Symmons’ objection:

- the applicant concurs with Mr Symmons opinions in that the facility is already authorised under a waste facility permit and this sets a precedent for its continued classification as a recovery facility and not a landfill. The applicant also concurs with Mr Symmons' hope "that a waste licence is granted to Lennon Quarries as per the recommendations of the EPA inspector for this case"; and
- the Soil Recovery Association (SRA) states its belief that the content of the objections combined demonstrate the licence application should not be refused and the objections made by "experts in this field" will have left "no stone unturned" in terms of presenting information to the Agency. The SRA submission repeats statements made in the SRA's original objection – see below.

There are no new recommendations arising from this section of our report or comments made in Mr Symmons' objection or submissions on the objection.

8. Third party objection by Mr John Behan of Behan Land Restoration Ltd, Co. Kildare, on behalf of the Soil Recovery Association

This section will deal principally with issues in the objection not already substantively addressed in sections 5, 6 and 7 above.

The Soil Recovery Association (SRA) is a national organisation set up in 2005 that represents members involved in the excavation, transport and recovery of soil and stones at authorised permitted and licensed soil and stone recovery facilities. Mr TJ Lennon of Lennon Quarries is stated by Mr Behan to be a member of the Association. The objection by Mr Behan on behalf of the Association is generally supportive of the applicant and seeks the grant of a waste licence for Lennon Quarries.

Much of the objection is related to policy and legislative matters and concerns itself with transposition into Irish law of the Waste Framework Directive (2008/98/EC). The technical committee will as a general rule refrain from discussing the SRA's position on these matters except where it is appropriate to respond from the Agency's point of view.

1. The SRA believe Mr TJ Lennon of Lennon Quarries is a competent and responsible operator and should be licensed to continue his existing recovery activity. The SRA believe that Lennon Quarries have been treated unfairly by the Agency. The decision to propose refusal of a licence is incorrect and goes against all logic. The SRA suggests that part of the reason for the proposed refusal is based on "issues and concerns with regards to other sites completely unrelated to this site (e.g. Kerdifstown and the Baldonnel case to name a few)."

The technical committee will make no comment in relation to the Kerdiffstown facility. The technical committee would clarify that the "Baldonnel case" is a reference to the Grangecastle Golf Course which is discussed in paragraph 3 below.

2. The SRA's first ground of objection to the Proposed Decision is their ongoing concern over the inconsistencies and failures of the regulatory bodies (the EPA and local authorities) in administering and regulating the soil recovery industry under the Waste Management (Facility Permit and Registration) Regulations 2007, amended in 2008. The SRA considers the requirement for waste licensing

for larger soil recovery facilities to be a “complete over-regularisation of the industry” and “premature, illogical and poorly thought out” and has resulted in the SRA members having to witness and endure blatant unauthorised waste activities being carried out. They have had to act as enforcers of the law so as to be able to stay in business and operate under excessively stringent rules set out under their waste licences. The SRA commented on the perceived failure of enforcement authorities to address SRA-reported cases of unauthorised deposit of mixed material including tarmac, plastic and timber. The “over-regulation” of large soil and stone facilities has reduced their ability to compete fairly with smaller facilities (regulated under a waste facility permit) and unauthorised facilities.

The technical committee will not comment on the structure of the current legislation or the generality of soil recovery licences, except to observe that four soil recovery licences have been granted to date.

Regarding the licensing of soil recovery facilities, the technical committee would clarify that the Agency has completed a review of the authorisation status of approximately 120 facilities notified by local authorities to the Agency as requiring a waste licence. The Agency issued 20 notifications to site operators instructing them to apply for a waste licence. All other facilities will remain to be regulated by local authorities.

Regarding specific reports of unauthorised waste deposition, these are followed up routinely by the Agency from both enforcement and licensing perspectives.

3. The SRA’s second ground of objection refers to an ongoing enforcement file (with OEE) regarding the deposition of waste at Grangecastle Golf Course. The use of article 5 (by-product status for materials – i.e. non-waste) of the revised Waste Framework Directive (2008/98/EC) is particularly highlighted from this case and the SRA are concerned (i) with the retrospective use of article 5 in this case and (ii) the uncertain future that article 5 will bring to the industry. (“Article 5” refers to article 5 of the revised Waste Framework Directive (2008/98/EC) and deals with by-products).

In response, on item (i) the matter of the ongoing investigation into South Dublin County Council’s activities at Grangecastle Golf Course can have no bearing on the Agency’s decision on Lennon Quarries and will not be discussed further here.

On item (ii), article 27 of the European Communities (Waste Directive) Regulations 2011 transposes article 5 of the Directive and introduces national provisions as follows:

- an economic operator may decide that a substance or object is to be regarded as a by-product and not a waste, subject to satisfying the criteria set out in the Regulations;
- the decision and grounds for the decision are to be notified to the Agency;
- the Agency may determine, in consultation with the local authority and the economic operator, that the material should in fact be classified as a waste; and
- the Agency is to maintain a register of by-products and by-product notifications.

It remains to be seen how the generators of waste soil and stone will utilise the new article 27 and how this will impact on the soil and stone recovery sector and its regulation.

4. The SRA suggest that the existing Waste Management (Facility Permit and Registration) Regulations 2007, as amended, are defunct with the coming into force of the new Waste Framework Directive. The SRA sets out its position on the (then) draft Waste Management (Waste Framework Directive) Regulations and the Waste Framework Directive. The technical committee does not propose to summarise that position here as it has no bearing on the Agency's decision regarding Lennon Quarries and the technical committee has no comment to make on the SRA's position.
5. The SRA summarise their analysis of the financial standing and prospects for the Lennon Quarries operation. The SRA found that the operation will create no financial gain whatsoever but will in fact lead to a financial loss. In response to its own question as to why a business would be conducted with no perceivable economic return, the SRA suggests the motive is the long term positive agronomic value that will accrue. Marginal farmland will be reclaimed to a condition that "will greatly enhance its agricultural productivity and therefore the agronomic value of the land and will therefore benefit agriculture."

The SRA's opinion that "it is uneconomic to run an EPA regulated site" is noted by the technical committee. The technical committee observes that the SRA in reaching that conclusion has attributed all monitoring, sampling, consultancy, machinery, staff and fuel costs to "costs to applicant ...under a waste licence". The technical committee contends that some of these costs would also be incurred under a waste facility permit (at least to some extent) and others simply to operate the site (machinery, staff and fuel). The analysis fails to take account of the stated agronomic land value accruing upon reclamation of the site. Therefore the analysis leading to the claim that it is uneconomic to run an *EPA regulated site* is incomplete and the finding flawed. Having said that, the technical committee does not have data to dispute the individual line-item costs presented by the SRA.

Mr Freddie Symmons made a submission on the SRA objection in which is expressed the opinion, based on extensive experience, "that the SRA are very accurate in their cost analysis of the land reclamation works for the site at Tallagh, Belmullet and that the licensing system ...is excessive and burdensome." Mr Symmons reiterates the view, and attributes statements of this nature to the EPA, that the value of the agronomic benefit to land from such activities will often be greater than the value or revenue from the filling exercise.

Lennon Quarries made a submission on the SRA objection and did not refer to, concur with, dispute or disagree with the SRA's projections of financial loss.

It appears to the technical committee that the financial issue raised by the SRA could undermine the fit and proper persons status of Lennon Quarries. The inspector expressed the view in her report that the applicant is of adequate financial standing to be considered fit and proper and the full suite of financial provision conditions were recommended in the RD. Given the relatively low risk of environmental pollution arising from this facility, and the anticipated low cost of remediation should the site need to be taken into the State's control, the technical committee proposes that the existing CRAMP, ELRA and financial provisions conditions of the RD are adequate.

6. The SRA notes a trend of inconsistency in its correspondence with “DOE/EPA” and attributes this to a lack of knowledge on the part of those bodies of soil recovery sites. The SRA questions how can people invest in an industry “which has contradictions and no clear path.” The SRA would like to see the “EPA’s difficulties” with the industry addressed openly. The SRA contends that these facilities, and the Lennon Quarries facility in particular, are not landfills and should not be treated as though they were.

The technical committee is not aware of any general “EPA difficulties” with the soil recovery sector. Issues have arisen in the sector since 2009 regarding the transitional arrangements for large sites moving from permitting to licensing. Some operators chose, legitimately or otherwise, not to make that move and this created considerable uncertainty for other operators. With the aforementioned assessment of 120 files (mentioned above in paragraph 2 of this section) the technical committee is confident that a consistent approach to interpreting the Regulations is in place and implemented through the article 11 system and in correspondence with local authorities. As mentioned above, the EPA will continue to respond to complaints of unauthorised activities.

It is noteworthy that the change introduced by the Regulations occurred in and around the time of the collapse of the construction industry (the principal source of material for the sector) and this added to the economic difficulties for the sector.

7. The SRA notes that the Agency made its Proposed Decision “before the Draft Waste Management (Waste Framework Directive) Regulations 2010 have come onto the statute books.”

The technical committee notes that the European Communities (Waste Directive) Regulations 2011 were published and came into force on 31 March 2011. These Regulations transpose the revised Waste Framework Directive.

8. The SRA queries what can be done with waste soil and stone arising in the west of Ireland if Lennon Quarries’ facility is not available to accept the material. Without this facility, the SRA states there would be an increase in unauthorised activity in this part of County Mayo.

In submissions on the SRA’s objection:

- the applicant concurs with the SRA’s opinion that the activity is recovery and supports the SRA’s urging of grant of a licence that renders commercial viability on the facility and reflects the negligible environmental impact of soil and stone; and
- Mr Symmons states that as the only legitimate representative body for the recovery of soil and stone in Ireland, the SRA has been wholeheartedly promoting best environmental practice in the regulation of the industry. Mr Symmons states that the proposed decision of the Agency shows a complete and utter lack of understanding by the Agency of soil and stone recovery sites. Mr Symmons concurs with the SRA’s anxieties and concerns regarding inconsistencies and failures of the Agency and local authorities since the introduction of licensing for the soil recovery sector. Mr Symmons considers the Agency’s licensing system to be haphazard and provides applicants with no sense of security or consistency. The Agency has created a huge amount of unnecessary additional cost and expense to the applicant. Mr Symmons expresses shock and alarm at the actions of both the Agency and South Dublin

County Council in respect of activities at the Grange castle Golf Course. Mr Symmons concurs with the SRA view that the Regulations need to be amended to remove soil recovery facilities from the licensing process.

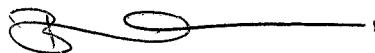
There are no new recommendations arising from this section of the report or comments made in the SRA's objection or submissions on the objection.

9. Overall Recommendation

It is recommended that the Board of the Agency grant a licence to the applicant,

- (i) for the reasons outlined in the Recommended Decision,
- (ii) subject to the conditions and reasons for same in the Recommended Decision, and
- (iii) subject to the amendments proposed in this report.

Signed:



Brian Meaney
Inspector
Office of Climate, Licensing and Resource Use
on behalf of the technical committee