



TO:	Board of Directors
FROM:	Technical Committee LICENSING UNIT
DATE:	7 th December 2011
RE:	Objection to Proposed Determination for Mr. Paul Tully, Moate Pig Unit, Ballinakill, Portlaoise, County Laois, Licence Register No. P0710-03

Class(s) of activity:	6.2 <i>The rearing of pigs in an installation, whether within the same complex or within 100 metres of the same complex, where the capacity exceeds 285 places for sows in an integrated unit, or 2,000 places for production pigs, where an integrated unit means "piggery in which pigs are bred reared from birth to slaughter" and production pig means 'any pig over 30kg in weight which is being fattened for slaughter'.</i>
Location of activity:	Moate Pig Unit, Ballinakill, Portlaoise, County Laois.
Licence application received:	24 th February 2010
Proposed Determination (PD) issued:	28 th October 2010
First Party Objection received:	24 th November 2010
Third Party Objection received:	24 th November 2010
First Party Submission on Objections received:	4 th January 2011
Third Party Submission on Objections received:	4 th January 2011

The application relates to an existing integrated pig unit with the capacity to accommodate 650 sows and their progeny to slaughter weight. The unit is located at Ballinakill, Portlaoise, County Laois, approximately 5km east of the town of Abbeyleix. The production on the site is continuous, however the presence of operative staff, deliveries and collections are normally between 06.00 and 20.00 hours.

An Environmental Impact Statement (EIS), which was required in support of a planning application submitted to Laois County Council in 2004, was submitted in support of this

licence application. Also, three submissions were received in relation to the licence application and these were considered by the Board prior to issue of a proposed determination (PD).

Consideration of the Objections and Submissions on objections

The Technical Committee, comprising of Ewa Babiarczyk (Chair) and Suzanne Wylde has considered all of the issues raised in the Objections and the Submissions on objections and this report details the Committee's comments and recommendations following the examination of the received documentation.

The main issues in the received documentation from the First and Third Party are summarised under various headings below. However, the original Objections and Submissions on objections should be referred to at all times for greater detail and expansion of particular points.

First Party Objection

Objector's name and Address	Date Received
Mr. Paul Tully, Moate, Ballinakill, Portlaoise, Co. Laois.	24 th November 2010

Mr. Tully submitted a letter in a form of a short introduction and a number of issues outlined below:

Objection A.1: Condition 6.3(i) and Schedule C.6.2: Land Used for Landspreading

Condition 6.3 reads as follows:

6.3 *The licensee shall ensure that:*

- (i) sampling and analysis for all parameters listed in the Schedules to this licence; and*
- (ii) any reference measurements for the calibration of automated measurement systems;*

shall be carried out in accordance with CEN-standards. If CEN standards are not available, ISO, national or international standards that will ensure the provision of data of an equivalent scientific quality shall apply.

Schedule C.6.2 reads as follows:

C.6.2 Land Used for Landspreading

Monitoring Location: All lands included in the landbank ^{Note 1}

Conditions	Monitoring Frequency <small>Note 2 & 5</small>	Analysis Method/Technique <small>Note 3 & 4</small>
Soil Sampling ^{Note 1}	Prior to the preparation of an NMP or Every six years	Morgan's P test

Note 1: Each sample should be representative of a maximum area of 4 ha except where uniform cropping and land use has been in place for the previous five years or more. In the latter situation a sample of 12 ha is acceptable.

Note 2: The licensee may assume 'Index 3' for preparation of nutrient management plans where no soil samples are available.

Note 3: Peach, M. and English, L. (1944) 'Rapid micro chemical test'. *Soil Science* 57:167.

Note 4: Soil analysis shall only be conducted by Department of Agriculture, Food and the Marine approved laboratories.

Note 5: The above requirements may be substituted by the requirements specified in Article 16(2) of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2009, S.I. 101 of 2009, until 2011.

The applicant objects to the implied requirement to monitor and control customers' farmlands and holdings as proposed in the above *Condition 6.3(i)* and *Schedule C.6.2*. The applicant identifies that this is the same proposed requirement as is set down in more specific terms in proposed *Condition 8.12.4* which reads "*Soil monitoring shall be undertaken as outlined in Schedule C.6 Ambient Monitoring, C.6.2 Land Used for Landspreading of this licence and a summary report included as part of the Nutrient Management Plan*".

The applicant strongly objects to the requirement for ambient monitoring on lands not within his ownership and states that the implied requirement "...*either pretends or asserts that the applicant/licensee can access and control the lands that his customers' may fertilise with pig manure that they acquire from the installation...*". The applicant continues to say that he has "*no authority to either access or control or monitor lands in other farmers' / customers' holdings*".

The objection refers also to the Note 2 of *Schedule C.6.2* which states that the licensee might assume "Index 3" for preparation of nutrient management plans where no soil samples are available. The applicant states that "...*he is not required, authorised or entitled to produce a nutrient management plan of the type inferred in Note 2 for any lands that are not his holding, and that he is not authorised or entitled to assume anything at all in relation the production of the nutrient management plans referred to*". The applicant requests in the objection that *Schedule C.6.2* be removed from the licence or be amended so it applies only to land fertilised by the applicant within the installation's boundary.

In addition the applicant objects to the requirements of *Condition 8.12.4* regarding the monitoring of soil on landspreading lands and the requirement for nutrient management plans for these lands, stating that the monitoring of soil outside the installation on customers holdings is not a matter for the applicant. The objection makes reference to both Section 52(2)(a) and Section 83(3)(d) of the EPA Acts 1992 and 2003 stating that the "*EPA knows or should know that these and similar 'landspreading' conditions clearly conflict with legislation in force by denying and disregarding provisions in S.I. 252 of 2008 and S.I. 253 of 2008 and in S.I. 101 of 2009 that classify manure as Category 2 by-product, authorise sale or supply and transfer of manure from producers for use as organic fertiliser or soil improver and assigns responsibility for all aspects of the use of the manure/fertiliser to the occupier of the holding on which it is deposited*".

Technical Committee's Evaluation:

The overriding point of the applicant's objection is to the requirement in the PD for ambient monitoring of landbanks that may be used for landspreading of manure from the installation.

Condition 6.3 is a general condition that requires that any sampling and analysis for parameters listed in the schedules of the licence and any reference methods for calibration of automated measuring systems shall be carried out in accordance with CEN standards. The condition provides that if CEN standards are not available alternative standards that will ensure the provision of data of an equivalent scientific quality will apply. The TC considers that it is appropriate to require the applicant to undertake sampling, analysis and reference measurements to a CEN standard or an alternative standard. The condition applies to all the schedules of the licence, i.e., storm water emissions, analysis of slurry for nutrients, groundwater monitoring and soil sampling.

The proposed licence does not require the applicant to monitor or control the activities of the farmers who may use/recover, as fertiliser, the pig slurry/manure arising from the installation. The licence requires the applicant to demonstrate by means of a nutrient management plan (which may be based on Nitrogen and Phosphorus Statements issued by the Department of Agriculture, Food and the Marine) that there are adequate lands available for the use/recovery of the quantity of slurry/manure arising at the installation. The licence, by means of *Schedule C.6.2*, specifies requirements in relation to soil sampling, i.e., frequency, analysis methods, etc. However, the applicant can avoid the requirement to soil sample the lands on which slurry/manure may be used/recovered by preparation of the required nutrient management plans (*Condition 8.12.1(v)*) based on Nitrogen and Phosphorus Statements issued by the Department of Agriculture, Food and the Marine or by assuming a soil phosphorus index of 3.

Schedule C.6.2 Land used for Landspreading relates to lands on which slurry/manure from the installation may be used/recovered as fertiliser. The applicant in support of the licence application provided details of lands on which slurry/manure may be used/recovered. The applicant provided, as confidential information received on the 24 February 2010, 'fertiliser plans' for farms referenced 1 to 21 that may receive slurry/manure from the applicant. The Agency is satisfied that the 'fertiliser plans' submitted in support of the application may be considered appropriate nutrient management plans. The 'fertiliser plans' submitted demonstrated to the satisfaction of the Agency that there are adequate lands available for use/recovery of the slurry/manure arising at the installation. The fertiliser plans submitted were based on a maximum organic nitrogen allowance of 170kg/ha, which was the limiting factor under S.I. No. 101 of 2009 and currently is the limiting factor under S.I. No. 610 of 2010. However, calculations were also provided based on an assumed soil phosphorus index of 3.

The EPA Acts have not in any way been superseded or amended by other national regulations such as those relating to the use of organic fertiliser (European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 or S.I. No. 252 and S.I. No. 253 of 2008). The Agency recognises that the introduction of S.I. No. 610 of 2010 may make it more difficult for activities generating organic waste/fertiliser, including slurry/manure, to source suitable and adequate landbanks on which such material may be used/recovered as fertiliser.

Article 34(3) of S.I. No. 610 of 2010 provides transitional provisions for the application to land of phosphorus where the excess arises from the application of manure produced by pigs. The transitional provision included under Article 34 of S.I. No. 101 of 2009 had been due to expire on the 1st January 2011. However, S.I. No. 610 of 2010 extended the

transitional provision with amendments. The following extract from the Nitrates Review Experts Advisory Group (September 2010) highlights the need for the transitional provisions as identified by the pig industry interests:

Pig industry interests have in their submissions argued the need for this transitional arrangement to be extended beyond end 2010 citing additional costs of compliance. In Ireland, there are a number of very large units and areas of high intensity of production with these areas at some distance from tillage lands, the optimum recipient land for the manure produced (tillage lands have a high requirement for P and need up to 10 times the average P needs of grassland). It is estimated that implementation of the P limits will require a further doubling of spread lands in certain areas which is not considered feasible at this time.

The need for the transitional provisions merely strengthens the Agency's requirement, by means of the conditions in the licence, to be satisfied that the applicant annually identifies adequate lands on which the slurry/manure may be used/recovered. The Agency has however reviewed the conditions associated with the use/recovery of manure/slurry and therefore *Condition 8.12* and *Schedule C.6.2* shall be amended accordingly. The amended conditions clarify that the licensee is not responsible for the activities on the farmland on which manure/slurry may be used/recovered as fertiliser but the Agency continues to require the licensee to identify adequate lands that may be used for the use/recovery of the slurry/manure. Thus, the Agency can be satisfied on an ongoing basis that slurry/manure is unlikely to cause significant environmental pollution.

Reference to S.I. 101 of 2009 shall be amended to refer to S.I. 610 of 2010 throughout the PD as issued.

Recommendation: Amend PD as follows:

Amend *Glossary of Terms* to include the following terms:

Customer Farmers:	Farmers who may use/recover slurry/manure generated at the installation as fertiliser on their lands.
Customer Farmers' Lands:	The lands owned/managed by customer farmers.
Intensive Pig and/or Poultry unit:	Activities which are required to hold an IPPC Licence.
Owner/operator:	IPPC Licensee.
Organic fertiliser:	Any fertiliser other than that manufactured by an industrial process and includes livestock manure, dungstead manure, farmyard manure, slurry, soiled water, silage effluent, non-farm organic substances such as sewage sludge, industrial by-products and sludges and residues from fish farms.

Amend the *Glossary of Terms* to delete the definition of:

'Client List'.

Delete the following *Condition 8.11*:

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

Renumber the existing *Condition 8.12* as *Condition 8.11* and amend to read as follows:

8.11 Slurry/manure shall only be recovered by landspreading subject to the following conditions:

8.11.1 The licensee shall maintain on-site, for inspection by authorised persons, and submit to the Agency, within three months of the date of grant of this licence and thereafter by the first of March annually, the following information:

- (i) a calculation of the predicted slurry production for the current calendar year (1st January to 31st December) based on the animal numbers predicted to be housed at the installation during the current calendar year. The licensee shall, based on the above, calculate the predicted quantity of nitrogen and phosphorus to be generated during the current calendar year; and*
- (ii) a summary table of customer farmers who may receive slurry/manure in the current calendar year. The table shall include as a minimum the 'Customer Farmer's Code' (Customer farmer's name shall be maintained on-site), and 'Quantity of Slurry (m³)' (that may be used/recovered on the customer farmer's land in the current calendar year).*

8.11.2 The summary table (referred to in Condition 8.11.1(ii)) may be updated during the calendar year, based on a nutrient management plan or Nitrogen and Phosphorus Statement, to include additional customer farmers who may seek to receive slurry/manure during the year.

8.11.3 The licensee shall maintain on site, for inspection by authorised persons, a current nutrient management plan or Nitrogen and Phosphorus Statement for all customer farmers' lands on which slurry/manure may be recovered in the current calendar year. The Nitrogen and Phosphorus statements or nutrient management plan shall demonstrate, to the satisfaction of the Agency, a nutrient need equal to or greater than the quantity of slurry/manure (and nutrients) predicted to be generated at the installation under Condition 8.11.1(i) above. Nutrient management plans may be based on 'Nitrogen and Phosphorus' statements issued by the Department of Agriculture, Food and the Marine.

8.11.4 Soil monitoring shall be undertaken as outlined in Schedule C.6 Ambient Monitoring, C.6.2 Land Used for Landspreading of this licence where nutrient management plans, required under condition 8.11.3, are based on soil monitoring results. A summary report of soil monitoring results shall be maintained on-site as part of the Nutrient Management Plan required under condition 8.11.3 above.

8.11.5 Slurry shall only be supplied to customer farmers for whom a current nutrient management plan or 'Nitrogen and Phosphorus statement' is maintained on-site.

Amend *Condition 11.9* to read as follows:

- 11.9 The licensee shall maintain a 'organic fertiliser register' to the satisfaction of the Agency, showing, as a minimum, details in accordance with Article 23 of S.I. No. 610 of 2010 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010 and as otherwise specified by the Agency or Department of Agriculture, Food and the Marine in accordance with the Regulations.*

Amend *Schedule C.6.2* to read as follows:

C.6.2 Land used for Landspreading

Monitoring Location: All lands included in the landbank

Conditions	Monitoring Frequency ^{Note 2}	Analysis Method/Technique ^{Note 3 & 4}
Soil Sampling ^{Note 1}	Prior to the preparation of an NMP or Every six years	Morgan's P test

Note 1: The sampling area shall not exceed 4 hectares. Exceptionally, where soil types and cropping of lands were similar during the previous years, a sample area of up to 8 hectares shall be deemed acceptable.

Note 2: The licensee may assume 'Index 3' for preparation of nutrient management plans.

Note 3: Peach, M. and English, L. (1944) 'Rapid micro chemical test'. *Soil Science* 57:167 or as otherwise specified by the Department of Agriculture, Food and the Marine.

Note 4: Soil analysis shall only be carried out by a soil-testing laboratory that meets the requirements of the Department of Agriculture, Food and the Marine.

Objection A.2: *Condition 6.4*

Condition 6.4 reads as follows:

- 6.4 The licensee shall ensure that groundwater monitoring well sampling equipment is available/installed on-site and is fit for purpose at all times. The sampling equipment shall be to Agency specifications.*

The applicant states that he is "not aware of the nature or cost of the groundwater sampling equipment that would be to Agency specification" for the groundwater well on site. The applicant continues to state that the "standard good practice for periodically taking grab samples of water from the wells should be adequate for purpose in this site". The applicant requests that the condition be amended to state that sophisticated equipment, not generally installed on pig farms, not be required in this installation.

Technical Committee's Evaluation:

Condition 6.4 of the PD requires the applicant to ensure that well sampling equipment be available or installed on-site and be fit for purpose at all times. *Schedule C.6.1 Ambient Groundwater Monitoring* requires groundwater monitoring to be undertaken at one well (identified as GW-1) at an annual frequency. This is a standard licensing condition, written to encompass both water supply wells and monitoring boreholes.

The TC can clarify that the groundwater well sampling equipment may be the water supply pumps and water infrastructure currently on-site. However, it must be possible to take a sample from the identified well, i.e., before mixing of the water extracted with water from any off site water supply. In the case of monitoring boreholes these may not be equipped with taps and therefore sampling equipment may be required to facilitate periodic monitoring. The proposed determination is not prescriptive in terms of what infrastructure is necessary on the installation to provide for groundwater samples to be collected from the groundwater well GW-1.

Recommendation: No change.

Objection A.3: Condition 6.10

Condition 6.10 reads as follows:

6.10 The licensee shall ensure that a freeboard of at least 200 mm from the top of each covered slurry/manure storage tanks and 300 mm from the top of uncovered slurry/manure storage tanks is maintained, as a minimum, at all times. The required freeboard shall be clearly indicated in the tank.

The applicant objects to the *"unreasonable interpretation of the statutory requirement in relation to freeboard"* as per the above condition. The applicant states that the condition is unreasonable when considered in the context of the statutory regulations under which freeboard requirement is prescribed. The applicant states that the *"clear intention in the relevant articles and schedules in S.I. 101 of 2009 in which the statutory requirement is prescribed, is that the gross manure storage capacity within a holding, calculated for pigs as prescribed in Articles 5, 7 and 9, and Schedule 2, Table 1, of S.I. 101 of 2009, shall include in the holding a provision for the equivalent of 200 mm freeboard in all covered manure storage tanks and 300 mm freeboard in all uncovered tanks in the holding"*. The applicant requests that the requirement for inclusion of the equivalent of 200 mm freeboard in the gross slurry storage capacity in the holding is a statutory requirement.

Technical Committee's Evaluation:

S.I. No. 101 of 2009 was revoked by S.I. No. 610 of 2010 with effect from 20 December 2010. The TC acknowledges that Articles 5, 7 & 9 make reference to storage capacity required for slurry on "the holding". However, the footnote in Table 1 "Slurry storage capacity required for sows and pigs" of *Schedule 2 Criteria as to Storage Capacity and Nutrient Management* of S.I. No. 610 of 2010, reads as follows –

An additional 200mm freeboard must be provided in all covered tanks and 300mm freeboard in all uncovered tanks. Allowance must also be made for net rainfall during the specified storage period for uncovered tanks.

This footnote above explicitly refers to all covered tanks and all uncovered tanks.

It is noted that in the applicant's IPPC licence application, the table which is labelled as *Attachment D.3 Schedule of Manure Tanks*, includes both the 'gross' and 'adjusted' capacity of each of the slurry storage tanks in cubic metres. A note is included under the table which states: *'All underground tanks are reinforced concrete. Adjusted capacity allows for 200mm "freeboard"'*.

The storage requirement of Condition 6.10 of the PD is additional to the requirement of Condition 3.6 which stipulates 'a minimum of 26 weeks storage of slurry'. As is stated in Condition 1.6 of the PD, *'This licence is for the purpose of IPPC licensing under the EPA Acts 1992 to 2007 only and nothing in this licence shall be construed as negating the licensee's statutory obligations or requirements under any other enactments or regulations'*. Furthermore, the licence may require infrastructure or measures in addition to those that are specified under statutory regulations, such as S.I. No. 610 of 2010.

The TC considers that it is reasonable to require that the freeboard shall be clearly indicated in the tanks. The mechanism by which the freeboard shall be indicated is not specified in the PD. Simple devices such as floats or dipsticks could be deployed as a means to fulfil this requirement.

Recommendation: No change.

Objection A.4: Condition 6.14

Condition 6.14 reads as follows:

6.14 Noise

The licensee shall carry out a noise survey of the site operations as required by the Agency. The survey programme shall be undertaken in accordance with the methodology specified in the 'Environmental Noise Survey Guidance Document' as published by the Agency.

The applicant objects to a requirement to carry out a noise survey at the installation. The objection contends that the normal noise limits for daytime and night-time operations are acceptable and not likely to be ever exceeded beyond the installation's boundary.

Technical Committee's Evaluation:

The TC considers that the condition is written as an enabling condition. The applicant will only be required to carry out a noise survey if required by the Agency. Thus, the condition may be activated where the Agency considers that the daytime or night-time noise limits, specified in *Schedule B.4 Noise Emissions*, may be exceeded based on observations during site inspections, receipt of complaints, etc.

Recommendation: No change.

Objection A.5: Condition 8.11

Condition 8.11 reads as follows:

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

The objection contends that the condition is wrong and inappropriate text that the applicant cannot assess or administer and as such has no place as a condition of the licence. The applicant states that it is wrong to infer that the use of manure of any farmed animals by deposition on farmland is subject to control under the Waste Management Acts (WMAs).

The applicant states that neither the Waste Management Acts nor "as agreed by the Agency" apply to his customers' deposition and use of pig manure from his installation on their land, where the deposition and use of manure is required to be in accordance with the terms prescribed in Fertilisers and Soil Improvers Order (S.I. 253 of 2008) and the Nitrates Regulations (S.I. 101 of 2009). The applicant states also that a condition requiring that the sale or supply and transfer of pig manure to farmers and that the recording of all such transfers be in accordance with terms prescribed in the Animal By-Products Regulations and the Nitrates Regulations.

Accordingly, the objection states that all manure produced in the site is collected and stored for a short time (generally less than 4 months) pending sale or supply and transfer to farmer customers who purchase/acquire it for use in fertilising land in their holdings. Farmer demand is adequate to ensure that there is no surplus accumulated in the installation.

Technical Committee's Evaluation:

Slurry/manure has the potential to be waste if not managed appropriately. The licence, by means of its conditions, identifies what is considered necessary for the appropriate management of the slurry/manure, including storage, maintenance of records, identification of lands on which it may be recovered, preparation of nutrient management plan, etc. If the management of the slurry/manure on-site or its transfer off site is not in accordance with the conditions of the licence it may not be considered as a manure or fertiliser.

The TC notes that, based on the licence application submitted, including confidential information, the applicant demonstrated that there were adequate identified lands available with a nutrient requirement for the use/recovery of the quantity of slurry/manure arising at the installation. Based on a continued demonstration of adequate identified land, with a nutrient need, the manure arising on the installation may be considered as a manure or fertiliser rather than a waste. The TC has recommended the deletion of condition 8.11 above in the consideration of Objection A.1.

Recommendation: Delete <i>Condition 8.11</i> as set out in the Recommendation for Objection A.1 above.

Objection A.6: Condition 8.12 and sub conditions

Condition 8.12 reads as follows:

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

8.12.1 The licensee shall submit by the first of January annually and maintain on-site the following:

- (i) Annual production of slurry/manure at the installation and the nitrogen and phosphorus content of the slurry/manure;*
- (ii) Summary table of customer farmers receiving slurry/manure. The table shall include as a minimum 'Customer Code' (Name to be maintained on-site), 'Townlands' and 'Quantity of Slurry/manure (m³)'. The table shall be updated, based on a nutrient management plan, as required, to include additional lands acquired during the year;*
- (iii) Map (scale of 1:50,000) showing the location of farms where slurry/manure may be recovered;*
- (iv) Declaration by suitable qualified person that lands, for recovery of slurry/manure, have been inspected and are suitable for landspreading, and*
- (v) A nutrient management plan for all lands demonstrating adequate capacity for recovery of slurry/manure generated at the installation. Nutrient management plans shall be to the satisfaction of the Agency and shall be agreed prior to the movement of slurry/manure off-site. Nutrient management plans may, until 1 January 2011, be based on the 'Nitrogen and Phosphorus' Statements issued by the Department of Agriculture, Food and the Marine. Nutrient management plans shall be maintained on-site for inspection by authorised persons.*

8.12.2 The licensee shall maintain on-site for inspection by authorised persons maps (scale 1:10,560) showing land that may be used for recovery of slurry/manure.

8.12.3 The licensee shall ensure, in all cases where there is a transfer of slurry/manure from the installation to storage provided on farms in the client list, that the recipient farmer is advised of the need to store the slurry/manure in a purpose-built holding structure adequate for the protection of groundwater and surface water.

8.12.4 Soil monitoring shall be undertaken as outlined in Schedule C.6 Ambient Monitoring, C.6.2 Land Used for Landspreading of this licence and a summary report included as part of the Nutrient Management Plan.

8.12.5 Landspreading shall, as a minimum, be carried out in accordance with S.I. No. 101 of 2009 European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2009. All landspreading activities shall be carried out in such a manner as to avoid contamination of surface waters and groundwaters, and so as to minimise odour nuisance.

8.12.6 Landspreading shall be undertaken only in accordance with appropriate national standards and protocols as agreed by the Agency.

8.12.7 Landspreading from this activity shall take place only on lands agreed in advance in writing by the Agency. Alterations to this landbank are subject to prior written agreement with the Agency.

8.12.8 Landspreading shall be undertaken to ensure an even spread of slurry/manure over land. Slurry/manure shall be spread using soil injection, bandspreading or low trajectory splashplate methods. Any other method must be agreed in advance by the Agency.

Condition 8.12 refers to recovery of slurry by landspreading subject to certain stipulations. The applicant objects to the inclusion of this condition and states that the content of this condition is not relevant or applicable to the applicant or to his installation, or the licensable activity. The objection highlights the awareness of the long history of conflict and confusion in relation to the landspreading conditions and states that the basis in the EPA Licensing Regulations under which the EPA can demand the customer farmer information is not clear.

The applicant states that he believes that *"the Agency... know that the producers of pig manure and suppliers of that pig manure to farmers who want it for their holdings, are required by separate legislation that is independent of the IPPC system, to store it, manage it and use it in accordance with prescribed standards binding on them in the context of their holdings"*.

The objection states that the applicant does not *"recover manure by "landspreading" or otherwise, not in the installation and not anywhere else"*, and maintains that the condition is not relevant to the installation. The applicant proposes *"to sell or supply and to transfer all animal manure produced by the activity in the installation to customers for their lawful use and benefit in accordance with rules and standards prescribed in the Animal By-products Regulations (S.I. 252 of 2008), and the related Regulations S.I. 253 of 2008, and in the Nitrates Regulations (S.I. 101 of 2009)"*.

The applicant maintains that if his position were to change, and that he wished to engage in any manure use or recovery or disposal activity at the site, such change would require Agency approval in advance. The applicant also states *"If I were to... dispatch any manure from the installation to any destination other than to (a) farmers for their use to fertilise farmland or to (b) a biogas plant or a composting plant approved under the Animal By-products Regulations, I would have to get prior agreement from the Agency"*.

The objection also quotes the definition of waste from the Directive 2008/98/EC on waste, where *"any substance or object which the holder discards or intends or is required to discard"*.

In conclusion the applicant states *"I request that the Agency respect this current European and National legislation and the Directive on Waste (2008/98/EC) or explain the basis upon which Agency Personnel/Inspectors chose to ignore those regulations and Directive in the technical report to be submitted to Agency Directors during the processing of this Proposed Determination, before it proceeds to allow these conditions be imposed upon me. I request that the Directors of the Agency are formally made aware of this request by the Agency personnel dealing with this Proposed Determination and that the minutes of such a Board Meeting be made available to me pending their decision"*.

Technical Committee's Evaluation:

Section 83(5)(a)(v) of the EPA Acts 1992 to 2007 states that:

The Agency shall not grant a licence or revised licence for an activity-

(a) unless it is satisfied that-.....

(v) any emissions from the activity will not cause significant environmental pollution,...

The Agency issued the Proposed Determination on the basis that the applicant provided information in relation to the nutrient requirement of identified lands which demonstrated, to the satisfaction of the Agency, adequate need for the slurry/manure generated at the installation. The conditions included in the PD are considered by the Agency to be necessary to demonstrate on an ongoing basis that adequate lands are available for the use/recovery of slurry/manure arising at the installation.

The requirement for the Agency to be satisfied that 'any emissions from the activity will not cause significant environmental pollution' has not in any way been superseded by other national legislation, including S.I. No. 610 of 2010 (implementing the Nitrates Directive) and S.I. No. 252 and S.I. No. 253 of 2008 (in relation to Animal By-Products).

The Agency recognises that S.I. No. 610 of 2010 applies to all holdings in the jurisdiction and requires all occupiers of holdings to comply with the requirements of the Regulations. However, S.I. No. 610 of 2010 does not specify that the Agency, by means of IPPC licensing intensive agricultural activities, cannot impose additional requirements which the Agency considers necessary to be satisfied that the activity will not cause significant environmental pollution. The Agency recognises that S.I. No. 610 of 2010 maintains, by means of Article 34, transitional provisions in relation to the application to land of phosphorus in excess of the quantities otherwise prescribed by the Regulations. The transitional provisions provided in S.I. No. 101 of 2009, which were due to expire on the 31st December 2010, have been retained in S.I. No. 610 of 2010, based largely on submissions from pig industry interests.

The recovery of animal manure or slurry, in this case pig slurry/manure, does not require a waste licence under section 39 of the Waste Management Acts 1996 to 2011.

The TC believes that the sub-conditions under *Condition 8.12* do not require or seek to require the licensee to manage or control the activities of the customer farmers who may use/recover slurry/manure from the installation. The sub-conditions do however require the licensee to satisfy the Agency that adequate recovery capacity is available (by means of nutrient requirement on identified lands) for the slurry generated on-site. The TC considers that it is necessary for the licensee to provide such information as the licensee has no use within the installation boundary for the quantity of slurry generated on-site. Thus the sub-conditions allow the Agency to be satisfied on an ongoing basis that the slurry/manure is being managed appropriately, that there is a certainty of use/recovery and, therefore, that the slurry/manure is not likely to cause significant environmental pollution.

The TC notes that Article 23(4) of S.I. No. 610 of 2010 provides for the Agency to request an occupier of a holding to provide such information as is requested relating to the movement of organic fertilisers on or off the holding. Article 23(4) reads as follows:

Notwithstanding sub-paragraphs (1), (2) and (3), an occupier shall, where requested by the Minister, the Minister for Agriculture, Food and the Marine, or the Agency, provide

such information as is requested relating to the movement of organic fertilisers on or off the holding.

It is considered that the proposed sub-conditions are in line with the European Court of Justice case C-121/03 (The Commission v The Kingdom of Spain). The following is an extract from the findings of the court:

"As the Spanish Government correctly maintains, livestock effluent may, on the same terms, fall outside classification as waste, if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations".

Recommendation: Amend and renumber *Condition 8.12* as set out in the Recommendation for Objection A.1 above.

Objection A.7: Glossary definition of facility and Schedule C.6.2 – Land used for Landspreading

Facility is defined as follows:

Facility Any site or premises used for the purpose of the recovery of disposal of waste.

Schedule C.6.2 reads as follows:

C.6.2 Land Used for Landspreading

Monitoring Location: All lands included in the landbank ^{Note 1}

Conditions	Monitoring Frequency <small>Note 2 & 5</small>	Analysis Method/Technique <small>Note 3 & 4</small>
Soil Sampling ^{Note 1}	Prior to the preparation of an NMP or Every six years	Morgan's P test

Note 1: Each sample should be representative of a maximum area of 4 ha except where uniform cropping and land use has been in place for the previous five years or more. In the latter situation a sample of 12 ha is acceptable.

Note 2: The licensee may assume 'Index 3' for preparation of nutrient management plans where no soil samples are available.

Note 3: Peach, M. and English, L. (1944) 'Rapid micro chemical test'. *Soil Science* 57:167.

Note 4: Soil analysis shall only be conducted by Department of Agriculture, Food and the Marine approved laboratories.

Note 5: The above requirements may be substituted by the requirements specified in Article 16(2) of the European Communities (Good Agricultural Practice for the Protection of Waters) Regulations 2009, S.I. 101 of 2009, until 2011.

The objection states that when the definition of facility in the glossary of the PD and *Schedule C.6.2 Land Used for Landspreading* are read together it would implicate, in a non-statutory and quite inappropriate labelling, the applicant's installation, and any customers' lands that may be fertilised with manure acquired from the installation, as waste recovery sites. The objection maintains that this is neither a fair nor acceptable labelling.

Technical Committee's Evaluation:

The definition of 'facility' in the Proposed Determination is based on the definition of 'facility' in the Waste Management Acts 1996 to 2011. The definition refers to the use of a site or premises for the purpose of recovery or disposal of waste.

Schedule C.6.2 refers to soil sampling that shall be carried out on lands that may be used for landspreading, i.e. use/recovery of slurry/manure by landspreading. The applicant may decide not to undertake soil sampling in circumstances where the applicant chooses to use the Nitrogen and Phosphorus Statements issued by the Department of Agriculture, Food and the Marine or assumes a phosphorus index of 3 to meet the requirements of *Condition 8.12* as proposed to be amended. The TC recommended amendments to *Schedule C.6.2* based on consideration of the applicant's objection above (see Objection A.1).

Section 51(2) of the Waste Management Acts (1996 to 2011) relating to the recovery of sludges and agricultural waste states:

"Recovery", for the purpose of this section, includes the injection of waste into land for the purpose of benefiting the carrying on of any agricultural or silvicultural activity or an ecological system.

The pig rearing unit is an 'installation' as defined by the IPPC Directive and national legislation (EPA Acts 1992 to 2011).

Recommendation: Amend *Schedule C.6.2 Land used for Landspreading* as set out in the Recommendation for Objection A.1 above.

Third Party Objection

Objector's name and Address	Date Received
Mr. Nicholas Lacey, Raggotstown, Ballinakill, Co. Laois.	24 th November 2010

Mr. Lacey submitted a letter in a form of a short introduction and observations outlined under various heading as set out below. It has been noted that issues raised in Mr. Lacey's objection are very similar to the issues in the First Party Objection.

Objection B.1: Condition 6.3 and Schedule C.6.2: Land Used for Landspreading

Mr. Lacey requests *Condition 6.3* and *Schedule C.6.2* to be removed from the licence as not relevant to the applicant and not applicable to his installation.

In his objection, Mr. Lacey states that Mr. Tully has no authority to either access or control or monitor lands in Mr. Lacey's ownership or any customers' holdings. The objection states that Mr. Tully cannot perform the soil sampling and testing indicated in *Schedule C.6.2*. and Mr. Tully cannot require Mr. Lacey or any customer to carry out such sampling and testing. Mr. Lacey states *"such sampling and testing and interpretation of the results of any such sampling or testing that we or any customer may do are all matters for us. The records and documents in relation to fertiliser movements (including animal manure movements) into and/or out of the holding that are required to be maintained by the occupier of each and every holding in the State are prescribed in Article 23(1) in S.I. 101 of 2009"*.

Mr. Lacey states "we believe that the Agency knows that Conditions of the Mr. Tullys' licence cannot impose any burden on persons who are lawful customers for manure and that it is wrong for the Agency to propose or include any such conditions in his IPPC licence. Management of fertiliser acquisitions and their use of fertilisers on customers' holdings is a matter for each customer. That is clear state policy as provided for in S.I. 252 of 2008, S.I. 253 of 2008 and S.I. 101 of 2009. Those are not matters for either control or influence by conditions in the licence when granted".

Technical Committee's Evaluation:

The PD as granted, subject to the recommended changes above, does not seek to control the activities of any farmer who may use manure/slurry from the applicants pig farm (installation). The conditions require the applicant/licensee to continue to demonstrate that there are adequate lands available for the use of manure/slurry as fertiliser, the method required under the recommended conditions is similar to how the applicant demonstrated adequate demand in support of the licence application (information submitted as confidential information in support of the licence application).

Recommendation: As per recommendations above.
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Objection B.2: Condition 8.11

Mr. Lacey states that it is wrong to infer that the use of manure of any farmed animals by deposition on farmland is subject to control under the Waste Management Acts (WMAs). Mr. Lacey further states that no manure is discarded on his lands and it is necessary that *Condition 8.11* either be deleted from the licence, or be amended so the reference to the Waste Management Acts is replaced with a reference requiring that manure transferred from the installation for use, be in accordance with terms and standards prescribed in S.I. 253 of 2008 and S.I. 101 of 2009.

Technical Committee's Evaluation:

Condition 8.11 is considered under Objection A.1 and A.5 above and the TC recommend that the condition should be deleted.

Recommendation: As per recommendations above.
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Objection B.3: Condition 8.12 and sub conditions

Mr. Lacey objects to inclusion of this proposed condition in the licence because most of what it contains is not relevant or applicable to Mr. Tully or to his installation, or the licensable activity.

Mr. Lacey expresses concern "about the implications for Mr. Tully of the kind of impossible regime in relation to "landspreading" that the EPA has been trying to impose on him and that the Agency has been trying to have applicants for a licence and licensees voluntarily accept not only on their own behalf but also on behalf of their customers for pig manure".

Technical Committee's Evaluation:

Condition 8.12 is considered under Objection A.1 and A.6 above and the TC recommend that the condition be amended.

Recommendation: As per recommendations above.
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First Party Submission on Objection No. 1

The Agency received a submission on objection from the applicant on the 4th January 2011. The Submission is in a form of a letter outlining a number of issues.

Mr. Tully states that he studied the Third Party Objection to the proposed conditions in the PD and he supports and agrees with everything that was said in relation to the transfer of manure from his installation to customers.

Mr. Tully stresses that all matters in relation to the production and the implementation of nutrient management plans in respect of customers' holdings or lands are the statutory responsibility of those customers as Occupiers of those holdings or lands. Mr. Tully further states *"I am not, and I cannot be, responsible for such matters that are obviously addressed in the 'landspreading' and related conditions to the person responsible for that 'landspreading', which person or indeed persons are simply lawful customers who are 'occupiers' of completely separate holdings that are entities independent of me and independent of my activity... and will not be subject to either me or any conditions in my licence..."*.

Mr. Tully also states that requirements set down in a licence condition must be a matter that is his responsibility and is under his control in relation to the activity and that licence conditions must respect entitlements and responsibilities of third parties, i.e. customers for the pig manure, *"by not imposing, pretending to impose or seeking to impose any requirement on any party other than the licensee"*.

Mr. Tully states *"... I expect in the interest of clarity, and for the avoidance of doubt, and to eliminate risk of criminal prosecution for alleged non-compliance with... licence conditions in relation to landspreading and/or an "NMP" for which I am not and cannot be the responsible person, that the "landspreading" and "NMP" Conditions and Schedule C.6.2 will either be deleted from the licence when granted, or be amended to make it clear that the "landspreading" to which they refer is any "landspreading" that would be carried on by the licensee in the installation, and that the "NMP" referred to would be an "NMP" that would be the statutory responsibility of the licensee and would relate specifically to any land in the installation to which slurry/manure may be applied by the licensee"*.

Mr. Tully further states that, as there is no land with a crop requirement for fertiliser within the installation and therefore no landspreading will take place within the site boundary, it seems clear and rational that the conditions relating to landspreading, nutrient management plans and *Schedule C.6.2* should be deleted from the licence and other associated conditions should be amended as may be necessary following such deletion.

Technical Committee's Evaluation:

The TC has considered the issues raised in the applicant's submission on objections above and has recommended amendments as considered appropriate.

Recommendation: As above.

Third Party Submission on Objection

The Agency received a submission on objection from Mr. Nicholas Lacey, Raggotstown, Ballinakill, Co. Laois on the 4th January 2011. The submission is in a form of a letter outlining a number of issues.

Mr. Lacey states that he supports and agrees with everything the applicant stated in their objection in relation to the transfer of manure from the installation to customers. Mr. Lacey also states *"I am entitled to acquire fertiliser, including pig manure if I want to, from sources of my choice for use to satisfy crop requirement for N and P on my farms, in compliance with the Nitrates Regulations in SI 101 of 2009 as they apply to my holdings, and, as authorised and as required by SI 252 of 2008 and SI 253 of 2008 as they to apply to my holdings. I wish to protect my entitlements as provided by National and European legislation and to ensure that they shall not be eroded by any extra burden purported to be imposed by reference to any conditions in a fertiliser supplier's... licence"*.

Mr. Lacey states also that he does not have to give information about his future requirements to Mr. Tully, the Agency or to any other authority at any time before ordering and acquiring a supply. Mr. Lacey continues that he is certain that Mr. Tully cannot acquire from him any reliable or useful information about the future demand for fertilisers in general or for pig manure from his installation in particular. Mr. Lacey explains that it is not possible for the applicant to require such information in advance of Mr. Lacey's week-to-week decisions with regard to fertiliser requirements.

Mr. Lacey further states that *"the applicant/ licensee has no authority to either access or control or monitor lands in my holding or any other farmers' / customers' holdings. The applicant/licensee cannot perform the soil sampling and testing indicated in that table in Schedule C.6.2 as being required of him by the Proposed Determination of this licence. He cannot require me or any customer to carry out such sampling and testing for either him or for the EPA"*.

Mr. Lacey states that he believes that it is wrong for the Agency to propose or to include in a licence any conditions that clearly refer to a farm practice (the application of slurry/manure to farmland) that is carried out on land outside the installation and is not done on the authority of or under the responsibility of the licensee.

Mr. Lacey requests that the Agency either delete the "landspreading" and related conditions, and *Schedule C.6.2*, or amend the text of those conditions and Schedule to make it clear that they refer and apply only to "landspreading" in the installation that would be subject to Agency regulation or control under the IPPC Licence.

Technical Committee's Evaluation:

The TC has considered the issues raised in Mr. Lacey's submission on objections above and has recommended amendments as considered appropriate.

Recommendation: As above.

Overall Recommendation

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

- (i) for the reasons outlined in the proposed determination;
- (ii) subject to the conditions and reasons for same in the Proposed Determination; and
- (iii) subject to the amendments proposed in this report.

Signed



Ewa Babiarczyk, Inspector,
for and on behalf of the Technical Committee

