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Signed: *Gráinne Dglesby* Date: 10/6/13

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

**TO:** Directors

**FROM:** Technical Committee - **Environmental Licensing Programme**

**DATE:** 10<sup>th</sup> June 2013

**RE:** Objection to Proposed Determination for **Ballyfaskin Enterprises Limited**, Register No: P0915-01

Application Details	
Location of activity:	Ballyfauskeen, Ballylanders, Co. Limerick
Class of activity:	6.2 The rearing of pigs in an installation, whether within the same complex, or within 100 metres of the same complex, where the capacity exceeds 2000 places for the production of pigs and 285 places for sows in an integrated unit.
Licence Application received	16 April 2010
Notice under 87(1F) received:	23 <sup>rd</sup> October 2012
Response to 87(1F) Notice made:	25 <sup>th</sup> October 2012
Notice under Section 87(1I)(g) issued:	28 November 2012
Response under Section 87(1I)(g) received:	11 January 2013 (via email)
PD Issued	10 April 2013
Third party objection received:	7 May 2013

**Background**

Ballyfaskin Enterprises Limited employ 3 people in Ballyfauskeen, Ballylanders, Co. Limerick at a 400 sow pig production installation but the licence application is for a 600 sow unit. The pig unit has an output of approximately 250 bacon pigs on a weekly basis and the application is to allow for the capacity of the installation to be 3,750 production pigs i.e. finishing approximately 17,500 pigs per annum.

## **Consideration of the Objection**

The Technical Committee, comprising of Patrick Byrne (Chair) and Ann Marie Donlon, has considered all of the issues raised in the Objection and this report details the Committee's comments and recommendations following the examination of the objections together with discussions with the inspector, Pamela McDonnell, who also provided comments on the points raised.

This report considers the third party objection, no first party objection was received. No submission on the objection was received from the applicant.

The main issues raised in the objections are summarised below. However, the original objection should be referred to for greater detail and further expansion of particular points.

### **Third Party Objection**

The Technical Committee report considers the third party objection to the Proposed Determination (PD) submitted by Peter Sweetman & Associates on behalf of Peter Sweetman and The Swans & Snails Ltd. c/o Monica Muller Rosspport South, Ballina Co. Mayo.

There are 3 points of objection in the first 4 pages of the objection which is accompanied by the following documents:

- the text of the Judgement of the European Court of Justice of 11 April 2013 in Case C-258-11 in relation to Directive 92/43/EEC (Habitats Directive) -the N6 Galway City Outer Bypass road scheme and,
- the text of the Opinion of Advocate General Sharpson in Case C258/11 delivered on 22 November 2012 and,
- the text of the Judgement of the European Court of Justice in Case C-50/09 of 03 March 2011 in relation to Directive 85/337/EEC (EIA Directive), and,
- a copy of the '*Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*'.

The objection is dealt with below:

#### **A.1 No screening as required under the Habitats Directive**

*The objection outlines that there has been no screening as regards an Appropriate Assessment carried out as required by the Habitats Directive and as clarified in the Judgement of the CJEU Case C-256/1 {C-258/11} and paragraphs 32, 43, 44 and 46 are quoted. The objection then quotes a section from the Inspector's Report related to the Habitats Directive which states that a screening was carried out and that no Appropriate Assessment was necessary. The objection contends that this does not fulfil the requirements of the Directive regarding 'could the development have an effect' as the full details of the disposal of slurry are not published and thus it is not possible to assess the decision.*

#### Technical Committee's Evaluation:

The text of the objection refers to ECJ Case C-256/1 but it is taken by the TC that the relevant case is ECJ C-258/11 as per the additional documents submitted with the objection and that this is a typographical error. ECJ Case C-256/1 could not be

located on the Eurolex website and C-256/01 or C-256/11 were not relevant to this objection.

The scope of the licence is defined in condition 1.3 and relates to the pig rearing units. The use of slurry/organic fertiliser off site as a land fertiliser is outside the scope of the licensing regulations and is therefore not controlled in the proposed determination.

In relation to the ruling of the ECJ, the TC wishes to clarify that this installation is not located within a European Site and there is no proposal within the application which would involve any operations within a European Site.

It should be noted that the Inspectors Report contains a section (page 9) which outlines that a screening for Appropriate Assessment was undertaken by the Inspector and it concludes that 'the activity is not likely to have significant effects, in terms of maintaining favourable conservation status of the qualifying interests, on the European Sites having regard to its conservation objectives due to the nature and scale of the activity and manure management requirements prescribed in the Nitrates Regulations and in the RD. On the basis of screening undertaken, it is considered that an Appropriate Assessment is not necessary'. The closest designated sites were identified as Galtee Mountains SAC (4km) and Lower River Suir SAC (13.5km).

With respect to slurry/organic fertiliser management, the Inspectors Report outlines, based on the licence application, that slurry is used as a fertiliser on land in accordance with the EC (Good Agricultural Practice for Protection of Waters) Regulations 2010. The Inspector's Report states that 'The applicant submitted a fertiliser plan for 2012 and has identified 21 farmers who are available/seeking to accept slurry/organic fertiliser from the installation as fertiliser for their farms (1128 usable hectares in the surrounding area of County Limerick, County Cork and County Tipperary). The applicant has calculated that these farms have a need for up to 22,313 m<sup>3</sup> pig manure per year based on the nitrogen balance for the farms'. The TC notes that the conditions in the PD control the management and storage of slurry/organic fertiliser on-site and require the recording of all slurry/organic fertiliser movements off site in accordance with the EC (Good Agricultural Practice for Protection of Waters) Regulations 2010.

The TC considers that a screening for appropriate assessment of the installation was undertaken in so far as it relates to the functions of the Agency.

**Recommendation:** No Change

### ***A.2 No Environmental Impact Assessment has been carried out***

*The objection states that Cork County Council and the EPA have not carried out an environmental impact assessment and that 'the requirements for an Environmental Impact Assessment are set out in Section 171A of the Planning Acts'. It states that this is clarified in section 4 of the Guidelines and sections 4.1, 4.2, 4.3, and 4.4 are quoted in the text of the objection. In summary section 4.1 relates to access to information, 4.2 relates to the EIA*

report, 4.3 relates to internal planning authority reports and 4.4 deals with the decision-maker's written statement.

Technical Committee's Evaluation:

The objection refers to Cork County Council. However, it should be noted that this application relates to an installation located in Co. Limerick and as such Limerick County Council is the relevant planning authority as outlined in the EPA Inspectors Report. The TC assumes that this is a typographical error.

The Inspectors report contains a section which addresses the EIA Directive and outlines the conclusions of the environmental impact assessment of this activity as required under the EPA Acts as amended by the EU (EIA)(IPPC) Regulations 2012. The referenced Guidelines were followed in the assessment.

In relation to the quoted sections of Section 4 of the '*Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment*', the TC makes the following comments:

- 4.1 All the documentation/correspondence with the applicant, public and other bodies including planning authorities in relation to the EIA and licence assessment are available on-line and have been placed on-line prior to the proposed determination (PD) being issued. Any person could have made a submission on the application at any time prior to the issue of the PD on 10<sup>th</sup> April 2013. After this date the PD was then to objections for 28 days beginning on the day of issue of the PD. One objection was received on the 7<sup>th</sup> May 2013, the objection was copied to the applicant and the applicant could have made a submission in writing to the Agency in relation to that objection within a period of one month beginning on the day on which a copy of the objection was sent to that party. The Agency received no submission on the objection from the applicant. The Agency will have consideration of the objection. Thereafter, the decision of the Agency can be questioned by way of judicial review or other legal proceedings. The TC considers that the licensing process, as outlined above and set out in statute is carried out in an open and transparent manner, provides for participation with the public and specified bodies and access to justice.
- 4.2 The TC notes that the Inspectors Report included a section headed 'Environmental Impact Assessment', which documented a description of 'the likely significant effect'. The Inspector's Report, EIS and Licence application contains the information as required and all this information is available on-line for the public to view/consider and make submissions/objections in accordance with the statutory limitations applicable. Planning application details are also available on-line through the planning authority website.
- 4.3 This section of the Guidelines does not appear relevant to the EPA assessment other than that the assessment carried out by Limerick County Council for the planning application was considered during the licence assessment process.

- 4.4 The Inspectors report contains the relevant information and the final decision of the Board of the Agency has yet to be made following their consideration of the objection and this report.

The TC consider that an EIA has been carried out as regards the functions of the Agency as is required by the EPA Act 1992 to 2013.

**Recommendation:** No Change

### **A.3 The decision of the EPA does not comply with the Judgement in Case C 50/09 of the CJEU**

*The objection quotes the finding in the Judgement that*

- *By failing to ensure that, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of Directive 85/337, as amended by Directive 2003/35*

*The objection then quotes a section of the Inspectors Report which states that 'an EIA as regards the functions of the planning authority was carried out for the development' in planning file Ref 12/306. The objection states that 'a glance at the planner's report in 12/306 clearly shows that this is not the facts'.*

#### Technical Committee's Evaluation:

Following on from ECJ Case C-50/09 the Irish legislation has been amended to take account of the judgement and there is a requirement for consultation between planning authorities and the Agency around the carrying out of the EIA and the assessment of applications for consents (planning and licence).

The TC considers that the consultation with the planning authority carried out under the amended Section 87 of the EPA Act 1992-2013, the planning decision and also the limitation on the number of animals to that assessed (Schedule A.1 of the PD) by both the planning authority and the Agency ensures that the EIA has been carried out for this installation.

In relation to the comment made on the planner's report, the TC considers that this is outside the scope of the licensing regulations and is a matter for the planning authority.

**Recommendation:** No Change


### **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 and

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

Signed



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Patrick Byrne  
for and on behalf of the Technical Committee.