

For the Attention of
Environmental Protection Agency
Office of Climate, Licensing & Resource Use
Environmental Licensing Programme
c/o Ms. Noeleen Keavey
EPA Headquarters, PO Box 3000
Johnstown Castle Estate
Co. Wexford

Our Ref.: W0129-03/210714
Tel: 01 8020520
Fax: 01 8020525
e-mail: louise.odonnell@pateltonra.com
Date: 21st July 2014

Dear EPA,

**Re: Murphy Environmental Hollywood Ltd. (MEHL), EPA Ref. W0129-03
Objection/Oral Hearing Request**

I refer to your correspondence dated 25th June 2014 regarding the Agency's proposed determination on the licence application by Murphy Environmental Hollywood Ltd., Hollywood Great, Nag's Head, Naul, Co. Dublin (EPA Ref. W0129-03).

Patel Tonra Ltd., Environmental Solutions, submits this correspondence under the instruction of our client, Murphy Environmental Hollywood Ltd. (MEHL).

MEHL hereby makes an objection to the proposed determination **and** requests an oral hearing.

In compliance with statutory requirements for making an objection/request for oral hearing, the following information is provided.

Name of the objector	Murphy Environmental Hollywood Ltd. (MEHL)
Address of the objector	Murphy Environmental Hollywood Ltd., Hollywood Great, Nag's Head, Naul, Co. Dublin
Application Reference No.	W0129-03
Subject matter of the objection	The objection relates to the stated decision and reasons for the Decision, as EPA Proposed Determination, dated 25 th June 2014.
Grounds of the objection, and the reasons, considerations and arguments on which they are based	The grounds, reasons, considerations and arguments are set out in the attached documents.
Fees	Please find enclosed cheques for the following: €253, relating to an objection by the applicant; €100, relating to a request for an oral hearing.

An Bord Pleanála granted planning permission (Ref. 06F.PA0018) for the proposed development, having regard to the following reasons and considerations (*inter alia*):

- *“the proposed construction of the engineered cells for the reception of hazardous, non-hazardous and inert waste, which is in compliance with, and exceeds the minimum requirements set down in Annex 1 of Council Directive 99/31/EC*
- *the environmental impact statement (EIS) including the mitigation measures as set out and the supplementary information submitted at the oral hearing, and*
- *the report and recommendation of the person conducting the oral hearing, including in relation to the assessment of the environmental impacts,*

It is considered that, subject to compliance with the conditions set out below [ref. An Bord Pleanála conditions], the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would be unlikely to give rise to adverse impacts on the environment including groundwater or any European site, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.”

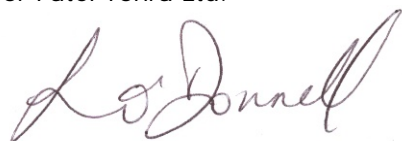
It is respectfully submitted that certain matters relating to the interpretation of the Landfill Directive and ‘Fit and Proper Person’ requirements are questions of law based on the facts and the evidence presented which in the first instance must be considered and decided upon by the EPA but ultimately may well have to be determined by the Courts.

We kindly request full disclosure of all documents and reports relating to the EPA assessment and decision-making process pertaining to the MEHL W0129-03 application.

Please find enclosed (2 No. print copies and 2 No. CD-ROM copies of the objection documentation).

Please do not hesitate to contact us with further queries.

Yours sincerely,
for Patel Tonra Ltd.



Louise O'Donnell
Director

Your ref
Our ref 326877-40
File ref

ARUP

Louise O'Donnell
Patel Tonra on behalf of MEHL Ltd
3f Fingal Bay Business Park
Balbriggan
Co. Dublin

50 Ringsend Road
Dublin 4
Ireland
t +353 1 233 4455
f +353 1 668 3169
sean.mason@arup.com
www.arup.com

21 July 2014

Dear Ms O'Donnell

Technical Submission in support of MEHL objection to Proposed Determination W0129-03

I refer to your correspondence dated 25th June 2014 regarding the Agency's proposed determination on the licence application by Murphy Environmental Hollywood Ltd., Hollywood Great, Nag's Head, Naul, Co. Dublin (EPA Ref. W0129-03).

The EPA Inspectors report highlighted a number of technical issues relating to the hydrogeology of the site and the surrounding areas as reasons for refusal to grant the site a waste licence. This document, which supports an objection by the applicant to the proposed determination, indicates where misinterpretations of the site hydrogeology information appear to have been made in the Inspectors report and sets out to address these misinterpretations by explaining the correct site hydrogeological concepts in a coherent and concise manner.

Groundwater Protection Responses for Landfills

The Agency has referred to the general Response Matrix provided in the 'Groundwater Protection Response for Landfills' as a reason for refusal. Under Reason 1 of the refusal (Page 16), Page 10 of the Inspectors report and Page 17 of the Geosyntec report, the Agency have stated that the response matrix determines that the MEHL site should be given a score of R3(2). This is on the basis that the Namurian aquifer is a Poor aquifer (not an aquitard) and is not providing natural protection for the underlying Loughshinny aquifer.

On the basis that the Namurian is a Poor Aquifer (P1) as shown on Figure 14.10 of the EIS with Extreme vulnerability (given the sites history as a quarry) the matrix should instead be applied to this aquifer and not to the Loughshinny aquifer. This would give a response score of R2(2), the conditions associated with which are:

Directors Eoghan Lynch (Chairman) Joe Burns Paul Coughlan Denis Crowley Michael Evans Gregory Hodkinson (Australian) Liam Luddy
Donal McDaid Fergus Monaghan **Company Secretary** Ken Freeman

Ove Arup & Partners Ireland Ltd trading as Arup | Company Reg No: 37037
Reg Office: 50 Ringsend Road Dublin 4
Cork | 15 Oliver Plunkett St Tel +353 (0)21 427 7670
Dublin | 50 Ringsend Rd Tel +353 (0)1 233 4455
Galway | 21 Middle St Tel +353 (0)91 894 700
Limerick | Hartstone House Upr Hartstone St Tel +353 (0)61 212 100

“Acceptable subject to guidance outlined in the EPA Landfill Design Manual or conditions of a waste licence.

- *Special attention should be given to checking for the presence of high permeability zones. If such zones are present then the landfill should only be allowed if it can be proven that the risk of leachate movement to these zones is insignificant. Special attention must be given to existing wells down-gradient of the site and to the projected future development of the aquifer.*
- *Groundwater control measures such as cut-off walls or interceptor drains may be necessary to control high water table or the head of leachate may be required to be maintained at a level lower than the water table depending on site conditions.”*

This alternative use of the response matrix highlights the inappropriateness of continuing to rely on generic assessment matrices when site-specific detailed investigations and assessments have been undertaken which supersede this.

Landfill Directive

The response to the Article 16 notice submitted by MEHL to the EPA on 17/10/13 stated that the *“Landfill Directive (1999/31/EC) is the current legal basis for the provision of environmental protection from landfills and the GSI document predates this. Therefore, the requirements of the Landfill Directive supersede those of the GSI document.”* The Agency and their consultants did not dispute this statement. However their consultant offered an alternative interpretation to Section 3 of Annex 1 of the Landfill Directive which deals with the protection of soil and groundwater.

Section 3.2 of Annex 1 of the Landfill Directive states that:

“The geological barrier is determined by geological and hydrogeological conditions below and in the vicinity of a landfill site providing sufficient attenuation capacity to prevent a potential risk to soil and groundwater”

and

“Where the geological barrier does not naturally meet the above conditions it can be completed artificially and reinforced by other means giving equivalent protection. An artificially established geological barrier should be no less than 0.5 m thick”

The EPA appear to have relied heavily on the Geosyntec interpretation of the Landfill Directive in reaching their determination to refuse, stating on page 7 of the refusal:

“The applicant has proposed that an entirely artificial barrier is installed at the landfill as described above, there being no naturally occurring mineral layer. Geosyntec in their report to the Agency (see Appendix 1) suggest that the text of the Directive does not state that the geological barrier can be completely absent. They emphasise that the alternative offered by the Directive relative to a situation where the geological barrier can be completed artificially and reinforced by other means, not completely replaced by an artificial construction.”

The EPA further reference this point under Reason 6 of their Decision to Refuse.

As outlined above, Annex 1 of the Landfill Directives states that: **“Where the geological barrier does not naturally meet the above conditions it can be completed artificially and reinforced by other means giving equivalent protection. An artificially established geological barrier should be no less than 0.5 metres thick.”** [Emphasis added]

It is therefore clear that where the geologically barrier does not meet the specific requirements in terms of permeability and thickness, it can be completed artificially and reinforced by other means giving the equivalent protection subject to the requirement that such artificially established geological barrier should be no less than 0.5 metres thick.

On this basis, MEHL object to the interpretation of the EPA and their consultants as stated above.

Rising groundwater levels

The Agency and their consultants quoted rising groundwater levels as reasons for refusal with respect to two points: Reason 4 (Bog of the Ring) and Reason 6 (the use of the DAC).

Under Reason 4, the Agency misinterprets the groundwater level patterns at the MEHL site by inferring that the groundwater levels at MEHL and the Bog of the Ring have tracked each other from 2003 to date. They state that *‘as groundwater levels at the Bog of the Ring rise and fall depending on pumping (abstraction) rates, so do the groundwater levels at the MEHL site’* and that *‘as abstraction has decreased, groundwater levels at the MEHL site have increased’*.

This hypothesis ignores two important facts: 1. The MEHL site is outside the Zone of Contribution (ZoC) for the Bog of the Ring water supply, and 2. Groundwater at the MEHL site in recent years has been dominated by dewatering and the cessation of dewatering at the MEHL site.

Multiple studies outlined in the MEHL Article 16 response have investigated the Bog of the Ring abstraction and its Zone of Contribution (ZoC) and have clearly determined its boundaries. The MEHL sites and Bog of the Ring groundwater catchments have been proven to be separate and cessation of pumping at the Bog of the Ring will only increase groundwater levels within its defined Zone of Contribution – this is a basic premise for how a Zone of Contribution functions.

Similarly the presence of a groundwater divide between the groundwater catchments in which the MEHL and Bog of the Ring sites lie was accepted by the Agency when a waste licence was granted for the Tooman Nevitt site (the Tooman Nevitt site lies within the same groundwater catchment as the Bog of the Ring and is closer to it than the MEHL site is).

In Reason 4 of the decision to refuse, there appears to be confusion in the understanding of the influence of pumping (and cessation of pumping) at the MEHL site and the influence of pumping (& cessation of pumping) at the Bog of the Ring site on the groundwater levels at the MEHL site. Groundwater level monitoring data is available from the MEHL site from 1999 to present. During the early part of this time period, pumping of groundwater (dewatering) began intermittently in both the north and south of the MEHL site and naturally groundwater levels were observed to decline during this period.

In late 2006, pumping in the north of the site ceased and pumping only continued in the south of the site, where it continued intermittently until May 2009. As expected, groundwater levels were observed to rise from 2006 and continued to rise as dewatering has ceased completely on the site since 2009. This is typical behaviour and as expected for a site where dewatering has taken place over a number of years. This pattern of groundwater levels cannot be correlated in any way with changes in abstraction rates at the Bog of the Ring.

Reason 6 of the Inspectors report determines that rising groundwater levels could pose a risk to the DAC liner and in this situation the DAC would not constitute BAT. With respect to the design formation level, pumping finally ceased at the MEHL site in 2009 and the groundwater levels rose since that period and monitoring data collected in 2012-2014 has demonstrated that groundwater levels have stabilised far below the design formation level of 104.5 mOD.

Potential impact on Bog of the Ring water supply

This topic has been dealt with in detail on numerous occasions throughout the waste licence application process. It was clearly demonstrated in the response to the Article 16 notice that the groundwater levels at the site and the Bog of the Ring are not hydrogeologically connected, as it was at the oral hearing for the Tooman Nevitt site.

In the MEHL licence determination, the Agency did not provide clarity as to why they have interpreted the situation at the MEHL site differently to that of their interpretation of the Tooman Nevitt case where faulting and extensive gravel deposits also exists.

It should also be noted that for the Tooman Nevitt oral hearing, the Inspectors report notes (page 36):

“With respect to faults, and their likely extent in the vicinity of the landfill, it is worth pointing out here that the EPA 2006 document ‘Landfill Manuals: Manual on Site Selection (Draft for Consultation)’ states that ‘In locating areas suitable for landfill, it is difficult to avoid being on, or close to geological ‘faults’. Even though the majority of faults increase the permeability of the bedrock in the fault zone it would normally not be appropriate to rule out or downgrade a site because of the presence of faults’ and that ‘It is recommended that there should be no general prohibition of landfill siting on areas with geological faults’.”

It is recommended that the EPA should provide the same considerations at the MEHL site.

Landsim

In the Article 16 notification, the Agency posed a series of detailed questions on the Landsim model at the time and requested the Applicant to ‘Justify whether Landsim is appropriate to use’. This justification was provided, along with detailed answers to the questions posed and a series of additional scenarios were modelled in Landsim and the results provided in order to address the queries raised by the EPA.

In the EPA’s determination documents, it appears that neither the Landsim modelling nor the responses to the questions provided in the response to the Article 16 notification were assessed, on the basis that the site ‘is complex, and this complexity is one of the main reasons why we have concerns about the site. Given other findings and the fact that a decision is now needed, there is little point in revisiting this aspect of the work done’ (page 19, Appendix 1. Geosyntec report).

It is disappointing for the Applicant that information which was specifically requested by the EPA was not reviewed and considered in their Determination.

This information has been submitted in support of the Applicants objection to the proposed determination. Please do not hesitate to contact us with further queries.

Yours faithfully
for
Ove Arup & Partners Ireland Ltd t/a Arup



Sean Mason
Director

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Report on the financial position
of Murphy Environmental
Hollywood Limited ("MEHL")

21 July 2014

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1. Introduction

1.1. Introduction

Smith & Williamson has been engaged by Murphy Environmental Hollywood Limited (MEHL) under a letter of engagement dated 17 July 2014. The services to be provided are:

- 1) To provide an opinion as to whether the applicant Murphy Environmental Hollywood Limited has the ability to meet the calculated financial commitments and liabilities taking into account known and potential liabilities from other sources that might impact on the ability of the applicant to so meet its commitments and liabilities.
- 2) To provide an opinion as to whether the applicant Murphy Environmental Hollywood Limited can be deemed a fit and proper person for the purpose of Section 83(5) subset 11 of the EPA Act 1992 as amended and include a detailed rationale for any opinions offered.

In relation to point 2 above we have concentrated on:

“In the opinion of the Agency, that person is likely to be in a position to meet any financial commitments or liabilities that the Agency reasonably considers have been, or will be entered into or incurred by him in carrying on the activity to which the licence or revised licence relates or will relate, as the case may be, in accordance with the terms thereof or in consequence of ceasing to carry on that activity”.

We have reviewed the company's financial statements for the years ended 31st March 2011, 2012 and 2013.

We have reviewed the report of Deloitte dated May 2014 on behalf of the Environmental Protection Agency (“EPA”) on this matter. We have not reviewed any technical submissions made.

We have set out in Appendix 1 the documentation and the material we have used in preparing this report.

1.2. Background

Murphy Concrete Manufacturing Limited (“MCM”) began quarrying at the Hollywood site in 1975 (the site has operated as a quarry since the 1940's). In 2003, Murphy Environmental was established as a trading division of MCM, to serve as the waste management division of the company, with responsibility for all aspects of the management and operation of the landfill and compliance with the Waste Licence.

MEHL was established on 1 October 2008 as a separate legal entity in the form of a limited company. On this date the EPA accepted the Transfer of Waste Licence W0129-02 from MCM to MEHL.

MEHL applied for a review of waste licence register number W0129-02. The application was assigned register number W0129-03. The existing waste licence (W0129-02) is for the operation of an inert landfill at a facility at Hollywood Great, Nag's Head, Naul, Co. Dublin. The application for a licence review is to seek authorisation to operate an integrated landfill facility including the existing inert landfill and also constructing new non-hazardous and hazardous landfill cells. These classifications of landfill are as per the Landfill Directive (1999/31/EC).

In late December 2010 following an extensive pre-consultation process and the compilation of a highly expert team MEHL submitted an application to An Bord Pleanala for consideration under Strategic Infrastructural Development for consent to build Ireland's first Hazardous Waste Facility.

On 20th June 2011 following an Oral Hearing and all the public consultation obligatory to a proposal of such significance An Bord Pleanala issued a Grant of permission for a period of 25 years commencing on the effective 'date of commencement' notice with leave to extend the permission beyond that time if the facility still required it. Reference PA0018.

A Hazardous Landfill Licence must accompany the now achieved Planning Consent and to that end MEHL also submitted an application to the EPA on 17.12.2010 one week after the application was submitted to An Bord Pleanala. Reference WO 129-03.

A waste landfill must have an EPA Waste Licence permitting the activity intended. We understand that MEHL and its predecessor group company managed an EPA Waste Licence at Hollywood since the first one was issued in December 2002 successfully and has an exemplary reputation with both the EPA and the local authority.

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2. Terms of Reference

2.1. Limitation of use of this report

We cannot accept liability to any third party recipient of our report including EPA or any recipient under the Freedom of Information Act 1997. No party other than MEHL are entitled to rely on this report for any purpose whatsoever.

Our work comprises a financial review on behalf of MEHL, as such we have not reviewed any technical submissions or assessed whether any relevant convictions made against the company and/or the directors might impact on whether MEHL can be considered a fit and proper person.

Environment Liability Risk Assessment ("ELRA") considers the risk of unplanned events occurring during the operation of a facility that could result in unknown liabilities materialising.

A closure plan or CRAMP details the liabilities a licensee will incur with site decommissioning and known liabilities for the facility at closure. Please note that Patel Tonra Environmental Solutions is dealing with this aspect.

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3. Key Findings & Observations

This report sets out our findings based on our work performed up to 21 July 2014.

CRO filings

The company is now up to date in its filings with the CRO and compliant with its obligations under company law. The 2013 financial statements were filed by the company in the CRO on 9th May 2014.

Company Trading History & Financial Position

The company has reported losses of €562,012 in 2013 and €603,434 in 2012. The company's retained losses mainly arise from interest costs and depreciation in 2013.

The company's EBITDA (earnings before interest, tax, depreciation and amortisation) has improved considerably in 2013 from 2012, reducing from an EBITDA negative €316,328 to an EBITDA negative €126,790. We present a summary profit and loss account for the company below:

MEHL Profit & Loss Account Year ended 31 March	2013 €	2012 €	2011 €
EBITDA	(126,790)	(316,328)	(274,041)
Depreciation	(175,701)	(9,424)	49,732
Deposit Interest	113	133	50
Operating Loss	(302,378)	(325,619)	(224,259)
Exceptional Item	-	-	(16,494,625)
Interest payable & similar charges	(309,565)	(379,607)	(289,256)
Loss before taxation	(611,943)	(705,226)	(17,008,140)
Taxation	49,931	101,792	77,417
Loss after taxation	(562,012)	(603,434)	(16,930,723)

Source: audited accounts

It is also important to state that the construction sector has just been through the worst recession in the sector in living memory and this has had a significant impact on the results of the company in recent years. However as noted above, the EBITDA position of the company has improved significantly in 2013 compared to 2012.

In 2011, the company's borrowings were transferred to NAMA. The company's operations have continued to be financed by its financiers throughout this period. They have also supported the company in its licence application process and have funded the costs of the application.

The net assets of the company amount to €8.15m as of 31 March 2013 (2012 €8.72m).

MEHL Net Assets as at 31 March 2013	Audited 2013 €	Audited 2012 €	Audited 2011 €
Tangible Assets	18,063,363	18,239,064	18,243,072
Stock	16,932	16,879	28,506
Trade Debtors	1,533,442	1,394,189	1,034,048
Cash at bank	10,925	10,733	10,743
Current assets	1,561,299	1,421,801	1,073,297
Creditors < 1 year	(11,471,086)	(1,446,218)	(1,093,863)
Net Current Assets	(9,909,787)	(24,417)	(20,566)
Creditors > 1 year	-	(9,498,529)	(8,903,484)
Net Assets	8,153,576	8,715,588	9,319,022

MEHL has invested heavily in the project to date. The success of the licence application is central to the company's business plan to sustain the operation of the facility and future jobs and economic activity. In the event that a positive decision is given on this licence application MEHL can further develop its business plan to secure the necessary investment to develop this project.

Support from MEHL's Financiers

As noted above, MEHL's debt was transferred to NAMA during 2011. All of the company's finance facilities are currently on demand facilities. It is not unusual for borrowings in NAMA to be classified as "on demand". The company's financiers have supported the company and its business since 2011. To date the company's financiers have continued to support the company in its licence application for permission to accept hazardous, non-hazardous and non-bio degradable waste in its Hollywood facility in Co. Dublin. They have extended additional facilities to the company during this period to enable it to continue to trade and make the necessary applications and incur the necessary costs for the licence application.

The company's financiers have been financing the costs incurred and trading losses of the company since 2011 as evidenced in the increase of bank loans and overdrafts in the period from €9.15m to €10.085m.

Bank Loans and overdrafts	Audited 2013 €	Audited 2012 €	Audited 2011 €
Repayable < 1 Year	10,085,700	297,438	250,697
Repayable > 1 Year	-	9,498,529	8,903,484
Total	10,085,700	9,795,967	9,154,181

Source: Audited accounts

To date MEHL has the continued support of its financiers to support this application process. The business plan presented by MEHL to its financiers in relation to this project has been supported and approved. Should the licence be granted, it is envisaged that the asset value of MEHL will increase significantly and enable the project to be financed to the next stage.

MCM

MCM has provided a guarantee in relation to the bank borrowings of MEHL. The company's financiers continue to support MEHL and accordingly this guarantee is not relevant at this juncture

Audit reports and Asset valuation

The audit reports attached to the recent financial statements of MEHL have been disclaimed. The auditors have stated in their report on the financial statements that they were unable to form an opinion due to the limited evidence available regarding the value of land and buildings in the marketplace at that time and given the materiality of the figure in the financial statements.

The valuations of the tangible assets included in recent financial statements were completed by the company directors. Independent professional valuations have not been completed given the state of the construction market and the value of land in the turbulent marketplace of the last 5 years. The last professional valuation was carried out by Lisney on 30th November 2009 and valued the lands and buildings at €25.5m (see Appendix 2). They had previously valued the land and buildings at €52.5m in August 2008.

At that time the land and buildings had the benefit of EPA waste licence W0129-02. There has since that date been significant progress by the company including a permission granted by An Bord Pleanála for the proposed use of the quarry that is now under licence consideration by the EPA.

The directors have confirmed to us that the company has not sought an up to date valuation from Lisney in the recent financial statements as there was no functioning market in recent years for such lands. Its financiers were supporting the company's business plan to seek the waste licence application currently under appeal and they did not require up to date valuations. Furthermore it was felt that it would be wasteful to spend money on a valuation that did not take account of the licence position, the fact that there was no intention to sell nor was there a functioning market to value the property in.

Audit reports and Going Concern

The auditors have also included an emphasis of matter paragraph in their audit reports concerning the ability of the company to continue as a going concern and the adequacy of the disclosures made in Note 2 of the financial statements. They have not qualified their audit opinion on the going concern issue. They state in their recent audit reports regarding going concern:

"This is dependent on the predictions within the cashflow projections being achieved, the directors would be successful in negotiating the necessary financial support and that the company would be successful in its licence application. These matters indicate the

existence of a material uncertainty which may cast doubt about the company's ability to continue as a going concern".

To date the company's financiers have been supportive of the company in seeking this licence. Should the company be successful in its licence application the directors are confident that they will be able secure the necessary financial support to progress thereafter.

Licence Conditioning

Should the licence be granted it is envisaged that the asset values of MEHL will increase significantly and this will enable the company to be able to secure the necessary financing to bring the project to the next stage. The EPA can put financial conditioning in place prior to allowing the company to operate the facility in accordance with the licence granted.

A report was submitted to the EPA in May 2014 detailing the ELRA, CRAMP and financial provisions to be put in place for the integrated waste management facility. MEHL propose the CRAMP financial position be covered by a cash based account funded by way of a levy and a bond. We understand that based on the calculations presented, the financial provision levy proposed would generate sufficient cash to meet the cash based element of the CRAMP provision.

Under standard licencing requirements (for "Specified Engineering Works"), the licensee will be obliged to obtain EPA approval for various stages of landfill construction works relating to the proposed development. As part of Financial Provision proposals, the applicant would have to provide that the calculated Financial Provision sum is in place, for each phase of works, prior to seeking consent from the Agency to proceed with the phase of works.

This is considered to be a robust approach to ensuring that financial provision requirements are fully in place, in a timely fashion, in advance of potential CRAMP/ELRA liabilities arising.

Conclusion

Should the company be successful in obtaining the licence, it is our view that the company would be able to secure the necessary financing to be able to meet the financial obligations it would have in relation to the conditions attaching to an EPA Waste Licence, and that MEHL can be deemed a fit and proper person for the purpose of Section 83(5) Subset 11 of the EPA Act 1992 as amended as it continues to be supported by its financiers during this process.

Signed:



Smith & Williamson

21/7/2014

Appendix 1: Records Inspected

I have reviewed the following information:

- Murphy Environmental Hollywood Limited Audited Report and Financial Statements for the years ended 31st March 2011, 31st March 2012 and 31st March 2013
- Valuation Reports for 133.21 acres (53.91 hectares) at Hollywood, Co. Dublin prepared by Lisney dated 5th August 2008 and 30th November 2009
- Report for Environmental Protection Agency reviewing the financial position of Murphy Environmental Hollywood Limited prepared by Deloitte & Touche dated May 2014
- Letter from Patel Tonra Environmental Solutions Limited to the Environmental Protection Agency dated 9th May 2014 in relation to additional unsolicited information concerning CRAMP, ELRA and Financial Provision

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21 July 2014

www.smith.williamson.ie

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For the Attention of
Environmental Protection Agency
Office of Climate, Licensing & Resource Use
EPA Headquarters, PO Box 3000
Johnstown Castle Estate
Co. Wexford

Our Ref.: W0129-03/210714(2)
Tel: 01 8020520
Fax: 01 8020525
e-mail: louise.odonnell@pateltonra.com
Date: 21st July 2014

Dear EPA,

**Re: Murphy Environmental Hollywood Ltd. (MEHL), EPA Ref. W0129-03
Objection to the Proposed Decision on grounds of CRAMP/ELRA**

We refer to the Agency's proposed determination on the licence application by Murphy Environmental Hollywood Ltd. (MEHL), Hollywood Great, Nag's Head, Naul, Co. Dublin (EPA Ref. W0129-03), dated 25th June 2014, the associated EPA inspector's report and a report prepared on behalf of the Agency by Deloitte & Touche (May 2014) *Report for Environmental Protection Agency reviewing the financial position of Murphy Environmental Hollywood Ltd.*

Patel Tonra Ltd., Environmental Solutions, prepared a report (May 2014) entitled *ELRA, CRAMP and Financial Provision Assessment for Proposed Integrated Waste Management Facility (W0129-03)*, on behalf of MEHL. The report was submitted to the Agency under Waste/Industrial Emissions Licence Application ref. W0129-03 on 9th May 2014.

On behalf of the applicant, Patel Tonra Ltd., Environmental Solutions objects to the following information which supports the Agency's proposed determination of W0129-03:

(#01) Subject matter of the objection:

"The Applicant has not demonstrated an ability to meet the financial commitments or liabilities (e.g. the calculated costs for CRAMP and ELRA) that will be entered into or incurred in carrying on the activity to which the application relates."

Source: EPA Inspector's Report (12th June 2014), Recommendation, Reason 7, page 18

(#01) Grounds of the objection, and the reasons, considerations and arguments on which they are based

The Patel Tonra Ltd. CRAMP/ELRA report (May 2014) (section 5.2.8) invited the Agency to condition the requirement for Financial Provision to be put in place by the licensee, to the satisfaction of the Agency, prior to the commencement of construction activities relating to the proposed development.

The majority of the Financial Provision liability arises only upon the commencement of waste acceptance; by putting Financial Provision in place at the construction stage is considered to be a 'worst-case' scenario.

Under standard licensing requirements (for 'Specified Engineering Works'), the licensee will be obliged to obtain EPA approval for various stages of landfill construction works relating to the proposed development. As part of Financial Provision proposals, the applicant would have to prove that the calculated Financial Provision sum is in place, for each phase of works, prior to seeking consent from the Agency to proceed with that phase of works.

This is considered to be a robust approach to ensuring that financial provision requirements are fully in place, in a timely fashion, in advance of potential CRAMP/ELRA liabilities arising.

(#02) Subject matter of the objection:

"If the estimates are correct the levy could generate sufficient cash to meet the cash based element of the CRAMP provision. However, we consider that regular reporting to the Agency would be required to ensure the income is meeting the estimates."

Source: Deloitte & Touche (May 2014) *Report for Environmental Protection Agency reviewing the financial position of Murphy Environmental Hollywood Ltd*, section 4.18, page 19

(#02) Grounds of the objection, and the reasons, considerations and arguments on which they are based

The Patel Tonra Ltd. CRAMP/ELRA report (May 2014) (section 2.10) states (*inter alia*) that "CRAMP will be reviewed in line with licence requirements (typically once per annum as part of the annual reporting obligations).

- CRAMP will be fully reviewed and updated every three years.
- FP will be reported annually, as a minimum.
- In the aftercare phase, aftercare reporting to the EPA will be conducted on an annual basis (or as may be required)."

This matter can be addressed by a licence condition.

(#03) Subject matter of the objection:

"The Agency's Legal Services Team conducted a preliminary examination of the financial provision proposals and stated the following:

- *Insurance, in respect of the ELRA, is not normally accepted by the Agency as an adequate means of covering unexpected incident costs.*
- *A bond is proposed to cover the entire CRAMP costs. A cash deposit will gradually displace the value of the bond. The cash deposit is proposed to be funded by means of a levy on each tonnes of waste accepted at the installation. This funding model is not normally accepted by the Agency. Instead, a schedule for deposit of fixed cash amounts is preferred."*

Source: EPA Inspector's Report (12th June 2014), Section 7, pages 12-13

(#03) Grounds of the objection, and the reasons, considerations and arguments on which they are based

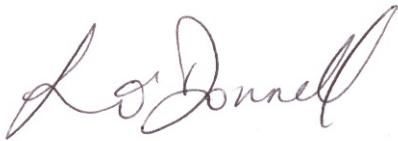
The approach outlined in the Patel Tonra Ltd. CRAMP/ELRA report (May 2014) is based on EPA guidance in force at the time of writing, i.e. EPA (2014) *Guidance on assessing and costing environmental liabilities*.

The Patel Tonra Ltd. CRAMP/ELRA report (May 2014) (section 5.1.1) states that: *"It is our understanding that the EPA intends to issue new guidance on Financial Provision (FP) in 2014. In the interim, a robust FP mechanism is outlined below, which will be subject to the agreement of the Agency in terms of specifics surrounding legal/contractual details."*

The EPA guidance on Financial Provision remains outstanding at the time of writing, to the best of our knowledge.

It is our opinion that, in the absence of published EPA guidance on Financial Provision, the Financial Provision model agreed by the applicant and put forward in the Patel Tonra Ltd. CRAMP/ELRA report (May 2014) was a considered and robust approach to achieving Financial Provision objectives. We contest that, in the absence of published EPA guidance on the matter, licence applicants may be unfairly assessed in terms of proposals advanced as part of the licence application process.

Yours Sincerely
for Patel Tonra Limited



Louise O'Donnell
Director

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