

 <p>Environmental Protection Agency An Ghníomhaireacht um Chaomhnú Comhshaoil</p>	OFFICE OF ENVIRONMENTAL SUSTAINABILITY
ENVIRONMENTAL LICENSING PROGRAMME	
TO:	Gerard O'Leary, Director
FROM:	Neasa Diviney, Inspector, Environmental Licensing Programme
DATE:	17 June 2022
RE:	Technical Amendment to Industrial Emissions Licence Register Number: W0078-03, held by Tipperary County Council for an installation at Ballaghveny Landfill, Ballymackey, County Tipperary.

The Agency received a request on 10th December 2021 from Tipperary County Council, regarding Ballaghveny Landfill, Licence Reg. No. W0078-03 to technically amend their Licence. The request relates to a temporary increase of 10,500 tonnes per annum in the annual waste acceptance limit at the installation for 2022 and 2023 (from 49,000tpa to 59,500tpa). The request for a waste acceptance increase is to accommodate the acceptance and management of illegal waste arising from Shannon Vermicomposting (SVC), Rathcabbin, County Tipperary.

This memo recommends that the change **cannot be** accommodated by a Technical Amendment (TA), in accordance with Section 96(1)(a), (b) or (c) of Environmental Protection Agency Act 1992 as amended (hereafter referred to as the EPA Act).

1. Background

Tipperary County Council was granted a licence for Ballaghveny Landfill, Reg. No. W0078-01, on 4th May 2001 for an installation located at Ballymackey, County Tipperary. The installation is licenced under Classes 11.5¹ & 11.1² of the First Schedule to the EPA Act.

A revised licence, Reg. No. W0078-02, was granted to Tipperary County Council on 15th June 2006.

A further revised licence, Reg. No. W0078-03, was granted to the licensee on 21st December 2009. This licence was subsequently amended as follows:

- Technical Amendment A (28th June 2010), which amended the limits on acceptance of municipal waste at the installation and reporting and waste monitoring requirements.

¹ Landfills, within the meaning of section 5 (amended by Regulation 11(1) of the Waste Management (Certification of Historic Unlicensed Waste Disposal and Recovery Activity) Regulations 2008 (S.I. No. 524 of 2008)) of the Act of 1996, receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25,000 tonnes, other than landfills of inert waste

² The recovery or disposal of waste in a facility, within the meaning of the Act of 1996, which facility is connected or associated with another activity specified in this Schedule in respect of which a licence or revised licence under Part IV is in force or in respect of which a licence under said Part is or will be required.

- Technical Amendment B (15th January 2013), which brought the licence into conformity with the provisions and requirements of the European Communities Environmental Objectives (Surface Waters) and Environmental Objectives (Groundwater) Regulations.
- An amendment for the purposes of Section 82A(11) of the EPA Act (19th December 2013), giving effect to the requirements of Directive 2010/75/EU (Industrial Emissions Directive).
- Technical Amendment C (19th June 2018), which provided for a change to the licence boundary.
- Technical Amendment D (26th June 2020), which changed the wording of Condition 6.2.2 to allow for the management of the leachate in a manner that prevents contamination of the surrounding groundwater subject to the agreement of the Agency.

It should be noted that prior to Technical Amendment D, the Agency refused a technical amendment request to change the wording in Condition 6.2.2 in order to allow leachate levels in cells 8 & 9 to be managed to a minimum of 0.2m below the groundwater level at nominated reference groundwater wells. The request was refused as the proposed alteration would regularise an on-going breach of a licence condition.

The licence currently authorises Tipperary County Council to operate a non-hazardous landfill at Ballaghveny Landfill and accept 49,000 tonnes of non-hazardous waste per annum including municipal waste, commercial waste, construction and demolition waste, pre-treated sludge and green waste for composting. Waste acceptance at the landfill ceased in February 2011, however, the Office of Environmental Enforcement (OEE) approved the resumption of waste acceptance at Ballaghveny Landfill on 2nd April 2019.

2. Technical Amendment Request

On the 10th December 2021, the Agency received a request for a Technical Amendment of Licence Reg. No. W0078-03, to increase the annual waste acceptance limit in 2022 and 2023 from 49,000 tonnes per annum to 59,500 tonnes per annum. The licensee states that the reason for their request is solely to accommodate the acceptance and management of waste arising from the SVC site, Rathcabbin, County Tipperary, within a two year period.

The licensee proposes to amend '*Schedule A.2. Waste Acceptance*' of the existing licence to increase the maximum annual acceptance limits for municipal waste and commercial & industrial wastes.

With regard to the site of origin of the waste, legal documents in relation to SVC were submitted to support the amendment. These documents include a 2005 High Court Order requiring SVC to remove waste from the SVC site within a specified timeframe "...to an authorised waste disposal facility which is operating lawfully and/or in compliance with the terms and conditions of any applicable waste permit or waste licence..". SVC did not comply with the High Court Order so Tipperary County Council are now taking steps to comply with the requirements of the Order in accordance with Section 58(4)(a) of the Waste Management Act 1996 as amended. They wish to complete this work within a two year period for efficient management of the haulage and to satisfy those living in the Rathcabbin area who want the SVC waste removed as soon as possible. An Appropriate Assessment Screening Report was also provided by the licensee.

3. Consultation with the Office of Environmental Enforcement (OEE)

I have consulted with the OEE Inspector, Anthea Southy, in relation to this technical amendment request. The OEE confirmed that the proposed temporary increase in tonnage of waste for acceptance at the installation cannot be accommodated under the existing licence. OEE has confirmed that there are no legal proceedings in train in respect of this licence.

4. Assessment

The proposed amendment request was assessed against the relevant criteria in the Agency's guidelines for licence alterations³.

The licensee has requested a temporary increase (21.43%) in the annual waste acceptance limit at the installation for two years (until the end of 2023). The proposed increase is to facilitate Tipperary County Council to manage waste that must be removed from the SVC site to fulfill the requirements of a High Court Order. It is noted that the High Court Order relates only to the removal of waste from SVC to an authorised waste disposal facility and does not require that the waste must be disposed at Ballaghveny Landfill. It is also noted that OEE have approved the acceptance of this waste type to the landfill, within the confines of the current tonnage limits of the licence. Waste removal from SVC to Ballaghveny Landfill commenced on 2nd December 2021.

The two year timeframe proposed by Tipperary County Council for removal of the waste is not a timeframe specified in the High Court Order. This timeframe is proposed by Tipperary County Council in order to move the waste in the shortest possible timeframe, to ensure efficient management of the haulage process and to satisfy those living in the Rathcabbin area who want the SVC waste removed as soon as possible. An increase in tonnage limits at Ballaghveny Landfill is required if all waste is to be removed from SVC to Ballaghveny within that 2 year timeframe.

Any increase in the maximum annual waste acceptance limit is considered a significant change under Agency licence alteration guidelines³ and would therefore warrant public participation, which can only be considered by way of a licence review.

For an amendment to be accommodated by way of technical amendment it would need to satisfy Section 96(1) of the EPA Act 1992 as amended which states that Section 96(1) of the EPA Act which states that:

"The Agency may amend a licence or revised licence for the purposes of -

- (a) correcting any clerical error therein,
- (b) facilitating the doing of anything pursuant to a condition attached to the licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or the terms of the licence taken as a whole but which was not expressly provided for in the condition, or
- (c) otherwise facilitating the operation of the licence and the making of the amendment does not result in the relevant requirements of section 83(5) ceasing to be satisfied".

The amendment request to increase the acceptance of waste above the existing limit in the licence cannot be considered to be (a) correcting any clerical error or (b) facilitating the doing

³ Guidance on Requests for Alterations to a Licensed Industrial or Waste Activity (EPA, June 2019).

of anything pursuant to a condition attached to a licence where the doing of that thing may reasonably be regarded as having been contemplated by the terms of the condition or terms of the licence when taken as a whole.

It is also considered that the amendment cannot be accommodated by way of Section 96(1)(c). For an amendment to be accommodated under Section 96(1)(c), it must satisfy both criteria part (i) otherwise facilitating the operation of the licence and part (ii) does not result in Section 83(5) failing to be satisfied.

In relation to part (i) the significant increase in the waste acceptance limit cannot be interpreted as otherwise facilitating the operation of the licence as to allow such an increase would facilitate a breach of a condition within the existing licence. In relation to part (ii) the licensee has failed to provide sufficient supporting information to demonstrate that Section 83(5) will continue to be satisfied.

It is therefore considered that the proposed amendment cannot be accommodated by way of a technical amendment and a licence review would be required in order to consider the proposed changes as requested.

5. Recommendation

This memo recommends that the requested changes **cannot be** accommodated by a Technical Amendment of Licence Reg. No. W0078-03 (held by Tipperary County Council for an installation at Ballaghveny Landfill), in accordance with Section 96(1)(a),(b) or (c) of the EPA Act 1992 as amended.

Signed,



Neasa Diviney
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Environmental Licensing Program