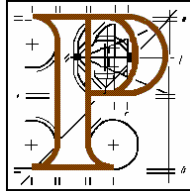


An Bord Pleanála



Inspector's Report

- Development:** Continue disposal of waste at higher rate of 360,000 tonnes per annum until 1st December 2015
- Site Address:** Drehid Waste Management Facility, Co. Kildare
- Applicant:** Bord na Móna plc
- Type of Application:** Request for the board to amend the terms of an approved development under section 146B of the Planning and Development Acts 2000-2011
- Inspector:** Stephen J. O'Sullivan

1.0 INTRODUCTION

1.1 This report deals with a request from Bord na Móna that the board exercise its power under section 146B of the Planning and Development Acts 2000-2011 to alter the terms of the permission to allow municipal solid waste to be disposed at its Drehid landfill facility at the higher rate of 360,000 tonnes per annum until 1st December 2015, rather than 1st December 2013 which is stipulated in the conditions attached to the existing permission, after which the rate of disposal would fall to 120,000 tonnes per annum.

2.0 LEGISLATIVE BASIS

2.1 Section 146B (1) of the acts allows a person who intends to carry out a strategic infrastructure development to request the board to alter the terms of that approved development. Under sub-section 2 the board must then decide, as soon as is practicable, whether to do so would constitute a material alteration in the terms of the development. If it decides that it would not be material, then under section 146B (3)(a) it must alter the approval accordingly. If the board decides that it would constitute a material alteration of the terms of the development, then under 146B (4) it must determine whether the alteration would be likely to have significant effects on the environment. If the board determines that the alteration would be likely to have significant effects on the environment then section 146C applies. If not, then under section 146B (3)(b) the board may make the requested alteration, make a different but no more significant alteration or refuse to make the alteration, but under section 146B (8) it must ensure the information associated with the request is made available for inspection and to ensure that appropriate persons are notified of the request and that submissions are sought from them.

2.2 Where section 146C applies the board must require the person making the request to prepare an environmental impact statement and submit it to the board and the local authority, and to publish a notice stating that this statement has been submitted and that the submissions or observations upon it may be made to the board within a specified period of not less than 4 weeks. After that period that board may determine the matter under section 146B (3)(b) having regard to various matters set out in section 146C (6).

3.0 HISTORY

3.1 PL 09.212059, Reg. Ref.04/371 - The board granted permission on appeal on the 21st November 2005 for an engineered landfill of 21.8ha to accept up to 120,000 tonnes per annum of non-hazardous residual municipal waste for disposal, a composting facility with a capacity of 25,000 tonnes and all ancillary works on a total site area of 139 Ha at the Drehid Waste Management Facility. Condition 2(1) of the permission stated -

The landfill footprint shall be as proposed in the documentation submitted to the planning authority on the 24th day of February, 2004. The active deposition of waste is permitted for a period of twenty years and shall not exceed an annual tonnage of 120,000 tonnes for the deposition of waste. Capping and restoration works on the site shall be completed within two years of the expiry of the period for waste deposition.

.....

Reason: To define the scale of the proposed development, in the interest of minimising recourse to landfill in accordance with national policy.

- 3.2 Under Ref. No. 09. PA0004 the board made an order on 31st October 2008 to grant permission under section 37G of the planning act for the extension and intensification of the Drehid facility, increasing the footprint of the landill by 17.8ha and disposing of 240,000 tonnes of non-hazardous municipal waste per annum for 7 years (over and above the 120,000 tonnes per annum previously authorised there). Condition no 1 of the permission states –

The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until 1st of December 2013. Thereafter waste for landfill disposal at the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL 09.212059, unless a further permission in this respect is granted.

Reason: *The Board considers it appropriate that the increased rate of waste deposition hereby permitted should be reviewed after five years, in the light of waste policy and capacity pertaining at that time.*

The reasons and considerations on the board's order included the following sentence –

Having regard to predicted waste arisings and capacity issues in the Greater Dublin Area and to national policy objectives in relation to reduction of waste, the Board considered that a five year limit on the increased through-put of waste at the facility is more appropriate than the seven years sought by the applicant.

The development proposed in the application to the board would have involved the disposal of the extra waste for 7 years. The permission was granted after the carrying out of an environmental impact assessment and an appropriate assessment of the project. The conditions attached to the approval did not significantly alter the proposed development.

- 3.3 Under Ref. No. 09. PA0027 the board made an order on 15th March 2013 to grant permission under section 37G of the planning act for a mechanical biological treatment facility with a capacity of 250,000 tonnes per annum of waste on the same landholding as the current site.

4.0 THE SITE

- 4.1 The request refers to the site of the permission 09. PA0004. That site had a stated area of 179ha within a larger landholding of 2,544ha within Timahoe Bog in the north of county Kildare c18km northwest of Naas. The extension of the footprint of the landfill authorised in the permission covered 17.8ha to the east of the previous landfill, centrally located within the site. The extension would be carried out in 7 phases, each covering approximately 2.1ha. The information submitted with the request did not indicate which phases have been completed or commenced.

5.0 THE REQUEST

The proposed alteration

- 5.1 The request from the applicant seeks the alteration of condition no. 1 of the permission 09. PA0004 to allow for the reception of an additional 240,000 tonnes of municipal waste per annum for two more years until 1st December 2015. So the altered condition would be –

The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until 1st of December 2015. Thereafter waste for landfill disposal at the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL 09.212059, unless a further permission in this respect is granted.

The reason of the condition would also have to be altered to render it consistent with the period of time stated that is applied, but the request did not specify how. Drawings were not submitted of the location or method of the proposed deposition of the additional waste. It is therefore assumed that it will be in the location and according to the methods described in the application and EIS for 09. PA0004.

The supporting arguments

- 5.2 According to the submission from the applicant, the EIS submitted with the application for 09. PA0004 considered the development proposed in that application , which was for an intensification of the rate of disposal to landfill on the site for 7 years. The statement demonstrated that this would have no significant effects on the environment. There will be a deficit of between 250,000 and 300,000 tonnes per annum in the capacity for waste disposal in the greater Dublin region in 2014 and 2015.

So there is a clear need to continue the operation of the Drehid landfill at the intensified rate of deposition for another two years. Waste policy has not changed significantly since the permission was granted. The most recent document, *A Resource Opportunity – Waste Management Policy in Ireland* issued by the Department of the Environment in July 2012 recognises the need for a sufficiency of waste management infrastructure in the state, including landfill facilities. It also states that existing regional waste management plans will remain in place until 2014, so the current Kildare Waste Management Plan is the 2005-2010 plan that was in place when the permission was granted. A review of the 2005 Dublin regional waste management plan carried out in 2012 noted that a number of projects envisaged in the plan had not been carried out, including the Nevitte landfill by Fingal County Council and the Poolbeg waste to energy facility by Dublin City Council. The proposed landfill at Usk has not proceeded. The review stated that landfill facilities outside the Dublin region would have to be used as a temporary contingency. The 2011 Kildare County Development Plan incorporates the current Kildare Waste Management Plan and recognizes the need for waste management facilities. So a review of waste policy in the manner envisaged by condition no. 1 of the permission should conclude that the continuation of the intensified rate of waste deposition until 1st December 2015 would be fully compliant with current waste policy.

- 5.3 The EIS submitted with the original application considered the potential effects of an intensified rate of deposition for 7 years and concluded that it would not have significant effects on the environment. The imposition of a 5 year limit by the board's decision was not due to any potential environmental effect but a response to issues of waste capacity and arisings, as is clear from the reasons and considerations stated in the board's order and the reason for condition no. 1. Therefore, the requested alteration is not likely to have significant effects on the environment.
- 5.4 The request was accompanied by a need assessment report prepared by the applicant's consulting engineer. It states that there will be no landfills or waste to energy facilities operating in Dublin in 2014 and 2015. The Ballynagran landfill in Co Wicklow is permitted to accept 150,000 tonnes per annum in those year, while Knockharley landfill in Meath can accept 88,000 tonnes per annum. The Carranstown waste to energy facility is licenced to accept 200,000 tonnes, with planning approval for 20,000 more. It would generate 48,400 tonnes of non-hazardous ash that may be recovered or sent to landfill. So there is a capacity to accommodate 529,600 tonnes of waste per annum in the greater Dublin area in 2014 and 2015. Waste arisings for those years are projected from those recorded in 2010 or 2011 in each county using growth rates from the EPA National Waste Report of 2011. In Dublin, 1.35m tonnes of municipal solid waste (MSW) would arise in each year, with 584,000 requiring disposal at current recycling rates. Kildare, Wicklow and Meath would generate 92,000 tonnes, 138,000 tonnes and 75,000 tonnes of municipal solid waste requiring disposal each year. So

the volume of waste sent for disposal in from the greater Dublin area would be 828,000 tonnes. Thus the capacity to dispose of MSW would be c300,000 tonnes per annum less than that required to cater for the waste arising if the ash from Carranstown is sent to landfill, or 250,000 tonnes per annum less if it is not. So there is a clear need to continue with the deposition of MSW at the accelerated rate of 360,000 tonnes per annum at Drehid for 2014 and 2015.

6.0 ASSESSMENT

Materiality of the proposed alteration

- 6.1 The terms and conditions of the board's permission restricted the higher rate of deposition to a period ending on 1st December 2013. The board did this explicitly and for stated reasons that referred to public policy and the predictability or otherwise of the volume of waste arising and the extant capacity to cater for it. In doing so the board departed from the period for which permission was sought in the application. The current request seeks to re-instate the period of increased disposal that was proposed in the application, and which the board deliberately decided to modify. In these circumstances the proposed alteration should be regarded as material within the meaning of section 146B(2)(a) of the act. The board should therefore decide whether the make the alteration or otherwise under section 146B(3)(b).

Likelihood of significant effects on the environment

- 6.2 Before it can make such a decision, the board is required under section 146B(4) to determine whether the extent and character of the alteration is likely to have significant effects on the environment. The proposed alteration would allow the disposal of 240,000 tonnes of waste in each of 2 years that would not otherwise be allowed. Class 11(b) of part 2 of schedule 5 of the Planning and Development Regulations 2001-2013 indicates that an EIS is mandatory where the proposed development consists of installations for the disposal of waste with an annual intake greater than 25,000 tonnes. This class might be regarded as encompassing the proposed alteration. However I would regard the permission granted by the board under 09. PA0004 as already providing the consent for the installation that would accept the waste, and would not regard the class would as applying to a variation in the rate of use of the authorised installation.
- 6.3 The applicant's arguments with regard to the likely effects of the proposed alteration are convincing. The board's consent to the development under 09. PA0009 was only given after an EIA of the proposed development was carried out, as required by the EIA directive. The EIA was therefore complete before the decision was made. The conditions on a permission might alter the development in order to make sure that its impact on the environment was acceptable. But this happens after the environmental impact of the development presented to the board has been assessed. The development that was put before the

board under 09. PA0003 provided for the deposition of MSW to landfill on the site at the rate and for the period specified in the current request. So the deposition of MSW to landfill on the site at the rate and for the period specified in the current request has already been subject to EIA. The EIS, the various submissions and the inspector's report all addressed a development with these characteristics. The alteration that is now being requested would not entail the carrying out of works to land that were not proposed in the application and described in the EIS.

- 6.4 Neither the EIS nor the inspector's report for the application identified any significant effect on the environment arising from the proposed period of deposition. The restriction in the period of the increased rate of deposition effected by condition no. 1 of the permission did not alter the physical works required to facilitate the extension of the landfill, or the method by which the emissions from the deposition would be managed. The reason for the restriction expressed in the board's order referred to matters of policy. It did not refer any effect of the period of deposition on human beings; flora and fauna; soil, water, air, climate and the landscape; material assets and cultural heritage; or the interaction of the foregoing. The clear inference is that no significant effects on the environment were identified from the period of intensified deposition proposed in the last application. The potential for any such effect has already been considered in the EIA carried out before the permission was granted. There has been no change in the material circumstances of the site or the development that would warrant a different conclusion at this stage. The board is therefore advised to make a determination under section 146B(5) that the making of the requested alteration would not be likely to have a significant effects on the environment, and to proceed to determine the request under section 146B(3)(b). The same reasoning would lead to the conclusion that an alteration similar to that requested by the applicant but which specified a shorter period or lesser rate of deposition would not be likely to have significant effects on the environment either.

Appropriate Assessment

- 6.5 The site is not within or immediately adjacent to any Natura 2000 sites. The consideration of the development undertaken before permission was granted addressed the likely direct and indirect impact of the development on designated sites, and concluded that no significant impact upon them was likely. This is evident from the submitted EIS and the inspector's report, from which board's decision did not depart. The proposed alteration would not involve any activity or works that was not considered in the EIS and the inspector's report on the previous application. The making of the alteration would not, therefore, be likely to have significant effect on any designated Natura 2000 site.

Consultation

- 6.6 Nevertheless, despite the likely absence of significant effects on the environment, the proposed alteration would increase by five sevenths

the period of time within which the higher rate of deposition could occur. This is a substantial increase and one that departs from the stated terms of the extant permission. It would affect the manner in which public policy on waste management was implemented. It is therefore a matter on which the public should be afforded the opportunity to comment. It would also be prudent to seek the opinions of the prescribed bodies who were invited to comment on the original application before the board decides whether to make the requested alteration or one similar to it.

7.0 RECOMMENDATION

7.1 I recommend that the board –

- make a determination under section 146B(2) of the Planning and Development Acts 2000-2011 that the making of the alteration to which this request relates would constitute a material alteration to the terms of the development concerned, and
- make a determination under section 146B(4) of the acts that the making of the alteration to which this request relates would not be likely to have significant effects on the environment, and
- require under section 146B(8), in the manner that the board considers appropriate, the person who made this request to make accompanying information available to the public and the consultees that were prescribed for the application 09. PA0004, and to notify them that the information is available and that submissions on the request may be made to the board within a stated period of time.

REASONS AND CONSIDERATIONS

The alteration which is the subject of this request would result in a substantial increase in the period of time over which the increased rate of deposition of municipal solid waste could occur on the site and so would have a material effect on the manner in which public policy on the management of waste was implemented. It would therefore constitute a material alteration to the terms of the permitted development and the public and certain prescribed bodies should be afforded the opportunity to make submissions before the board decides whether to make the alteration. The alteration would not entail the carrying out of works or changes to the use of land that were not described in the development for which permission was sought under Ref. No. 09. PA0004 or which were not the subject of the environmental impact assessment that was carried out before the board granted permission on foot of that application. It is therefore considered that the making of the alteration would not be likely to have significant effects on the environment .

Stephen J. O'Sullivan
7th August 2013

8.0 SUPPLEMENTARY REPORT ON APPLICATION 09. PM0003

8.1 I note the board's directions of 27th August and 5th November 2013, where it decided that the proposed alteration would constitute a material alteration, to invite submissions on the application and to seek a further report from the inspector regarding the significance of its effects on the environment and matters in relation to waste policy and landfill capacity.

8.2 I visited the site on 26th November 2013. The facility was laid out and operating generally in accordance with the particulars submitted with the application for the previous permission and approval. Landfill disposal was occurring at phase 5 with preparatory works at phase 6, as indicated on the site layout drawings for 09. PA0004

9.0 SUBMISSIONS

The **submissions** to the board can be summarised as follows –

9.1 Environmental Protection Agency

The proposed alteration is provided for under the waste licence No. W0201-03 granted to the applicant, which allows the reception of 360,000 tonnes of non-hazardous municipal commercial and industrial waste until the end of 2015, after which the intake shall revert to 120,000 tonnes per annum. The licence will be amended in due course to incorporate the requirements of the Industrial Emissions Directive.

9.2 An Taisce

The board must independently address the status of the application relative to the environmental impact assessment and must justify any reconsideration of its previous decision.

9.3 From Margaret Logan on behalf of local residents

The applicant has not consulted with local residents in a regular and transparent manner in line with its obligations. The applicant has not complied with the terms of its licences, as the EPA have found, by accepting untreated cleansing waste and a lack of documentation to show the composition of the waste matter accepted. There were discrepancies in the records of tonnage accepted and it was not clear whether some waste was household or commercial. There are reprehensible odours and fly infestation that are a nuisance and health risk. The existence and severity of a smell issue from the landfill is attested to by c250 local residents. Haul routes to the site have not always been observed and significant amounts of rubbish falls from the trucks onto the road. The planning conditions regarding the maintenance of roads have not be observed, and it would be extraordinary to casually extend the intensity of deliveries to the site. Given the lack of compliance with reporting regulations, with planning conditions and the negative impact the site has on the surrounding area, the application should be refused.

9.4 From Greenstar Holdings Ltd

The company holds licences for four landfills, three of which have extant available capacity at Knockharley Co. Meath, Ballynagran Co. Wicklow and Kilconnell Co. Galway. The analysis of need submitted by the applicant fails to have regard to certain relevant factors including –

- The effect of the landfill levy of €75 per tonne on landfill diversion in 2013
- The export of waste for incineration, which may be up to 500kt/annum
- Current fill rates, with the Drehid landfill only accepting 70kt of MSW in the first six months of 2013
- The mothballing of licensed landfills with extant licensed capacity
- The fact that Drehid accepts waste from around the country while the analysis only considers the Greater Dublin Area

Much of the unit cost associated with a landfill is relatively fixed and does not vary with scale. So an enlarged facility that could accept 240kt per annum above the permitted capacity can operate at a much lower unit cost than small landfills such as Greenstar's. The amount of waste disposed to landfill is falling rapidly due to policy measures. The applicant has reduced its prices to attract waste from around the country. Given the oversupply of landfill capacity, Greenstar and local authorities followed this price down. However it is illegal

under section 53 of the Waste Management Act to operate a landfill below cost. Thus the extended capacity at Drehid is distorting the market and undermining the longer term sustainability of under-utilised competitor facilities. The development of the national road network has almost eliminated reliance of local facilities. The landfill capacity assessment is therefore seriously flawed and cannot be relied upon to support the proposed alteration.

Greenstar has developed its own model of the supply and demand of licensed landfill capacity in the state. It identifies a total landfill capacity in 2015, both operational and mothballed, of 1,030kt, down from 2,226kt in 2011. The Greenstar landfills at Knockharley and Kilconnell with a capacity of 188kt per annum are mothballed, as are council landfills in Cos. Wexford, Cork and Clare. This indicates that existing landfill capacity exceeds demand and this situation will continue for the two years of the proposed amendment to Drehid. Waste arising in Ireland fell from 3.3Mts of MSW in 2008 to 2.8Mt in 2012. Greenstar's model assumes no growth or a decline in arisings in 2013 and a return to very moderate growth of 0.2% in 2014. Legislation and enforcement by local authorities has increased to proportion of recycle and source separated organic waste being presented. The incinerator at Carranstown Co. Meath began operating in 2011 at full capacity of 200kt per annum. The volume of mechanically treated residual waste has increased due to the imposition of the landfill levy. It is predicted that the proportion of residual waste being disposed to landfill will dwindle from 27% in 2013 to 9% in 2015. The Greenstar model predicts a demand for landfill space of 466kt in 2015, down from an actual demand for 1,180kt in 2012. The model ignores the Poolbeg incinerator, and includes conservative projections of the amount of waste exported. The model shows that the need for landfill void capacity has declined rapidly in the past few years in response to the strong economic incentive to divert waste from landfill due to the levy. Incinerators in northern Europe have spare capacity of 7m tonnes per annum and this have been made available to cater for waste from Ireland. These routes are now established, but the applicant's analysis ignores the export of waste. In 2015 Greenstar predict an surplus of available landfill void over demand of 564kt with the Drehid facility at 120kt per annum. So the application to increase that capacity to 360kt per annum is not justified.

The current planning approval restricts deposition after 1st December 2013 in order to allow the rate to be reviewed 'in light of waste policy and capacity pertaining at the time'. Waste policy has therefore clearly effected true demand for landfill disposal with a consequent surplus capacity available. Drehid accepts waste from across the country and the current application should be considered in light of the capacity in the country as a whole and not just the

GDA. A landfill capacity in the country will be more than 100% greater in 2014 and 2015 than demand without the proposed extension of the higher rate of deposition at Drehid. An expansion there would result in other licenced facilities being mothballed. Mothballed facilities still incur costs and it is more logical to spread revenue to where such costs are being incurred. Placing unsustainable financial burdens on landfill licence holders is not consistent with the proper planning and sustainable development of effective waste management infrastructure. The applicant's analysis over-estimates the demand for landfill capacity and is seriously flawed because it does not take account of the €75 per tonne landfill levy, the export of waste for incineration or the mothballing of licenced facilities. The persistent surplus of landfill capacity damages industry participants. Enquiries to waste operators indicates that this trend is escalating, with a reasonable belief that the volume of waste sent to landfill will continue to fall. Nothing the current applicant indicates otherwise. So there is no justification for the proposed amendment to the planning approval for Drehid and it should be refused.

Appendices to the submission list landfills in Ireland with available capacity, those that are mothballed, and a record and projection from the years 2011 to 2015 of the tonnage of material sent for various waste treatment and disposal options.

10.0 RESPONSE

The applicant's response can be summarised as follows –

- 10.1 In response to An Taisce, the applicant states that the proposed amendment would not involve the board setting aside its previous decision. The board reduced the requested term for deposition at 360kt per annum to enable an analysis of waste arisings and capacity pertaining at the end of the 5 year term. The applicant's analysis has demonstrated the ongoing deed and demand, and justified the request to prolong the higher deposition rate.

- 10.2 In response to the EPA, the applicant requests the board to permit the intensification for the additional two years.

- 10.3 In response to Margaret Lohan and others, the applicant gives the date of meetings that were held with a group of local residents and the topics on which

it made information available. Invitations were given to other meetings, but these were not accepted. This group is not the community liaison committee established under the parent planning permission PL09. 212059. The applicant has implemented corrective action to address a breach of the waste licence, which the EPA may have described as 'accounting issues'. The Drehid facility uses the best available techniques to control odour. The EPA has monitored odours and has taken no enforcement. The applicant has not observed any fly infestation, which is managed by the landfill cover management regime. The applicant polices the use of haul routes by its customers to the site and controls litter within 3km of the site entrance. The applicant has complied with the planning conditions requiring financial contributions in respect of roads.

10.4 In response to Greenstar Holdings Ltd. , the applicant stated –

- The applicant's assessment was carried out with respect to the Greater Dublin Area, which is consistent with the reasons and considerations for the Board's approval under PA0004 which referred to the waste management capacity needs of the Greater Dublin Area in the short to medium term. The reference to capacity in condition no. 1 should therefore be taken to mean the capacity in the Greater Dublin Area. More than two thirds of the waste disposed at the facility is from the GDA.
- The applicant's assessment had due regard to the trends evident from the most recent published data. The public register of Dublin City Council's National Transfrontier Shipments Office indicates that the total quantity of Municipal Solid Waste exported from the state for incineration in 2012 was less than 100kt. The amount actually shipped may be significantly less than the amount entered in the register. The Government's most recent policy statement *A Resource Recovery Opportunity – Waste Management Policy* in July 2012 cautions about the regulation of waste exports, and states that all waste management plans will remain in place until new plans are in place at the start of 2014. The policy refers to the proximity and self sufficiency principles to support an objective to ensure a sufficiency waste management infrastructure within the state to manage waste. The capacity to accept exported waste outside the state is intangible, volatile and subject to market and policy conditions in other countries. The export of waste is in conflict with the principle of self-sufficiency.
- More than 158kt of MSW was accepted at Drehid in the first half of 2013, which is consistent with a full year rate of 360kt. The Greenstar facilities

at Knockharley, Co. Meath and Ballynagran, Co. Wicklow are closed and are subject to enforcement action by the EPA under section 53 of the Waste Management Act, 1996 with proceedings issued in the High Court Ref. 2013 1682P. The Knockharley and Ballnagran facilities were included in the applicant's assessment of need. If they are deemed to be closed the projected capacity deficit increases to between 490kt and 540 kt per annum in 2014 and 2015. Cork County Council has stated that the Bottlehill landfill will not proceed.

- The Greenstar model contains data and projections that are unsubstantiated. The Greenstar landfills are closed, and the number of operational landfills in the state has fallen to 9 in the second quarter of 2013, according to the EPA. The applicant disputes that the Greenstar landfills or other facilities could be opened in a matter of days. Section 53 of the Waste Management Act 1996 requires a bond or security for to address costs arising at waste facilities.

10.5 More generally, the applicant's response stated that none of the submissions to the Board have identified any issues that would preclude the extension of the intensification of deposition at the applicant's facility.

11.0 ASSESSMENT

Whether the proposed alteration would be likely to have significant effects on the environment

- 11.1 After consideration of the submissions from the parties and an inspection of the site, I would not alter my previous advice to the board that the proposed alteration would not be likely to have significant effects on the environment. The alteration would not authorise any works to land or a change in the use of any land that has not already been authorised. The environmental implications of deposition at the proposed rate were described and assessed prior to the decision on 09. PA0004. Those implications were not deemed in that decision to require or justify a lower deposition rate. The submission from Margaret Lohan and other local residents raised concerns with emissions and record keeping at the facility. These are matters that are directly controlled by the waste licence issued by EPA. It would serve no useful purpose, and would probably be *ultra vires*, for the board to attempt to replicate the agency's controls over the activity at the site, which will have to be enforced whether or not the board makes the alteration currently proposed by the applicant. The submission from Ms Lohan referred to the implementation of planning conditions relating to roads. The proposed alteration would not have a significant negative impact on the safety or carrying capacity of the road network in the area. The application for the proposed alteration was made under section 146B of the planning act. There are other procedures for the enforcement of planning conditions in the act. They do not involve the board.

Waste policy and landfill capacity

- 11.2 Table 23 of the EPA's national waste report of 2011 provides information on the landfill disposal capacity in the state at the end of that year (14.5Mt), with an approximation of the remaining life expectancy of those facilities (11 years). The licensees of the 21 facilities accepting waste at the end of 2011 were county councils, apart from the landfill with which the current application is concerned, and three facilities licensed to Greenstar Holdings Ltd. whose submission on the current application denies the need for the proposed alteration. The EPA report finds that the number and capacity of landfills is decreasing, leading to significant inter-regional movement of waste. The amount of municipal solid waste generated in 2011 was 17% below the peak level generated in 2007, although the rate of decrease has slowed since then. The bulk of the municipal waste that is recovered is exported for recovery. The second EU landfill directive 1999/31/EC sets targets for the amount of

biodegradable municipal waste disposed at landfill. For 2013 the target is less than 610kt, for 2016 it is less than 427kt. The report indicates that the first target will be met, but the second is at risk. Section 5.4 of the report indicates that the EPA have altered conditions attached to waste licences to restrict the amount of biodegradable waste disposed to landfill and that the agency will continue to monitor and enforce such conditions. The minister's response to the said targets is described at sections 2.3.3 and 2.3.4 of the policy document *A Resource Opportunity* issued in July 2012. Those sections refer to the same supervision of disposal by the EPA, and to the imposition and increase of the landfill levy. Section 10.2 of the policy document states that landfill bans will be considered. Section 3.4 of the policy states that existing waste management plans will remain in force until a new set of plans, based on no more than 3 regions, have been put in place by the start of 2014. No such plans have been put in place yet.

11.3 The applicant and Greenstar have presented the board with different analyses on the need for the proposed alteration, each comparing capacity with the likely demand for landfill disposal over the next two years. The figures for projected relationship between demand and capacity diverge, with the applicant seeing a deficit of 250kt-300kt in the greater Dublin region without the proposed alteration, while its competitor sees a surplus of 564kt across the state without the proposed alteration. The capacity figures from the EPA are common to the both analyses. The divergent projections regarding surplus or deficit in landfill capacity relate to whether capacity in the state as a whole is considered or only that in the counties comprising the Greater Dublin area; to the impact of the landfill levy; and to the consideration of the export of waste for recovery. Both projections are tendentious but plausible. Either would provide the board with a rational basis on which to determine the current application. The amount of municipal solid waste generated in the country has fallen since the board's approval under PA0004, and a greater proportion of it is now sent for recovery, mainly overseas or at the Carranstown incinerator. The state is also obliged to take action to ensure compliance with the limits for the disposal of biodegradable municipal waste to landfill that are set out in the landfill directive. These factors could support a decision to refuse the proposed alteration.

11.4 Nevertheless I would prefer the position put forward by the applicant as it is more closely in keeping with the terms of the parent approval and condition no. 1 attached to it. The reasons for the approval referred specifically to the need

for landfill capacity due to waste arising in the Dublin region, as opposed to a national need. This is in keeping with the proximity principle and the regional framework set out in the waste management plans then in force. Those waste management plans remain in force. The regional approach adopted in the applicant's analysis of need is therefore favoured. It is also the case that the additional facilities envisaged in the Dublin waste management plan - the Nevitt landfill and the Poolbeg incinerator - have not been provided. The circumstances that are likely to have been envisaged in the terms and conditions of the board's approval for an extension of the period of deposition at 360kt per annum have therefore come to pass. While the activity at the site does involve waste crossing the current regional boundaries from the Dublin area and elsewhere to Kildare, this aspect of the Irish waste market was recognised by the board the parent approval, and by the minister in the 2012 policy *A Resource Opportunity*. Such movement would be unlikely to run counter to the network of no more than three regions envisaged in the 2012 policy.

11.5 National waste policy has been changed since the parent approval by the minister's 2012 document. That policy states that landfill bans will be considered, which implies that they are not to be imposed at this time before such consideration has taken place. The policy sets out two methods to ensure that the state meets its obligation to limit the biodegradable municipal waste going to landfill – the landfill levy and revisions to waste licences. Neither involves the imposition of planning restrictions. The licence for the facility now under consideration would allow deposition at the heightened rate for the period set out in the proposed alteration. So the making of the alteration would lead to a more harmonious and consistent regulatory regime, although there is no obligation on the board to make decisions that impose the same restrictions as a waste licence if it considers that there are good planning reasons to do otherwise. Given the limited duration of the proposed alteration, approval for it would not frustrate the achievement of the objectives set out in the 2012 policy *A Resource Opportunity* or the new regional waste management plans which that policy envisages.

12.0 RECOMMENDATION

12.1 I recommend that the board make the proposed alteration to the terms of the approval granted under 09. PA0004 in the manner and for the reasons and considerations set out below.

Amend condition no. 1 of the approval 09. PA0004 to read as follows –

The landfill footprint extension shall be as proposed in the documentation submitted to the Board on the 30th day of April, 2008. Waste to be accepted at the facility for disposal shall be restricted to 360,000 tonnes per annum until 1st of December 2015. Thereafter waste for landfill disposal at the facility shall be restricted to a maximum of 120,000 tonnes per annum, in accordance with the conditions attached to the original permission, PL 09.212059, unless a further permission in this respect is granted.

Reason: *The Board considers it appropriate, in the light of waste policy and capacity pertaining at this time, that the increased rate of waste deposition should only be authorised until 1st of December 2015.*

REASONS AND CONSIDERATIONS

Having regard to the provisions of the document *A Resource Opportunity – Waste Management Policy in Ireland* that was issued by the minister in July 2012 which has extended the duration of the waste management plans that were applicable when the board gave its approval under 09. PA0003, to the failure to develop certain facilities envisaged in the Waste Management Plan for the Dublin Region 2005-2010, to the likely waste arisings and capacity issues in the Greater Dublin Area in 2014 and 2015, and to the terms of the waste licence which governs activity on the site issued by the EPA under Ref. No. W201-03, it is considered that the making of the proposed alteration would be in keeping with the waste management policies of the state and its obligations under European legislation. The proposed alteration would not be likely to have significant effects on the environment or upon any Natura 2000 site. It would therefore be in keeping with the proper planning and sustainable development of the area.

Stephen J. O’Sullivan

4th December 2013