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Director General  
European Commission  
Directorate General Environment  
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DG ENV	
25. 10. 2005	
A/ ATT INFO	[REDACTED]

19<sup>th</sup> October 2005

Dear Director General,

I have been asked by my authorities to refer to a variety of cases covered by Reasoned Opinion No 2002/4218 and Reasoned Opinion No C (2002) 5293 and to state that the reports attached gives the up-to date position on each of these cases.

My authorities understand that these cases should also come under the aegis of the response to ECJ case C-494/01 and the information provided, therefore, attempts to meet Commission concerns under the relevant headings. Most of the cases are ongoing in terms of actions to assess threat to the environment, regularisation of the waste and in relation to sanctions against the offenders.

Follow up visits by the Office of Environmental Enforcement are planned for October/November 2005 to ensure consistency in the national response and my authorities are determined to bring each of the cases to a successful conclusion in terms of what the ECJ wants and in line with the Section 60 Ministerial policy Direction issued on 3 May 2005 (see Appendix 1) which sets out policy in relation to unauthorised activities.

My authorities would be pleased to discuss any or indeed all of the cases with the Commission where there are aspects, which may require further clarification.

Yours sincerely,

[REDACTED]

### **Reasoned Opinion No 2002/4218**

- Kilpedder, **Co. Wicklow** P2002/4292
- Grannyferry/ Newrath, **Co. Kilkenny** P2002/4218
- Dunsink Landfill, **Fingal**, Co. Dublin P2002/4483
- Ardristan, Tullow, **Co. Carlow** P2002/5228
- Murphy's Rock, Blackpool **County Cork** P2002/5266

- **Kilpedder, Co. Wicklow** P 2002/4292

The European Commission was informed of the position on this site by letter dated 17 January 2005 which was as follows:

The situation in this case, as described below, here is that there is ongoing action by Wicklow County Council (KCC) in order to address the issue of site remediation, risk assessment, enforcement and regularisation of the waste, and is as follows:

#### **Site remediation**

In January 2001, an agreement was reached between the parties whereby a restoration plan was to be agreed with WCC by 28 February 2001. While plans were received from engineers for the defendant, [REDACTED] no agreement could be reached. WCC further sought to reach agreement by submitting proposals to the defendant in February 2002 but no agreement has been possible. A reminder was sent in June 2002. Due to failure to reach agreement on the restoration plan as was required in a 2001 Court case, new proceedings have been entered in the Circuit Court (2003) but no date for the hearing has yet been given.

#### **Risk Assessment**

WCC commenced its investigation in January 2004. Initially a desk study of the history of the site and of aerial photographs showed indications of where the dumping of material may have taken place. The following preparatory work was completed in June 2004:

1. Site walkover
2. Comparative Aerial photography
3. Contextual hydrology and hydro geological study
4. Compilation of site history
5. Preparation of field investigation

Following this preparatory work the field work commenced on the 28 July 2004 and involved the following:

1. Source material characterisation
2. Trial trenches excavation
3. Trial trench logs generated
4. Photographic record maintained
5. Evidence identified and photographed
6. Soil and leachate samples taken for analysis

A first interim report dated 30 July by the firm of consultants (the same consultants who have been working with WCC since October 2001 in the investigating of illegal sites in the county is carrying out the investigation work) is attached for information.

The consultants made their recommendations to WCC on 7 September 2004 (Already forwarded). Based on the evidence so far obtained the consultants considered that the environmental risk posed by the importation of waste material into the site appears not to be significant but with a caveat that the data is not complete. They recommended that a notice issue under Section 18 of the Waste Management Act as to the presence of waste on the site including records of origin, laboratory tests or other controls that may be undertaken. They also recommended the issue of a section 55 notice by WCC to monitor the status in the underlying aquifer.

The Office of Environmental Enforcement also visited the site on 20 October 2004 and the steps to be taken by WCC – as recommended by the consultants - were endorsed.

WCC issued both statutory notices on 2 December 2004 to the relevant parties. They detail the measures required to be carried out in order to prevent environmental pollution and request the furnishing of particular information to WCC concerning the waste deposited -copies are attached.

#### **Enforcement and Regularisation of the waste**

Condition 7 of the Section 55 notice requires the relevant parties to seek confirmation from the EPA as to whether or not a waste licence will be required for the activities previously carried out at the site (which determination will be made on the basis of information to be supplied by the parties concerned).

The up to date position will be verbally outlined to the Commission at the bilateral meeting on 20 October 2005 and a written report will follow.

- **Grannyferry/ Newrath, Co. Kilkenny**

**P2002/4218**

The European Commission was informed of the position on this site by letter dated 3 February 2005, which was as follows:

### **Legal sanctions**

The letter from my authorities of 30 May 2003 has updated the Commission concerning sanctions against [REDACTED]. Concerning [REDACTED] already convicted for operation of a waste facility without the requisite licence - Kilkenny County Council (KCC) is pursuing the imposition of a landfill levy but a legal challenge has been made on this. When the issue is resolved the Commission will be informed. In both cases, therefore, legal action has been taken against the owners who in both instances proceeded to infill illegally and without due process.

### **Regularisation of the sites**

Following court proceedings, both [REDACTED] and [REDACTED] have cooperated with KCC and no further infilling has occurred at either site. Site investigations are being carried out by environmental consultants, on behalf of both owners, to assess the environmental impact of the past illegal waste activities on both sites. These investigations are continuing. So far, the findings indicate that the material deposited is not a source of environmental pollution. KCC has instructed that a small amount of material be removed from the site but no instruction has been given to have the site cleared of all construction and demolition material.

The reasons for this are as follows:

- Neither site is located within the SAC nor do the sites impact on the SAC to any material extent.
- The sites are zoned development and have been since 1986 in the Kilkenny County Development Plan. The scope of the KCC Development Plan covers a wide range of interests including environmental and heritage matters. Two further Development Plans have been adopted since 1986, those of 1994 and 2002. It is the KCC view that when the sites were zoned for development public expectation was that the sites would be land filled. At the time of the making of the 2002 plan no submissions were made in relation to the status of these lands during the public consultation process. There was no submission from any interested party who may have had concerns about the proposed development of the site – the opportunity was there for concerns to be voiced during the preparation of the Draft County Development Plan about having the site zoning altered or having the ecological significance of the site altered. This was not done which suggests that this was not warranted. KCC has to presume that for development to take place on these sites, infilling would occur. It is likely; therefore, that had the owners followed due process and applied to KCC for a waste recovery permit, the applications would have been granted given the nature of the infill

and the fact that the potential environmental impacts of the material deposited are insignificant. Article 4 of the WF Directive is respected in terms of the environmental impact and KCC intend to regularise the sites by now issuing waste permits - instructions have been issued to both owners to apply for a waste permit in respect of their waste deposition.

➤ Site visits by the Office of Environmental Enforcement have taken place and the EPA has evaluated the two environmental reports prepared on behalf of KCC and notes the following:

- 1) The landfill gas survey pertaining to both sites showed evidence of methane and carbon dioxide contamination which can be linked to the decomposition of the former reed bed. EPA will continue to monitor this through KCC.
- 2) Results of trial pit investigations at both sites show that the fill material is primarily composed of sand, silt and clay with various other types of construction and demolition waste.
- 3) At the [REDACTED] site, there was evidence of Poly Cyclic Aromatic Hydrocarbons (PAH) and Diesel Range Organics (DRO) contamination. This is being investigated by KCC. A section 12 notice has been issued by KCC on an adjacent tyre repair depot (thought to be the source but less likely at this stage) to clean up the site but the Council is not yet certain of the source of this contamination. EPA has sought that KCC identify the possible sources of contamination.
- 4) At the [REDACTED] site, an adjacent motor company - [REDACTED] has been identified as a potential source of surface and waste water discharges and a section 12 and section 23 notice has been served on this company.

In summary, there is no significant evidence of environmental pollution attributable to the material deposited at either site.

### **The wetlands issue**

The dumping has taken place on reed beds adjacent to the proposed Natural Heritage Area but not within the site. The dumping is not affecting the adjacent River Suir SAC. It has resulted in damage to a large area of reed-bed habitat but is, as stated, outside the area designated for ecological protection. As to the site itself it is important to note its location, what development has taken place there, its gradient, the boundary caused by both the road and railway line and the type of habitat affected (Common Reed bed). While the loss of any such habitat is regrettable, there are large areas of this habitat type in adjacent sites in the local area - see in this regard the comments in the environmental reports submitted to KCC and which is additionally upheld in the Environmental Impact Statement submitted for the N25 Waterford by-pass in 2001 (in terms of the habitats of interest) (Already Forwarded).

KCC met with the National Parks and Wildlife Service (NPWS) on 20 December 2004 at the Grannyferry site to consider the options. Whilst it is clear that the NPWS does not in any way condone the illegal activity that has occurred at the two sites - and neither does KCC for that matter or any of the Irish competent authorities for enforcement - there are practicalities concerning removal of the material given its nature and as it is not causing significant environmental pollution. The long standing land zoning for development is a long term presumption for these sites as the area is to some extent compromised by its boundaries through the construction of the road and rail line, and its non designation for preservation.

The conclusion from this meeting is that there would appear to be merit in putting forward a proposal, which would achieve an ecological gain for the area through redistribution, rather than a removal of some of the waste material deposited within the site boundaries. The following possibilities are being considered for conditioning on the landowners as part of a retrospective permitting of the two sites:

- Remaining wetland area along Granny River behind Redbridge Station to be connected hydrologically to the remaining wetland on the illegal dumping site.
- 5m strip of wetland restored along the road boundaries and also connected.
- Hydrological and ecological study of remaining wetlands on both sites with a view to developing a management plan for their retention, protection and enhancement.
- Also assessing the viability of the size of the remaining wetland and whether there is any ecological benefit in increasing its size.

The Plan-as submitted by the consultants (see Appendix 2a – to follow in hard copy) and the updated situation on this case as of October 2005 is as follows:

██████████ have now submitted their proposals to Kilkenny CC following a meeting with the council and a series of consultations with relevant stakeholders (see Appendix 2b - letter of 12 October 2005 in PDF format). The Commission might like to note that a planning application is necessary for the remediation in question and it is the intention that a planning application-together with an environmental impact statement and a waste permit application will be submitted within the next 4 weeks to KCC.

- **Dunsink Landfill, Fingal, Co. Dublin** **P2002/4483**

The European Commission was informed of the position in relation to this site on December 2004, which was as follows:

### **Threat to the environment and regularisation of the situation**

- A waste licence, register no. 127-1, was granted to Fingal County Council on 9<sup>th</sup> January 2004. This licence is for the closure and restoration of areas previously landfilled at Dunsink Landfill, aka a Dunsink Civic Amenity, Dunsink Lane, Finglas, County Dublin. Fingal County Council is required to restore and remediate the facility and to install infrastructure to monitor and manage landfill gas and leachate emissions and to cap previously filled areas using inert materials. The works are required to be completed within three years of the date of grant of this licence. The licence also allows for the continued operation of the civic waste facility (Bring Centre), green waste composting on site and the acceptance of white goods.
- Fingal County Council must manage and operate the facility to ensure that the activities do not cause environmental pollution. Fingal County Council is required to carry out regular environmental monitoring and submit all monitoring results, and a wide range of reports on the operation and management of the facility to the Agency.
- The licence sets out in detail the conditions under which Fingal County Council will operate and manage this facility.
- The EPA held a meeting with the licensee on 27<sup>th</sup> February 2004 to discuss various issues at the facility.
- The landfill is closed and is no longer being used for the deposition of waste. The Civic Waste Facility at this facility has been closed. The licensee indicated to the Office of Environmental Enforcement that Fingal County Council would not be proceeding with the installation of a composting facility at Dunsink Landfill. These observations were confirmed during a site inspection undertaken on 9<sup>th</sup> January 2004 by Office of Environmental Enforcement staff.
- The landfill must be restored by January 2007 utilising a non-hazardous landfill specification for the final cap. The licensee is required to submit a Restoration and Aftercare plan during July 2004 and to submit reports on the current status of and proposals to meet the licence requirements with respect to leachate, surface water and landfill gas management. These measures should substantially reduce this environmental impact of this facility.
- As required by waste licence register no. 127-1, environmental monitoring by the licensee has commenced at the facility. The licensee must also undertake continuous monitoring of leachate levels. The EPA also plan to monitor groundwater, surface water and leachate at the facility annually.
- The Office of Environmental Enforcement will undertake inspections and audits of the facility as part of the enforcement of the waste licence.

### **Current position**

Further capping works have been agreed and commenced in September 2005. Various additional landfill gas and leachate control infrastructure has been installed over the last 12 months and further measures are planned.

These works will lead to further improvement in the water quality of Scribblestown Stream.

The main aspects of the Restoration and Aftercare plan have been submitted by FCC and agreed with the EPA.

### **Sanctions against the offenders**

Not applicable

#### • **Ardristan, Tullow, Co. Carlow**

P2002/5228

The Commission was informed of the situation in this case on 25 January 2005, which was as follows:

### **Site Remediation**

As indicated to the Commission in my authorities letter of 7 August 2003, following High Court proceedings against [redacted] deposition of construction and demolition waste ceased and Carlow County Council (CCC) was considering the best practical environmental option to pursue. CCC served a notice under section 55 of the Waste Management Act 1996 on [redacted] requiring [redacted] inter alia, to submit a report to the council outlining his proposals to mitigate or remedy any effects of the said dumping. [redacted] did not initially reply to the notice. However, following an ultimatum issued by the council concerning immediate legal action, he did reply on 27 July 2004 stating that he had hired an environmental consultant to prepare the required report. CCC considered the reply to be not specific enough and following a further request for details, and again the threat of High Court proceedings against him, [redacted] has now indicated that his consultants are [redacted] but that he has not yet received their report in the matter. [redacted] has been instructed to address this issue with [redacted]

CCC has separately been in touch with the consultants who have indicated that they expect to provide their report to [redacted] in the coming weeks. CCC would hope to be in possession of it shortly thereafter.

Also, CCC intends to pursue by order under section 58 of the Waste Management Act 1996 High Court action to secure their objectives in relation to remediation in the event that there is further non-cooperation by [redacted]. These High Court proceedings stand adjourned to the Masters Court until 18<sup>th</sup> January 2005. A copy of the relevant special summons in the matter is attached (already forwarded).

### **The question of regularisation of the waste**

This issue will be pursued in tandem with the consideration of the risk assessment report. Officials from the Office of Environmental Enforcement visited the site on 19 October 2004 and will await further developments

concerning the risk assessment report prior to determination of the appropriate permit to apply.

### **The current situation**

In view of the non-co-operation of the defendants in this case Carlow County Council went to the High Court and on 15 June 2005 received an order under section 58 of the Waste Management Act 1996 directing that a Risk Assessment Report – as set out in an affidavit - be undertaken by 1 October 2005 - copy of the affidavit is attached as Appendix 3 - for information. The case went before the High Court on 10 October 2005 and was adjourned until 11 November 2005.

- **Murphy's Rock, Blackpool County Cork** **P2002/5266**

The European Commission was informed of the position on 10 January 2005 on the position regarding this site as follows:

The situation in this case is that there has been ongoing action by Cork County Council (CCC) in order to address the issue of site remediation, risk assessment, enforcement and regularisation of the waste, and the updated position following my authority's communication of 26 September 2003 is as follows.

### **Site remediation**

Following the issue of a notice under section 55 of the Waste Management Act (WMA) by CCC on 16<sup>th</sup> September 2003 requiring measures to be undertaken by 14 October 2003 which included:

- Securing the site from any further disposal activity,
- The removal of all waste (other than soil and stone) from the site, which would then be sent to appropriate recyclers or a duly authorized waste disposal facility.
- Regrading and top soiling the material in the area identified in a manner that would be consistent with the levels/gradients of the surrounding landscape and to the satisfaction of CCC,

The following is an account of the principal actions and outcomes in that regard.

- ✓ On the 15<sup>th</sup> October 2003, a site inspection carried out by CCC confirmed non-compliance with the Section 55 notice and prosecution was recommended under section 55(8) of the WMA.
- ✓ On the 30<sup>th</sup> December 2003, remediation proposals were received by CCC. Having examined the proposals, CCC on 12<sup>th</sup> January 2004, requested further information in relation to the proposals submitted.

- ✓ Following on from a meeting on 15<sup>th</sup> January 2004 between officials of CCC and a consultant for the landowner, a response to the further information request was received on 20<sup>th</sup> January 2004.
- ✓ Further site meetings and inspections in 2004 were attended by officials of CCC and a consultant for the landowner on foot of further information requests dated 16<sup>th</sup> February; 30<sup>th</sup> March; 29<sup>th</sup> April; and 10<sup>th</sup> June. Responses to the requests were received by CCC on 11<sup>th</sup> March; 4<sup>th</sup> May; 27<sup>th</sup> May; and 18<sup>th</sup> June respectively. During this time, meetings between officials of CCC and a representative for the [REDACTED] took place in order to clarify concerns in relation to the site.

#### **Confirmation of removal of material**

CCC, on 20<sup>th</sup> July, received confirmation that approximately 100 tonnes of material had been removed off-site to a permitted site. The material included concrete blocks and brick; hardcore steel reinforcement; and metal cladding.

#### **Soil sample analysis**

In addition to tests carried out a number of years ago which showed no contamination, CCC requested that a further set of trial pits and soil samples be taken to ensure that no further contamination had taken place since the earlier tests. The trial pits and samples commenced on 14<sup>th</sup> June and copies of test reports, as analysed by the UK-based laboratories [REDACTED], were received by CCC on 21<sup>st</sup> July 2004.

#### **Quantity of waste**

In the "Letter of formal notice" from the Commission dated 3<sup>rd</sup> April 2003, it was estimated by the complainant that 300,000 tonnes of material had been placed at the site. However, from site investigations, CCC estimate that not more than 30,000 tonnes of material was placed at the site. An aerial photograph of the site taken in July is attached for information.

#### **Current position on site**

Following on from the most recent site inspection on 5<sup>th</sup> November, CCC wishes to confirm that the works as set out in the remediation plan that was submitted on behalf of the landowners, have been on going for some time. These works are currently nearing completion with regrading and top soiling of material taking place to the satisfaction of CCC. In addition, following on from investigations at the site, CCC wishes to confirm that trial pits and sampling did not identify any environmental risks. CCC continues to closely monitor the site.

#### **Formal response to the section 55 notice**

The consultants for the site owners have now submitted their formal response to the Section 55 notice. It is quite clear from the response - copy attached - that there is no hazardous material on the site (a half sheet of broken corrugated asbestos roof sheeting which was uncovered was removed) and the tests carried out do not reveal any threat of environmental pollution. CCC

is assessing the response and will consider what further action, if any, is required to bring closure to this case in January 2005

#### **District Court hearings**

In response to the recommendation by CCC for prosecution under Section 55(8) which followed the site inspection of 15<sup>th</sup> October 2003, a date for a court hearing was fixed for 28<sup>th</sup> January 2004, which at the request of legal representatives of the landowners was adjourned on a number of occasions subsequently given developments in relation to the compliance with the section 55 notice. The case is again scheduled for January 2005 and CCC will decide on whether to continue with this action depending on its final analysis of the consultant's report - see above.

#### **Site regularisation**

CCC is satisfied that compliance with the section 55 notice will adequately deal with the requirements of the framework waste directive in this regard."

#### **Updated situation October 2005**

This is a site where a large volume of C&D waste was used to raise the level of ground adjacent to a football playing pitch. While it was an unauthorised activity it only presented an environmental risk in terms of its visual appearance. CCC has carried out a large number of trial pits and found the material to be inert. The matter is still before the courts for non-compliance with a notice served under section 55 of the Waste Management Acts 1996 to 2003.