



## **Waste Management and IPPC Licensing**

### ***Aspects of Licensing Procedures: Objections and Oral Hearings***

This document does not purport to be and should not be considered a legal interpretation of the provisions and requirements of the Waste Management Acts 1996 to 2010, the Environmental Protection Agency Acts 1992 to 2007, and supporting regulations.

**ENVIRONMENTAL PROTECTION AGENCY**  
An Ghníomhaireacht um Chaomhnú Comhshaoil  
PO Box 3000, Johnstown Castle Estate, County Wexford, Ireland  
Telephone: +353 53 9160600 Lo Call: 1890 33 55 99 Fax: +353 53 9160699  
Email: [info@epa.ie](mailto:info@epa.ie) Website: [www.epa.ie](http://www.epa.ie)

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### ***Aspects of Licensing Procedures: Objections and Oral Hearings***

Published by  
Environmental Protection Agency, Ireland

Authors: Fiona McCoole, Ana Bolger and Yvonne Clooney

ISBN 978-1-84095-374-9 01/05/500

Price: €2

**Revised Version 2010**

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## 1. Introduction

**1.1** The Environmental Protection Agency (EPA) has responsibility for the licensing of significant waste disposal and recovery activities as provided for in the Waste Management Acts 1996 to 2010 and large-scale industrial and other processes as provided for in Part IV of the EPA Acts 1992 to 2007.

**1.2** The EPA is required to examine and determine licence applications, having regard to the provisions of the Waste Management and EPA Acts and any supporting regulations.

**1.3** A Waste or Integrated Pollution Prevention and Control (IPPC) licence is a single integrated licence, which deals with emissions to all environmental media, and the environmental management of the facility. All related operations carried on by the applicant in, on, or adjacent to the facility are taken into consideration.

**1.4** The procedures for dealing with licence applications are set out in regulations made by the Minister for the Environment, Heritage and Local Government. These regulations outline the procedures that the EPA, the applicant and any other person must follow in relation to the licensing process. The key legislation governing waste and IPPC licensing is set out in *Appendix 1* of this publication.

**1.5** Applications are made to the EPA on a somewhat similar basis as those submitted to the planning authority for planning permission. There are two stages in the licence application process. The first stage is from receipt of the application by the EPA to issue of a proposed decision/determination (PD) on the application. The second stage of the process, the objection stage, begins on the date of issue of the PD and ends with a final decision on the application. Any person making an objection may request an Oral Hearing of the objection.

**1.6** Waste and IPPC licence applications are available for public inspection at EPA Headquarters, at Johnstown Castle Estate, County Wexford. In the case of a waste licence application submitted by a local authority, a copy of the application is also available for inspection at their Headquarters. Applications and associated documentation is available for viewing on the Agency's website at [www.epa.ie](http://www.epa.ie).

**1.7** The EPA is required to determine an application as promptly as possible after receiving a complete application and any necessary supporting documentation. In the case of an IPPC application, the EPA is required to issue a PD within eight weeks of the date of receipt of a complete application and any further information the EPA considers necessary. Any person can make a submission in writing to the EPA or online under the relevant application at [www.epa.ie](http://www.epa.ie) in respect of an application for a licence. The EPA will accept submissions after receipt of the application and will take them into consideration prior to making the decision on the PD. Online submissions can be made electronically under the relevant application at [www.epa.ie](http://www.epa.ie). There is no charge or fee for making a submission. The applicant, the relevant local authority, certain bodies specified under the legislation (such as An Taisce), and any person who made a submission are all notified of the PD.

**1.8** The EPA has published general guides to the licensing procedures. This publication expands on those general guides to provide information on a specific aspect of the licensing process: namely, the procedures to be observed for objections and Oral Hearings.

## 2. Objection Stage

The following paragraphs outline the procedures relating to the lodgement of an objection to a proposed decision/determination (PD).

Lodging an objection is subject to certain procedural rules that must be observed at all times. In the case of a waste licence application, these are set out in Part V of the Waste Management Acts 1996 to 2010. In the case of an IPPC licence application, please refer to the provisions of Part IV of the EPA Acts 1992 to 2007.

Licensing regulations made from time to time by the Minister for the Environment, Heritage and Local Government support the various provisions of both of these Acts, and should be read in conjunction with the Acts.

### ***Set periods for objections***

**2.1** An objection can only be made within the appropriate period. This period is set in both of the above referenced Acts at 28 days commencing on the date of the EPA's notification of its PD on the application. The applicant or any other person may make an objection.

If the last day for receipt for objections is a Saturday, a Sunday, a Public Holiday or any other day on which the Headquarters of the EPA is officially closed, an objection will be accepted on the next working day.

Note that when calculating the appropriate period, the days from 24 December to 1 January inclusive shall be disregarded.<sup>1</sup>

Where no valid objection is received within the appropriate period, the EPA must issue the final decision as and in accordance with its PD.

### ***Making an objection***

**2.2** An objection must be made either by sending the objection by prepaid post to EPA Headquarters or by leaving the objection with an employee of the EPA at its Headquarters at Johnstown Castle Estate, County Wexford during office hours, i.e. 09:00–17:00 h Monday to Friday. Objections can also be made online at [www.epa.ie](http://www.epa.ie), within the appropriate timeframe. It is important to note that the EPA has no discretionary power with regard to the acceptance of objections that are received outside the appropriate period for objections. A person who proposes to lodge an objection should ensure that the objection is complete in all respects and that it is posted, delivered or submitted online to the EPA in good time so that it is received by the EPA within the appropriate period.

<sup>1</sup> This applies to all applications, in accordance with the Protection of the Environment Act, 2003.

***What is a valid objection?***

**2.3** The EPA can consider only valid objections. For an objection to be valid, it must:

- be in writing;
- state the name and address of the objector;
- state the subject matter of the objection;
- state in full the grounds of the objection and the reasons, considerations and arguments on which they are based;
- be accompanied by all the documents that the objector considers necessary and appropriate;
- state the register reference number of the application for the licence; and
- be accompanied by the fee specified in the legislation (see *Appendix 2* of this publication).

The EPA acknowledges all valid objections. Those which are received after the appropriate period, or do not meet the above criteria, are returned to the sender.

An objection can be withdrawn at any time prior to consideration by the Board of the Agency.

***Documents accompanying an objection***

**2.4** An objector must ensure that all documents, particulars or other information relating to the objection, which the objector considers necessary or appropriate to the case being made, are attached to the objection. This is particularly relevant where reference is being made in the objection to documentation which is crucial to the grounds of the objection but which is not already included in the licence application submitted to the EPA.

***Elaboration on an objection***

**2.5** An objection must be comprehensive when it is submitted. Once it has been lodged with the EPA, an objector cannot elaborate further in writing on the grounds for the objection. The EPA cannot consider any such additional material.

***Circulation of objections***

**2.6** Every valid objection received by the EPA is copied and circulated to the applicant and all other persons who have lodged valid objections. Only the applicant and any person who made an objection are entitled, but not required, to make a submission to the EPA in respect of anyone else's objection. All such submissions must be made to the EPA within one month of the date of circulation of the objections. Submissions received outside this period cannot be considered. Once a submission is made, no further elaboration or further submission is allowed other than as detailed in the following paragraphs of this section.

Special provision is made in the legislation which allows the EPA, if it considers it appropriate in the interests of justice, to invite an objector or an applicant to make a submission other than that referred to in the previous paragraph, within a period, specified by the EPA, concerning any matter that has arisen in relation to an objection.

In certain circumstances, it may be necessary for the EPA to request an objector to submit, within a period specified by the EPA, certain additional documentation, particulars, or other information to enable the EPA to properly consider an objection.

In certain cases, the EPA may decide that additional matters that have not been raised in any objection should be considered by it. In such cases, the EPA will notify the applicant, and all other persons who have lodged valid objections, of its intentions and of the matters it proposes to take into consideration. Where this happens, each person notified is allowed to make a written submission, within a period specified by the EPA, in relation to such matters.

### 3. Consideration of Objection

#### **Consideration of an objection**

**3.1** The EPA will examine each objection in detail and assess the specific grounds and issues raised by the objector. It is therefore very important that an objection be as specific as possible, to allow a thorough assessment to be undertaken.

The EPA will carry out the assessment of an objection as quickly as possible and will take all steps necessary to ensure that there are no avoidable delays in considering the objection.

The EPA is required to give its decision at the latest within four months from the date of the end of the appropriate period. However, if it appears to the EPA that, because of particular circumstances, it would not be possible to give its decision within the four-month period, the EPA will notify all parties to the objections in writing, stating the reasons for extending the period for consideration of objections and indicating a date by which a decision will be made.

#### **Decision**

**3.2** Having examined and assessed all objections, the EPA issues its final decision as set out at 5.4 below.

## 4. Oral Hearings

### ***Making a request for an oral hearing***

**4.1** An Oral Hearing can only take place where a valid objection has been received. Only a person making an objection can request an Oral Hearing of the objection. There is a fee for an Oral Hearing request, which is set out in the legislation (see *Appendix 2* of this publication). The EPA cannot consider a request for an Oral Hearing if it is not accompanied by the fee or received within the appropriate period. Legislation prohibits any such consideration.

### ***Set periods for requesting an oral hearing***

**4.2** The Waste Management Acts 1996 to 2010 and EPA Acts 1992 to 2007 specify the appropriate period during which an objector may make a request for an oral hearing of an objection. The period for making a request for an Oral Hearing of an objection is identical to that which applies to making an objection, i.e. within 28 days, commencing on the date of the EPA's notification of its PD on the application. If the last day for receipt of a request for an Oral Hearing of an objection is a Saturday, a Sunday, a Public Holiday or any other day on which the Headquarters of the EPA is officially closed, a request will be accepted on the next working day.

When calculating this period, the days from 24 December to 1 January inclusive are disregarded.

A request for an Oral Hearing can be withdrawn at any time prior to consideration by the Board of the Agency.

### ***Decision to hold an Oral Hearing***

**4.3** The decision to hold an Oral Hearing rests solely with the EPA, which has absolute discretion in this matter irrespective of whether or not a request has been made for such an Oral Hearing. While there are no specific statutory criteria that govern the decision to hold an Oral Hearing, matters that influence the EPA in this regard would include:

- new issues not previously raised that are specific to the location or the development;
- the sensitivity of the location or local environment;
- whether it is a matter of national or regional importance;
- the scale or complexity of the development;
- significant new information.

The EPA may decide, during the consideration of an objection, and where a request for an Oral Hearing has not been received, to use its discretionary power to hold an Oral Hearing to examine the objections raised to the PD. If the EPA decides not to hold an Oral Hearing, it will give notice in writing of its decision to the person who requested the Oral Hearing.

The following paragraphs set out the procedures to be followed in cases where an Oral Hearing is held.

***Procedures prior to oral hearing***

**4.4** If the EPA decides that an Oral Hearing is warranted, it will appoint a person or persons to conduct the Oral Hearing. The person/s appointed is/are given statutory powers under the Waste Management Acts 1996 to 2010 and the EPA Acts 1992 to 2007 relating to the conduct of the Oral Hearing, including deciding the order of appearance of persons to be heard. The EPA will advise the applicant, the local authority (where relevant), and those who made valid objections, at least seven days in advance, of the date and venue of the Oral Hearing, unless a shorter period of notice is accepted by all parties.

The EPA may, at any time, prior to the opening of the oral hearing, alter the date or venue, giving at least seven days notice of the new date or venue, unless all parties accept a shorter period of notice.

***Format of an Oral Hearing***

**4.5** Oral Hearings convened by the EPA:

- are conducted without undue formality;
- provide an appropriate forum for all parties to an objection to orally express their objections and concerns about the PD; and
- provide the applicant, an objector and the local authority (where relevant) with the opportunity to appear in person and/or to be represented by another person.

***Venue for an Oral Hearing***

**4.6** The EPA will try to secure a venue for the Oral Hearing with a view to minimising any inconvenience to those involved. The selected venue must accommodate all those involved in the Oral Hearing and, as far as is reasonably possible, the general public who may wish to attend.

***Attendance at an Oral Hearing***

**4.7** Any person who lodged a valid objection, as well as the applicant, and the local authority (where relevant), have an automatic right to attend and to participate fully at an Oral Hearing. An Oral Hearing may not be delayed or cancelled on the grounds that any one or more of the parties fails to

attend.

All Oral Hearings are open to the public. Members of the public can participate in the proceedings where they have lodged a valid objection. However, any other member of the public who wishes to participate in the proceedings can only do so with the approval of the Chairperson. Any such request can only be made to and considered by the Chairperson during the course of the Oral Hearing.

The Chairperson shall permit an objector, the applicant, or an employee of the local authority (where relevant) to appear or be represented at the Oral Hearing, and where the Chairperson considers it necessary shall give notice requiring such person's attendance. A notice may also require the production of specified documents for the Oral Hearing. The notice requiring the attendance of a person should not be confused with the general notification that an Oral Hearing is to take place.

It will not be necessary for a person who has been issued with a notice requiring attendance and whose ordinary place of residence is more than ten miles from the venue of the Oral Hearing to attend, unless the EPA pays for or tenders the attendance expenses. Where such expenses are recouped, that person must not willfully neglect or refuse to attend.

***Participation at an Oral Hearing***

**4.8** An Oral Hearing will be conducted, as far as is possible, in non-technical language. No technical expertise or background is therefore required of any objector. The applicant and any other party to the Oral Hearing together with any other person allowed to participate at the Oral Hearing by the Chairperson will be afforded an opportunity to outline their objections. Once this has been completed, all matters raised are open for question or discussion among all parties. The Chairperson will decide whether it is more appropriate to take such questions directly following the presentation by each party or to have an open discussion by all parties.

Any person intending to use equipment such as an overhead projector, a video, a DVD or slides in presenting an objection should notify the EPA well in advance of the Oral Hearing. The EPA cannot guarantee the supply of equipment, so the onus is on the objector to arrange to have this equipment at the Oral Hearing venue.

Prior to the Oral Hearing, the EPA will have circulated the objections to all parties. An objector proposing to present a written submission concerning any other objection lodged with the EPA should ensure that there are adequate copies available for all other parties to examine and comment on during the course of the Oral Hearing. If copies are not readily available, it will not be possible for the submission to be considered until such time as all the parties have received a copy and have been given adequate time to examine and respond to the submission. It is advisable to notify the Chairperson as early as possible before the Oral Hearing that a written submission is to be made in order to avoid delays on the day of the Oral Hearing.

All parties to an objection must provide any documents requested by the Chairperson. Similarly, an officer of a local authority, a sanitary authority, or a planning authority may be required by notice of the Chairperson to supply such information as is specified for consideration at the Oral Hearing. It is the duty of any person issued with such a notice to comply.

In certain cases, the EPA may decide to take into account matters other than those that have been raised by objectors. The EPA will notify all those concerned, i.e. the objectors, the applicant and the local authority (where relevant) of its intentions and of the matters it proposes to consider and will specify a period within which the notified party may make a submission on the matters concerned.

#### ***The Chairperson***

**4.9** The Chairperson may:

- take evidence on oath or affirmation (Any person giving evidence at the Oral Hearing is entitled to the same immunities and privileges as if s/he were a witness in the High Court.);
- adjourn or resume an Oral Hearing (Seven days notice must be given to all parties where it is intended to resume an Oral Hearing that has been adjourned indefinitely.);
- reopen an Oral Hearing on the instructions of the EPA (An Oral Hearing will not be reopened once the report on the has been made to the EPA, unless the EPA considers it necessary.);
- proceed with an Oral Hearing even where parties to an objection have failed to attend;
- require a party to the objection, an employee of a local authority in whose functional area the relevant activity is or will be carried out to attend the Oral Hearing and to produce documents in their control.

## 5. Decision Stage

### **Completion of Oral Hearing**

**5.1** On completion of an Oral Hearing, the Chairperson will submit a report of the Oral Hearing to the Board of the EPA. In this report, the Chairperson must make a recommendation to grant or refuse the licence. Where the recommendation is to grant a licence, the Chairperson must outline the recommended conditions to be attached to the licence.

### **Consideration of report of Oral Hearing**

**5.2** The Board of the EPA must give full consideration to the report and recommendation submitted by the Chairperson of the Oral Hearing before making its decision. It is a matter solely for the EPA to decide whether or not to grant a licence and what conditions should be attached thereto.

### **Period within which a decision is to be given**

**5.3** The period for consideration of objections by the EPA, whether or not an Oral Hearing is held, is limited to four months. However, if it appears to the EPA that it would not be possible to meet this deadline because of particular circumstances related to the issues involved or to any or all of the objections, the EPA will notify all parties to the objections in writing, stating the reasons for extending the period and indicating a date by which the decision will be made.

### **Notification of decision**

**5.4** When the final decision to grant or refuse a licence is made, the EPA will notify and supply a copy of the decision to the applicant, the local authority (where relevant), bodies specified under the legislation, and all those who made submissions or objections. Details of the decision will also be made available on the EPA website, [www.epa.ie](http://www.epa.ie).

Copies of every decision, including the Oral Hearing report, will be made available on the EPA website. Photocopies of decisions and reports to the EPA may be purchased at a reasonable charge.

### **Can a decision be appealed?**

**5.5** Any person can apply to the High Court and seek leave to apply for a judicial review of the validity of the EPA decision in relation to the licence application. In the case of an IPPC licence application, the period is within eight weeks of the date on which the decision to refuse or grant the licence is made. In the case of a waste licence application, the period is two months.

## Appendix 1

### Legislation

The following are the key pieces of legislation containing the statutory provisions that govern waste licensing:

|  |
|--|
| Protection of the Environment Act, 2003 (No. 27 of 2003)                         |
| Waste Management Act, 1996 (No. 10 of 1996)                                      |
| Waste Management (Amendment) Act, 2001 (No. 36 of 2001)                          |
| Waste Management (Licensing) Regulations, 2004 (S.I. No. 395 of 2004) as amended |

\*\*\*\*\*

The following are the key pieces of legislation containing the statutory provisions that govern IPPC licensing:

|  |
|--|
| Protection of the Environment Act, 2003 (No. 27 of 2003)                 |
| Environmental Protection Agency Act, 1992 (No. 7 of 1992)                |
| EPA (Licensing) Regulations, 1994 (S.I. No. 85 of 1994) as amended       |
| EPA (Licensing Fees) Regulations, 1994 (S.I. No. 130 of 1994) as amended |

## Appendix 2

### Objection and Oral Hearing Request Fees

#### (1) Proposed Decision in respect of waste licence application

Extract from Second Schedule (Part II) of the Waste Management (Licensing) Regulations, 2004, as amended.

| (1)        | (2)  | (3)<br>Amount of fee |
|------------|--|----------------------|
| Article 42 | Objection by the applicant or licensee                       | €500                 |
|            | Objection by an authority or body mentioned in article 42(3) | €100                 |
|            | Objection by any other person                                | €200                 |
| Article 44 | Request for an Oral Hearing                                  | €100                 |

\*\*\*\*\*

#### (2) Proposed Determination in respect of IPPC licence application

Extract from of the EPA (Licensing Fees) Regulations 1994 to 2004, as amended.

| (1)             | (2)  | (3)<br>Amount of fee |
|-----------------|--|----------------------|
| Article 8(2)    | Objection by the applicant or licensee   | €253                 |
|                 | Objection by any other person other than a person mentioned in article 8(3) of Regulations | €126                 |
| Article 8(3)    | Objection by an authority or body mentioned in article 8(3) of Regulations                 | €63                  |
| Article 7(C)(2) | Request for an Oral Hearing  | €100                 |