
APPENDIX J

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Our Ref: ES/MMcD 1158/1a

11 June, 2008

Mr Prionsias De Batuin
Development Applications Unit
Department of the Environment, Heritage & Local Government
Dun Sceine
Harcourt Lane
DUBLIN 2

**Re: Waste Water Discharge (Authorisation) Regulations 2007
S.I. No. 684 of 2007
Waste Water Discharge Licence Application
Dundalk Waste Water Treatment Plant & Agglomeration
EPA Reference - D0053-01**

Dear Mr De Batuin,

I am writing on behalf of our client 'Louth County Council'. In compliance with the above-mentioned regulations, Louth County Council submitted a Waste Water Discharge Licence Application for Dundalk Waste Water Treatment Plant & Agglomeration, to the EPA in December 2007. The EPA registered the application as D0053-01. Louth County Council received a *Notice in Accordance with Regulation 18(30(b) Waste Water Discharge (Authorisation) Regulations 2007*, from the EPA, dated 29 April 2008. One section of the notice requires the applicant to engage with the National Parks and Wildlife Service (NPWS) in relation to:

"A determination as to the likelihood of current discharges from the treatment works having a significant effect on a European Site"

The request goes on to state:

Directors: D.A. Downes (Chairman) L.E. Waldron (Managing Director) M.F. Garrick R.F. Tobin
J. Collieran B.J. Downes S. Finlay P.J. Fogarty D. Grehan J.P. Kelly B.M. Mulligan
B. Murray C. O'Keefe F. Renkema E.J. Harrigan (Company Secretary)

Associates: T. Cannon P. Cloonan T. Curran O. Downes B. Gaffney B. Gallagher B. Heaney
B. Hutchinson D. Kennedy J. McCreagh C. McGovern E. McPartlin

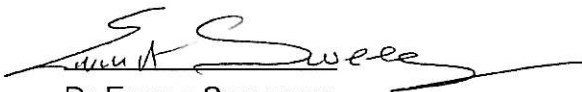
"If the discharges are deemed likely to have a significant effect, an appropriate assessment of the implications for the designated site in view of the site's conservation objectives must be carried out. Any assessment, should it be deemed necessary, shall be submitted as part of the reasoned response to this notice"

We now wish to scope with you the determination as to the likelihood of current discharges from the treatment works having a significant effect on a European Site.

The full application, including all attachments, is available for inspection on the EPA website (www.epa.ie), under 'Waste Water Discharge Licence Applications' (D0053-01). Also, it is our understanding that the NPWS, through the Development Applications Unit (as a listed 'Statutory Body'), should have received a hard copy of the full application from the EPA.

Should you wish to discuss the application, please do not hesitate to contact me.

Yours sincerely,



Dr Emma Sweeney
Senior Environmental Scientist

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An EIS for a WWTP was published in 1991 and certified by the Minister for the Environment under the Planning and Development Acts 1963-90 in 1992. The capacity permitted was 101,000 ppe. The query requests assessment of the requirement for an EIS for an expansion to 125,000 pe.

1. Legal advice indicates there would be no such requirement unless it is determined that the proposed expansion was likely to have significant effects on the environment. Special requirements apply to subthreshold developments in environmentally sensitive areas.

2. *Subthreshold developments*

This development is a subthreshold development. The approval of An Bord Pleanála must be obtained for sub-threshold developments likely to have significant environmental effects on the environment. A local authority itself must submit an EIS for subthreshold development where it considers that it is likely to have significant environmental effects having regard to the criteria in *Schedule 7* of the Planning and Development Regulations 2001 as amended. If the sub-threshold development will be *on or in* a European site and certain other sites of conservation sensitivity designated under sections 15, 16, 17 of the Wildlife Act 1976, as amended, or *on, or in*, a Natural Heritage Area designated under section 18 of the Wildlife (Amendment) Act 2000, or a site subject to a notice under section 16(2)(b) of the Wildlife (Amendment) Act 2000 (i.e. a proposed NHA), articles 120(2) and 120(7) expressly require the local authority (a) to decide whether an EIS is required and (b) to make its decision that the proposed development would *not* be likely to have significant environmental effects available for inspection under article 83. The Board has a residual power under article 120(3) to require an EIS for sub-threshold developments if the local authority has not carried out one where the Board considers it likely to have significant effects on the environment having regard to the criteria in *Schedule 7*. If the Board exercises its power under article 120(3), the local authority is obliged to provide the Board with the information it requests in relation to the sub-threshold development. In practice, the Board will decide whether or not an EIS is required if a member of the public raises the matter¹. Presumably, it would also do this if the local authority asked for a ruling. Although the section states that subthreshold developments must be *on or in* a European site, legal advice is that a

¹ See the following Bord Pleanála decisions on proposed water abstraction schemes in 2003: 091ED 2021 (Hybla) 09/ED 2019 (Rathdangan) and 09 EC. 2020 (Johnstown Bridge) where the Board decided at the request of a member of the public that an EIS was not required for below threshold water abstraction schemes. It also ruled in 091ED 2019 (Rathdangan) that the local authority developer was not involved in project splitting.

subthreshold development which could significantly affect a European site without being on or in it should be subjected to EIA.

3. *Exemptions from the obligation to submit an EIS*

An Bord Pleanála has power under sections 175(8) of the 2000 Act to exempt the developer of a project from the obligation to submit an EIS if "exceptional circumstances so warrant". The Board may exempt a local authority project without being requested to do so². In no case can an exemption be granted when another EU Member State or a State party to the Espoo Convention has indicated that it wishes to make submissions in relation to the effects of the proposed development in that State. Notification of the exemption must be published in *Iris Oifigiúil* and notified to the public and the EU Commission. The Board may impose other requirement in lieu of an EIS and the developer must comply with these. No criteria for determining "exceptional circumstances" are stated. It is suggested that they could comprise cases where the likely significant effects for a project modifying an existing development are not adverse and where delaying a project by requiring an EIS is undesirable in the public interest, for example, when the project is specifically designed to prevent or mitigate pollution. It is unlikely that the Board will use this power extensively. The EPA must be consulted and regard had to its views before any exemption is given for the projects subject to section 72(5)(a) of the Environmental Protection Agency Act 1992. Such projects include a WWTP.

4. The Ministers' certification of the original EIS is for a particular capacity and this is the capacity permitted. It might be argued that an immaterial deviation is permissible but there is a legal risk. The proposed efficiency measures are not covered by the Planning and Development (Strategic Infrastructure) Act 2006.

5. An "appropriate assessment" must be made under the European Communities (Natural Habitats) Regulations 1997 if the proposed development might significantly adversely affect a European Site (widely defined in section 2 of the Planning and Development Act 2000). Habitats considerations are integrated into the development control system for development likely to have a significant effect on a *European* site either individually or in combination with other developments by Art. 29 of the Habitats Regulations 1997, and also by later provisions in the Planning and Development Act 2000 and regulations made thereunder, Art. 29 of the Habitats Regulations provides that where development is proposed which is not directly connected with, or necessary to the management of, a European Site (as defined in section 2 of the Act), but is likely to have a significant effect thereon

² PDA, s.175(8)(a)

either individually or in connection with other developments, local authorities must carry out an “appropriate assessment” of the implications of the proposed development for the site’s conservation objectives. An EIA is deemed an appropriate assessment although a full EIA may not always be necessary. In principle permission may not be given for the development if it would *adversely affect the integrity of the European site* although in making a decision local authorities are obliged under Art. 29(3) to “have regard to the manner in which the development is proposed to be carried out or to any conditions or restrictions subject to which the proposed development is carried out”. This impliedly (and properly) recognises that a development could be designed to obviate adverse effects on the integrity of a European site.³ Provision is made for giving permissions for “imperative reasons of overriding public interest” as permitted by the Directive.

6. If the activity could affect a Natural Heritage Areas or a proposed NHA under section 12 of the Wildlife Act 1976,⁴ local authorities, Works are obliged to consult with the Minister responsible for wildlife conservation (currently the Minister for the Environment) before determining any matter or doing any thing which is, in his or their opinion, or is represented by the Minister to them, to be likely or liable to affect, or to interfere with, the suitability for a nature reserve or a refuge of land to which orders under sections 15,16,17 or a section 18 agreement apply, or Natural Heritage or notified proposed Natural Heritage Areas⁵ and to take all practicable steps to avoid or minimise such effect or interference. *Locus standi* to enforce this obligation is apparently wide.⁶ This obligation probably requires local authorities to take proactive measures to avoid interference with protected areas.⁷
7. Since the proposed activity is a subthreshold EIA activity, an inquiry will have to be made and recorded into whether or not it is likely to have significant effects on the environment. If it is, an EIS is required for it.

³ See *World Wildlife Fund-UK and RSPB v Secretary for State for Scotland* [1999] *Env. LR* 632.

⁴ As amended by Wildlife (Amendment) Act 2000, s.24.

⁵ NHAs and sites notified under s.16 (2)(b) of the Wildlife (Amendment) Act 2000 were added under the 2000 Act, s.24.

⁶ In *Murphy v Wicklow County Council*, Supreme Court, unreported, 2 December 1999, the Supreme Court held that the plaintiff, an eco-warrior who had determinedly defended a wildlife reserve against the construction of a motorway, had *locus standi* to enforce it in the “exceptional” circumstances of the case.

⁷ Per Denham J. in *Murphy v Wicklow County Council*, Supreme Court, unreported, 2 December 1999.