

Fiona Marshall  
Secretary to the ACCC  
UN Economic Commission for Europe  
Palais des Nations  
1211 Geneva 10  
Switzerland

20 May 2021

Dear Ms. Marshall,

**Re: Communication concerning compliance by Ireland with articles 5 and 6 of the Convention with respect to Dumping at Sea Permits (ACCC/C/2016/139)**

Diving Ireland (formerly trading as the Irish Underwater Council) greatly appreciates the opportunity afforded it to address the questions raised in your communication of 26 March 2021. It is hoped that the responses will assist the Committee in preparing its findings on this communication.

**Questions to the communicant:**

**4. Please provide the latest version of the Environmental Protection Agency's Dumping at Sea Register.**

Please see Appendix 1a and Appendix 1b:

- Appendix 1a is the list of DAS permits as it actually appears on the EPA website.
- Appendix 1b is the list of DAS permits that the EPA gives if you click on the link to "Dumping at Sea Register".

There is a discrepancy between the two EPA data sets.

**5. For each of the permits listed in the Dumping at Sea Register, what was the commencement and end date of loading and dumping activities specified in the public notice concerning the permit application? Please provide your reply in the form of a table, with columns setting out (i) the DAS permit reference, (ii) the start and end date of the dumping activities as granted in the permit, (iii) the start and end date of the dumping activities as stated in the public notice.**

Please see Appendix 2. The appendix includes three additional data sets:

- Applicant name
- The dates for the permit as requested in the application form.
- The dates across which activities actually occurred, as these sometimes vary from all of the other dates and would appear to be important additional information.

*6. For which of the permits in the Dumping at Sea Register issued since September 2012 have loading and dumping activities been carried out but the required two-week notice before commencing activities are not available on the EPA website? For any permits whose commencement notices are not available on the EPA website, please indicate whether those particular notices are accessible via the public computer at the EPA's regional offices.*

Please see Appendix 3.

It must be noted from review of Appendix 3 that at least fifteen DAS permits do not have Annual Environmental Reports (AER) uploaded to the EPA website. This is the most basic piece of information required for any oversight of DAS permits by the public or other interested parties. It is a condition of ALL dumping at sea permits that the AER must be submitted in electronic format to the EPA no later than the 31<sup>st</sup> March of the following year. The AER must contain information on all loads dredged and dumped. Therefore, without access to the AERs, it is not possible to know if any dredging and dumping occurred in a given year (bearing in mind that this tends to be an intermittent activity) and, if the activity has occurred, across which dates. It is therefore not possible to know if a notice should have been issued and the required date of issue.

*7. Which of the permits in the Dumping at Sea Register have to your knowledge been amended since September 2012 but the content of the amendment is not available on the EPA website? For any amendments which are not available on the EPA website, please indicate whether those particular amendments are accessible via the public computer at the EPA's regional offices.*

It is noted that, by the very nature of such acts, it is generally impossible to identify occasions when conditions of a permit have been amended but where there is no documentary evidence to show that such a change has occurred. However two examples have been identified:

1. S0021-02 Port of Cork Company. Condition 3.1 of DAS permit S0021-02 states that "All loading and dumping activities shall be completed by 31<sup>st</sup> March 2019". Dredging and dumping continued until at least 10 December 2019, based on the marine mammal report for the 2019 AER. Curiously, the last load in the register for 2019 was 30 Apr 2019 – it is unclear why the load register for 2019 does not include work undertaken between September and December 2019. There are no documents relating to this substantive change to the conditions of the DAS permit on the EPA website. There is no communication from the permit holder to the EPA to request an extension to the permit, nor any documentation relating to an agreement between the applicant and the EPA to extend the time limit of the permit.

There is no record of enforcement action by the EPA taken against the permit holder for breaching the conditions of the permit. Further, there is no documentary evidence that the EPA has taken enforcement action against the permit holder for failing to provide a complete register of all loads of material that was dredged and dumped at sea.

2. S0024-01 Dublin Port Company (DPC). On 29 June 2018, DPC received a warning letter under Section 152 of the Planning and Development Acts 2000-2016 from Dublin City Council Planning Enforcement with regard to An Bord Pleanála's decision reference 29.PA0034. DAS permit S0024-01 was issued on foot of this planning permission. The planning permission included conditions relating to the operation of the dumping at sea permit that DPC would require in order to complete the proposed project. The warning letter related to these specific conditions. Dublin City Council requested that this warning letter be forwarded to the EPA, and this duly occurred. However, this documentation is not available on the EPA website. On foot of this warning, DPC produced an updated Dredging Management Plan, and this also is not available on the EPA website. There is no documentary evidence to confirm that this updated Dredging Management Plan was reviewed by the EPA and subsequently agreed to by the EPA. A change to the Dredging Management Plan would constitute an amendment to a DAS permit.

3. S0024-01 Dublin Port Company (DPC). DPC wrote to the EPA on 11 March 2021 requesting permission to dredge an extra 90,000 m<sup>3</sup> of sediment (the letter is available on the EPA website and a copy is attached for convenience as Appendix 4). DPC claimed that this was due to infill of the navigation channel due to storms in February 2021. The letter states that the dredging campaign was to be completed by the end of February 2021, a month ahead schedule. Since the dredging was complete on the date of the letter, the letter appears to be a request to add an extra 90,000 m<sup>3</sup> to the total volume as scheduled in the original DAS permit application (and, by extension, also the volume that was agreed by An Bord Pleanála in the planning permission). This would be a very significant amendment to the DAS permit. The EPA website does not include any response to this request from DPC, including whether a copy of the letter was forwarded to Dublin City Council Planning Enforcement. The ACCC is reminded that the Burford Bank dump site that is used by DPC lies entirely within the Rockabill to Dalkey Island Special Area of Conservation, so all projects of this scale proposed to be undertaken within this SAC must be subject to screening for Appropriate Assessment. The original DAS permit was screened for Appropriate Assessment, but if the EPA granted permission for DPC to dredge this extra 90,000 m<sup>3</sup>, then this activity could not have been subject to screening for AA before the expiration of the permit on 31 March 2021.

**8.** *Which of the permits in the Dumping at Sea Register have to your knowledge been the subject of enforcement correspondence since September 2012 but the content of that correspondence is not available on the EPA website? For any such correspondence that is not available on the EPA website, please indicate whether it is accessible via the public computer at the EPA's regional offices.*

As noted in the response to Question 6 above, a very significant number of the DAS permits do not have Annual Environmental Reports (AER) uploaded to the EPA website. Without access to the AERs, it is not possible for the public or any other interested party to fully review the enforcement of DAS permits by the EPA. However, two examples have been identified:

1. S0024-01 Dublin Port Company (DPC). DPC sought planning permission for the redevelopment of the Alexandra Basin and associated works in Dublin Port. Planning permission was granted by An Bord Pleanála in July 2015, reference 29.PA0034. Conditions 1 (a) and (b) of the planning permission 29.PA0034 state:

- a) The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 18<sup>th</sup> day of August, 2014, the submissions made at the oral hearing, and the further plans and particulars received by An Bord Pleanála on the 2<sup>nd</sup> day of April, 2015, except as may otherwise be required in order to comply with the following conditions.”
- b) All environmental mitigation measures set out in the environmental impact statement, Natura impact statement, and associated documentation submitted with the application, the further information responses, and at the oral hearing shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

DPC submitted extensive information regarding the proposed dredging and dumping activities that would be required for the proposed project. Planning permission was therefore granted pursuant on the applicant adhering to the details of the dredging and dumping as submitted in the planning permission application, with these details necessarily being replicated in the subsequent application for the DAS permit from the EPA. The Irish Underwater Council (now trading as Diving Ireland) undertook a review of the dredging and dumping logs submitted by DPC and noted that the rate of dumping exceeded the rate that was submitted to both An Bord Pleanála for planning permission and the EPA when applying for a DAS permit. This issue was raised with Dublin City Council Planning Enforcement who subsequently issued a warning letter to DPC on 29 June 2018. Dublin City Council forwarded this letter to the EPA so that the EPA could open the necessary enforcement file. This file is not available on the EPA website.

2. DAS permit S0024-01, issued to Dublin Port Company (DPC), was subject to a further enforcement action due to a complaint from a member of the public in January 2018 regarding failures to fully implement all of the measures contained in the 'Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters'. Adherence to these guidelines is a requirement of Condition 4.5.3 of DAS permit S0024-01, which brings into effect Condition 8(a) of the planning permission reference 29.PA0034. The EPA responded by email to the complainant *“Having reviewed the further information received, the EPA has issued a notification of non-compliance to Dublin Port Company in relation to condition 4.5.3 of the permit for failure, on this occasion identified, to implement all of the measures contained in the 'Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters'. The EPA may consider further enforcement action and will continue to review the matter to assess compliance with the requirements of the permit.”*

This non-compliance was logged in the Complaints Summary of the 2019 AER (i.e. only a limited summary of the non-compliance is available), but the full nature of the complaint itself, the notification from the EPA to the permit holder, the response from the permit holder (if any) to the EPA, and the response of the EPA to the complainant (i.e. the email quoted above) are not available on the EPA website.

Questions to the communicant numbers 6, 7 and 8 request details on whether the information sought is available on the public computers at the EPA regional offices. Due to the current Covid 19 restrictions, all EPA offices are currently closed to the public. Therefore, the public computers could not be accessed. An AIE request has been submitted to the EPA in order to obtain the further information requested by the Committee. A copy of this AIE request is attached as Appendix 5.

Diving Ireland re-iterates its gratitude for the opportunity to address the questions raised by the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rory Keane', with a stylized flourish at the end.

Rory Keane

Company Secretary

Diving Ireland