

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

19 October 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)

As was indicated in our letter of 23 June 2021, there were a number of documents of interest required to address issues raised in your communication of 26 March 2021 that were not available on the EPA website. Furthermore, due to the Covid 19 situation, EPA offices continue to be closed to the public so the hard copy document records could not be examined in person. As a result, Diving Ireland submitted an Access to Information on the Environment (AIE) request to the EPA to source these records. The response from the EPA has been received and so a finalised response to the questions raised in your correspondence of 26 March 2021 can be prepared.

Questions to the communicant:

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

This information was returned to the ACCC with the initial response from Diving Ireland, dated 20 May 2021.

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.

This information was returned to the ACCC with the initial response from Diving Ireland, dated 20 May 2021.

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.

Appendix 3 of the initial response from Diving Ireland, dated 20 May 2021, included a list of permits for which commencement notices could not be located on the EPA website. The AIE response from the EPA contained copies of emails and hard copy letters for a number of these permits, and links to pages on the EPA website with soft copies of commencement notices for the majority of the permits. A full review of every dredging campaign for every permit has now been completed and is attached as Appendix 1.

In reviewing Appendix 1, it is apparent that for the majority of DAS permits the correct 14-day notification of commencement was given and records are available. However, issues regarding the notification procedure were identified for the following DAS permits:

Shannon Foynes (S0009-02). To date, this permit has been used for at least 45 separate dredging campaigns, with the required 14-day notification being given on only two occasions. For seven campaigns, the Annual Environmental Reports (AER) indicate that dredging took place, but no notifications are available at all. It is noted that this port submits to the EPA in advance a schedule for the proposed dredging for each year, but it is uncertain whether this constitutes notification. The AER for 2018 is not available on the EPA website, so it is not possible to confirm that notifications were given for all campaigns in 2018.

Donegal County Council (S0011-02). This the only permit for which no commencement notices have been provided. The EPA provided a link to the appropriate file, but the file does not contain any commencement notices (file reviewed 27 July 2021):

<https://epawebapp.epa.ie/licsearchdownload/CombinedFileView.aspx?regno=S0011-02&classification=Enforcement>

Port of Waterford (S0012-02). There are a number of instances where notification was given but was less than the required 14 days. There were also five occasions where the AER indicated that dredging had taken place, but where no notification was available. The AERs for 2019 and 2020 are not available on the EPA website, so it is not possible to confirm that notifications were given for all campaigns in these two years.

Port of Waterford (unknown DAS permit). "Emergency dredging" took place in the Port of Waterford between 7 March 2014 and 13 March 2014. There is no DAS permit available on the EPA website that covers this period.

Drogheda Port Company (S0015-03). Only 8 days' notice was given for the dredging campaign that started on 20 February 2020. The AER indicates that a dredging campaign started on 27 November 2020 and no notification is available for this activity.

Shannon Foynes Port Company (S0019-01). Only 4 days' notice was given prior to commencement of dredging on 7 April 2015.

Department of Agriculture, Food & Marine (S0028-01). A commencement notice for the dredging campaign that commenced on 2 November 2019 was uploaded to the appropriate folders on the EPA website on 2 June 2021, which was after Diving Ireland had submitted the AIE request on 19 May 2021. The 2020 AER indicates that four dredging campaigns took place in 2020 with no commencement notices available for any of them.

Wexford County Council, Kilmore Quay (S0030-01). Commencement notice for dredging campaign that commenced on 3 June 2020 was uploaded to the appropriate folders on the EPA website on 2 June 2021, which again was after Diving Ireland had submitted the AIE request on 19 May 2021.

Malahide Marina (S0031-01). Commencement notice for dredging campaign that commenced on 15 January 2019 was dated 8 January 2019 but was only uploaded to the appropriate folders on the EPA website on 2 June 2021, which again was after Diving Ireland had submitted the AIE request on 19 May 2021. The EPA received only 7 days notice in this case, the permit holder stating “*I am writing to request an exemption to Condition 2.4 of the license in order to permit dredging to commence next Tuesday 15th January 2019. This license was received yesterday Monday 7th January 2019 giving insufficient time to allow 14 days’ notice to the EPA. The reason we are requesting this exemption is due to time constraints as set out within the license (all dredging works to take place between December and January of any one year – Condition 3.4) and the necessity for maintaining navigable depths within the marina. We require commencement on 15th January 2019 to complete a 17-day dredging campaign.*”

The links for the last three permits are as follows:

S0028-01:

<https://epawebapp.epa.ie/licsearchdownload/CombinedFileView.aspx?regno=S0028-01&classification=Enforcement>

S0030-01:

<https://epawebapp.epa.ie/licsearchdownload/CombinedFileView.aspx?regno=S0030-01&classification=Enforcement>

S0031-01:

<https://epawebapp.epa.ie/licsearchdownload/CombinedFileView.aspx?regno=S0031-01&classification=Enforcement>

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.

The initial response from Diving Ireland, dated 20 May 2021, indicated three possible occurrences of amendments to DAS permits but where insufficient documentary evidence was available on the EPA website to determine whether amendments had in fact taken place.

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 31st March 2019”. The 2019 AER for

DAS permit S0021-02 includes the register of loading and dumping activities, which records dumping at sea continuing to the 30 April 2019 (i.e. one month beyond the end date of the permit). 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.

The AIE request to the EPA requested documents relating to the extension by one month to the completion date of DAS permit S0021-02. The EPA response to the AIE request included a copy of a letter from Port of Cork Company to the EPA requesting an extension of the DAS permit S0021-01 from 31 December 2018 to 30 April 2019, the letter being dated 20 December 2018 (Doc. No. 23 attached). The EPA also provided a copy of an email response from the Agency giving consent to the request, also dated 20 December 2018 (Doc. No. 24 attached). To be clear, the documents provided by the EPA are for a different permit to the documents requested, though both are for the same port authority.

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. The EPA have confirmed that this letter was received by the EPA on 30 May 2019 (please refer to attached email from Caoimhin Nolan of the EPA to Ray Yeates, President of Diving Ireland). 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. Mr. Nolan confirms in the attached email that the EPA has not reviewed this updated Dredging Management Plan. It is considered that a change to the Dredging Management Plan would constitute an amendment to a DAS permit.

Based on the email from Mr Nolan, the attempted communication between the EPA back to Dublin City Council Planning Enforcement does not appear to have been effective. Dublin City Council requested that the EPA make contact with their investigating officer and the EPA, by their own admission, failed to do this.

3. S0024-01 Dublin Port Company (DPC). DPC wrote to the EPA on 11 March 2021 requesting permission to dredge 90,000 m³ of sediment (the letter is available on the EPA website and a copy was attached as Appendix 4 of the initial response of 20 May 2021).

Diving Ireland sought further information regarding the letter of 11 March 2021 from DPC to the EPA through a separate AIE request. The EPA responded by stating that "*The 90,000m³ of sediment referred to in DPC's correspondence was not in addition to any quantity of sediment specified in permit no. S0024-01. The relevant limitations in the permit in relation to the maximum quantity of sediment that can be dredged/dumped therefore still stand*". The EPA also clarified that "*However, it should be noted that this correspondence [the letter from DPC] was not a request for permission, and it did not require a response from the EPA to either approve or reject it. The correspondence was merely updating the EPA on the permit holder's dredging/dumping activity for the season 4 campaign which had already*

been notified to the EPA under a commencement notice dated 7th August 2020.” It is therefore concluded that there was no amendment to the permit.

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 Diving Ireland’s initial response of 20 May 2021, a very significant number of the DAS permits do not have Annual Environmental Reports (AER) uploaded to the EPA website. Failure to submit the AER is a breach of the conditions of a DAS permit and should be subject to enforcement correspondence in order to ensure these environmental records are available. It is possible that AERs may have been submitted to the EPA, but that the Agency may not have uploaded them. 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 18th day of August, 2014, the submissions made at the oral hearing, and the further plans and particulars received by An Bord Pleanála on the 2nd 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.

Diving Ireland sought further details on this issue via the AIE request, and the EPA response is indicated in Question 7, part 2 above.

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.

Diving Ireland also sought further details on this issue via the AIE request. The EPA were asked for a copy of the non-compliance notification from the EPA to the permit holder with respect to COM007031. The only document provided by the EPA was the one line from the Complaints Summary of the 2019 AER that is noted in the previous paragraph (copy attached, Doc No. 29). The EPA were asked to provide records of any response from the permit holder to the EPA on foot of this non-compliance. The EPA responded by stating that *"the permit holder was not required to submit a response to the Agency"*. This does seem quite remarkable. In most situations, when a non-compliance is raised it is necessary for the non-compliant body to initiate an investigation in order to determine how the non-compliance arose, and detail what measures will be taken to prevent similar non-compliances from happening in the future.

Diving Ireland again expresses its gratitude for the opportunity to address the questions raised by the ACCC.

Yours sincerely,

Rory Keane
Company Secretary
Diving Ireland