

Maire Buckley

From: Ana Bolger
Sent: 02 September 2010 09:48
To: Maire Buckley
Subject: FW: objection

-----Original Message-----

From: Imelda Moran [mailto:imeldamoran@gmail.com]
Sent: 31 August 2010 15:58
To: Ana Bolger
Subject: objection

Dear Ms Bolger,

I wish to confirm that the document lodged yesterday by Anthony Brogan is indeed an objection to the Proposed Decision of the EPA to issue a licence to Shell E and P Ireland Limited.

Imelda Moran

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Maire Buckley

Subject: FW: For Attn of IPPC Licencing Unit -
Attachments: EPA Submission 2010.doc

From: Anthony Brogan `` [mailto:brogan_anthony@yahoo.ie]
Sent: 30 August 2010 11:29
To: Wexford Receptionist
Cc: rossportsolidaritycamp@gmail.com
Subject: For Attn of IPPC Licencing Unit -

To whom it may concern in the EPA IPPC Licencing Unit the community of Kilcommon Parish, Erris Co Mayo hereby present the following :

Submission re Application for a Review of IPPC Licence to Shell E & P Ireland Ltd Reg. No. PO738-02

Please find attached submission stating grounds on which review request is made under Article 15 of the EPA Licencing Regulations 1994-2008

The review request fee has been submitted separately in accordance with the EPA Licencing Fees Regulations 1994-2006

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Submission re Application for a Review of IPPC Licence to Shell E & P Ireland Ltd
Reg. No. PO738-02

SEPIL want to increase by 600% the suspended solids from the refinery site to the salmonid watercourses of the Ballinaboy River and to Carrowmore Lake SAC. This despite the fact that the North Western Fisheries Board 2005 report on Carrowmore Lake stated that:

“Carrowmore Lake has a very high profile as a salmon fishery in the North Western Fisheries Region and has gained a reputation as one of the finest lake salmon fisheries nationally, and it also has a significant reputation internationally”.

The report stated furthermore that:

“Carrowmore Lake has attained a strongly eutrophic class since 2003 and is considered unlikely to reach the status set out in the regulations by 2007”...“from 2006 onwards, both biological and chemical quality will be required to achieve good status under the requirements of the Water Framework Directive”.

What is particularly significant in this is that SEPIL's work on the refinery commenced in 2003 so that from the outset their influence on Carrowmore lake has been detrimental and no preventive action was taken during this period by the EPA or Mayo Co. Council, both of which have responsibility to ensure its protection. In fact under the EPA Act, the EPA:

is required to assess whether Local Authorities are performing their statutory environmental protection functions. .. *[If found deficient,]* .. the EPA can request a report on the statutory performance of the local authority with regard to their environmental responsibilities, offer advice and recommendations to the Local Authorities or direct the Local Authority to carry out a specific task.

What in fact did happen is that, while this damage was going on, an IPPC licence was applied for which took 3 ½ years to process after which the EPA issued a licence with an ELV (emissions limit value) for suspended solids of 5 mg/l, and SEPIL did not challenge this decision. Now SEPIL want this increased by 600%!!!

Section 171 of the fisheries Act makes it an offence to allow the entry of deleterious matter into waters insofar as it may affect fish life directly or indirectly. Furthermore, under European legislation Carrowmore Lake is a Special Area of Conservation which make compliance with the EU Water Framework Directive imperative. In this light the BREF guidelines for oil and gas refineries which SEPIL quote in regard to suspended solids are patently relevant only to highly industrialized areas and cannot apply to this sensitive location.

An Bord Pleanala's effort to be conscientious in this regard was undermined by EPA's failure to comply adequately with ABP's requests. That is to say, the EPA have statutory right of input into planning applications from the outset. In relation to the Corrib Project they chose not to exercise these powers, instead choosing to limit their input to assessing the IPPC Licence Application when it would come before them – this was after planning permission had been given for the refinery.

The precise sequence of events is noteworthy: when the application for the refinery site was appealed to An Bord Pleanala, the Board wrote a 4 ½ page letter to the EPA on 23rd July, 2004 describing in full a) the elevated site, b) the massive excavation and deposition of peat required; c) the receiving environment of protected areas and d) the drainage of the site into the Ballinaboy River and Carrowmore Lake. Against this background the Board requested the EPA to make observations in relation to:-

“The general suitability of the Bellanaboy Bridge site for the proposed construction works and the operation of the proposed gas terminal having regard to the nature and extent of the proposal, the characteristics of the receiving environment and the

Agency's potential to control emissions through an IPPC Licence during the operational phase."

The ABP Inspector, Mr. Des Johnson, replied to the Board in relation to the above:

"The Board consulted with the EPA in relation to the general suitability of the two sites for the development proposed. The Agency ... stated that there was no information before the Agency at this time to indicate that the requirements of section 83 of the EPA Act would not be satisfied insofar as the risk of environmental pollution is concerned. However I submit the Agency's response indicates a generally favourable line of thinking at this stage in relation to the operation of the proposed development and the Board is obliged to have regard to the Agency's views". (Underlining added)

These comments crystalize quite clearly the attitude of the EPA in relation to this project and renders it difficult to conclude that the EPA did fulfill its obligations in relation to this request for observations from ABP. Their neglect is all the more serious as the ABP Inspector for the previous application, Mr. Kevin Moore, had stated after exhaustive examination of the project (377 page report) that the site was unsuitable on **four** separate counts. Finally the EPA failed in their responsibility under the EU IPPC Directive to adopt an Integrated Approach "where more than one Competent Authority is involved".

Again in regard to pollution of Carrowmore Lake SAC, Inspector Des Johnson of ABP stated in his report that:

"The potential for pollution of water resulting from both earthworks and construction and haulage activities is a crucially important consideration. ... The range of European sites which could potentially be effected and the importance of Carrowmore Lake both as an amenity and a water supply are important considerations. ... I submit that the greatest potential for pollution of water during earthworks and the construction phase arises from suspended solids and, to a lesser extent, accidental spillages."

In this light the argument used by SEPIL in looking for a huge increase in suspended solids to Carrowmore Lake SAC is that they were allowed similar quantities of suspended solids during the construction phase. What this ignores is that high levels of suspended solids were allowed during that phase only because it would be of relatively short duration whereas SEPIL is now seeking an on-going sixfold increase. This is abundantly clear from Inspector Des Johnson's grave concerns in relation to the construction phase:

I am concerned that, in the event of excess solids being discharged to the Bellanaboy River, Carrowmore Lake could effectively become a giant settlement pond. It is critical that this does not occur as deposition of peat particles on the floor of the lake would have a seriously detrimental impact and would be difficult, if not impossible, to remove.

This in turn would be compounded by the fact that, as stated in the 2005 NWRFB report, "Carrowmore Lake is large shallow lake ... (with a) mean depth of 1.84 m ...". Winds in Erris can be very strong over extended periods, and can whip up sediment from the bottom making the lake extremely vulnerable.

Had the EPA adopted an Integrated Approach to this project from the outset, as is their obligation under the EU IPPC Directive, then the morass that the Corrib project is today could not have happened. For example, the piecemeal and incremental method adopted by SEPIL, through Tom Phillips Associates, in eliciting agreement from Mayo Co. Co. for relief from requirement for an EIA (letter 3rd March 2010) clearly reflects the kind of predisposition referred to by Inspector Des Johnson, quoted above.

This correspondence skirts the fine line bounding the distinction between intervention and interference in that an application should be a presentation of the facts only and should not contain pleadings in any shape or form. The fact is that because of the very powerful biocide which the new plan requires to be injected into the outflow, the end product going into the environment unmitigated is significantly greater and results entirely as a consequence of the changes being sought by way of review. A new EIA is undoubtedly warranted. On national grounds quite apart from considerations deriving from the OSPAR Convention to which Ireland is a contracting member.

ATEX Directive

The ATEX Directive is concerned with the risks from fire and explosion arising from flammable substances stored or used in the workplace - such as the Ballinaboy site. This directive came into effect on 1st November, 2007 while the IPPC Licence was issued on 12th November, 2007, - eleven days after the Directive became effective. This remarkable coincidence must now be put right since there is an obligation on the EPA under Art. 13 of the IPPC Directive for “***Reconsideration and updating of permit conditions by the Competent Authority***” ... *when ... “new provisions of Community or National legislation so dictate”*.

Bearing in mind that this is an **Integrated Pollution Prevention and Control Licence** any review of the IPPC Licence must include a review of the choice of methanol as a hydrate inhibitor. At the original ABP oral hearing Mr. Kevin Moore established that all off-shore gasfield facilities investigated use glycol rather than methanol. In this light the ATEX Directive has especial relevance in case of explosive catastrophe for the Ballinaboy site which, being on a hilltop in the immediate vicinity of Carramore Lake would result in runoff via the Ballinaboy salmonid river which would threaten the only adequate potable water supply for the 10,000 inhabitants of the Erris region-

Referring again to the ATEX Directive in the context of the current review, employers must prevent the formation of an explosive atmosphere by:

1. **Elimination**:- replacing a flammable substance or process that totally eliminates the risks. (eg *glycol would eliminate the risk posed by methanol*)
2. **Substitution**:- where total elimination is not possible the flammable substance may be able to be replaced with a less hazardous one possibly with a higher flashpoint i.e. less easily ignited. (eg *glycol has a very much higher flashpoint than methanol*)
3. **Control Measures**:- reduce the quantity of the flammable substance used to the minimum ..

The ATEX Directive additionally applies to means of transport intended for use in a potentially explosive atmosphere, as applies to all trucks transporting methanol, condensate, propane etc. to and from the site. Also, requirements that those sites should be protected from ignition sources by selecting equipment and protective systems which meet the requirements of the ATEX Product Regulations are relevant in that there will be an open flame maintenance flare in operation in this refinery site. These issues are being treated by SEPIL as fait accompli whereas all matters are subject to re-assessment in a review, as stated above in reference to Art. 13 of the IPPC Directive.

The risks associated with the use of methanol in this particular situation are enormous as methanol is a listed dangerous substance under Annex 1 of the SEVESO Directive - glycol is not. The SEVESO Directive states that methanol is harmful to the environment - the refinery site is surrounded on all sides by protected SAC sites. It is a fatal poison which even in small quantities can cause blindness. It is highly miscible in water and cannot be fully extracted. If

any one of a number of scenarios outlined at the oral hearings were to happen which resulted in explosion at the site or if there were accidental or terrorist contrived failure of the massive tanks holding tonnes the methanol, Carrowmore Lake would be devastated as a potable water supply. On the morning of 13th November, 2007, when the EPA announced that it had issued the IPPC Licence, Dr. Padraic Larkin of the EPA stated on Mid West Radio that *there was nevertheless a threat to Carrowmore Lake*.

There has been repeated confusion in regard to information supplied at various stages by SEPIL in relation to their annual usage of methanol¹. This was particularly evident during the processing of the Licence, when SEPIL was asked, in a request for further information (Item Eh-1), to state what the annual usage of methanol would be. They replied that it would be 3,100 tonnes. Yet in his the EPA report of oral hearing, Mr. Frank Clinton used SEPIL's lesser estimate of losses of 1,300 tonnes. Mr. Clinton went on to say that SEPIL did not know where the lost methanol disappeared to as, he stated,

“The approach taken in this process of estimate provides for losses of approximately 1,300 of methanol through unknown routes, to unknown receptors”.

Despite this and despite the clear discrepancy in estimated losses the licence that was issued allowed the use of methanol.

Earlier SEPIL had stated in their appeal against the EPA Proposed Determination (21st Feb. 2007) and also through their expert witness, Mr. Philip Webb, that methanol was the main component which resulted in the very high Chemical Oxygen Demand (COD) and Biochemical Oxygen Demand (BOD). Nevertheless SEPIL later stated that the methanol would be lost to the Bord Gais pipeline and not to the waste pipe – despite the fact that methanol being highly miscible in water, would have dissolved in the produced water in the first place. Altogether it begs the question as to why such a high ELV (emissions limit value) for COD and no limit on BOD if the main contributor to oxygen demand – methanol – was not going out in the produced water. Furthermore SEPIL intends to use a TOC (total organic carbon) analyser for measurement of COD and BOD. This is not Best Available Technology, yet they admit that a bio-reactor is BAT, but they are required to use it. IPPC Directive Art 9 stipulates that ELV's shall be based on BAT to ensure a high level of protection for the environment as a whole.

A further dimension of this review relates to the 2nd Nov, 2009 ruling of An Bord Pleanála which makes demands that have very serious implications for the EPA review. Among those demands are:-

- A new Environmental Impact Statement
- A new Quantified Risk Assessment
- An analysis of the condition where the umbilical becomes severed and the control of valves at the wellhead and the subsea manifold is lost...and the risks involved in that circumstance
- A reasoned defense of the proposed Landfall Valve Installation at Glengad

Most of the items listed above such implications for several aspects of the review of the IPPC Licence that the EPA must have regard to them individually and collectively.

One instance in particular relates to thorough re-assessment of the use of the maintenance flare (which is explained in footnote 2 below). The maintenance flare is now intended to be used much more extensively than was envisaged in the original EIS - which in part highlights why a new EIS is required. It requires complete re-evaluation and assessment by Competent Authorities, especially the EPA. Emission limits must be applied to all three flares, but most particularly, to the maintenance flare.

Likewise mercury emissions from the maintenance flare must also now be re-evaluated in light of its usage and possible usage. SEPIL confirmed at the EPA oral hearing that the consultants report (Feb. 2006) by Netcen on mercury emissions from the maintenance flare was based on a mercury concentration of 2.1ug/m³. However, in their response to extra information required by the EPA dated 13 June, 2005, SEPIL admitted that maximum mercury concentration would be 34ug/m³. This information was not included in the Netcen report, which seems extraordinary considering 1,700 % difference. In light of extra usage of the maintenance flare, mercury emissions must be re-assessed and the correct information included in a new EIS.

In respect to noise, third parties were denied their right of access to information re flaring noise right up until the closing days of the EPA oral hearing. The information was not in the EIS and the Inspector of EPA asked no questions throughout the 3 ½ year processing of the IPPC Licence, though EPA is the Agency with sole competency in regard to noise. At the oral hearing the Chairman in turn refused to allow discussion of noise levels, stating that he would deal with the issue. In his report on the oral hearing, the Chairman stated

“The supplementary submissions made towards the end of the hearing in response to enquiries made by the Chairman revealed serious anomalies in the information presented earlier, and revealed that the IPPC Applicant had omitted from the application key information on the very significant matter of noise emissions from all three flares”.

As is the case with flare-related noise, information relating to cold venting of gas was not assessed by the HSA because the information was not in the EIS - consequently it did not conform with the information in the IPPC Application so the EPA was statutorily obliged under their own regulations to reject the application. This did not happen so substantial required information relevant to environmental pollution was missing from the EIS and was this omission was compounded at the oral hearing stage.

All of this is a close replication of the experience described by An Taisce in an appeal to An Bord Pleanála in May 2004, which stated:-

“There is a change of circumstances now applying. Ireland has been subject to proceedings by the EU commission for breach of Council Directive 85/337/EEC as amended by 97/11/EC initiated in July 2003. The grounds include failure to provide for integrated assessment of projects subject to assessment by planning authorities and EPA.

“... there is a change in legislation which must be addressed, namely the provisions of Sections 256 and 257 Planning and Development Act 2000, which allows environmental grounds relating to Waste Licence and IPC applications to be considered by planning authorities. The previous application was made under the Local Planning and Development Act 1963 as amended, the current application PO3/3343 is made under the Planning and Development Act 2000 and did not provide for this.

“The Environmental Impact Statement fails to adequately assess alternative sites and methods of gas processing and landfall. The required information relevant to environmental pollution is missing from the EIS. The EIS does not fully address the discharge from this development to the environment. “

Six years later little has changed.

A fundamental question for the EPA in relation to this matter overall is whether, under their own regulations, they were entitled to grant SEPIL a Review of their Licence? In August, 2008, SEPIL drew up a legal agreement with EIFA (Erris Inshore Fishermen's Association

which guaranteed that the treated produced water would not be discharged through the waste pipe but would go out to the wellhead. This was in contravention of the Licence issued to them less than a year previously, as confirmed by a senior EPA official as it would be illegal for SEPIL to do this. SEPIL consequently requested the EPA to amend the Licence to facilitate them but the EPA decided that under the regulations they were unable to do this. SEPIL next applied for a Review of the Licence as is now under way. SEPIL have shown scant regard for the integrity of the licence previously granted or for the ethical basis of the legal agreement with EIFA or for the authority of the EPA. It has abused all three.

Footnote 1 The HSA is the Competent Authority in relation to safety in the workplace for this SEVESO site. However, as stated above, the EPA have obligations under the IPPC Directive (97/61/EC) Art 7 to have an Integrated Approach where more than one Competent Authority is involved. Mayo Co. Co as the planning authority originally in 2004 invoked the advice of the HSA in respect to Ballinaboy as a SEVESO site, as is the norm. However this was before the ATEX Directive came into effect in 2007 and also before the current fundamental change involving a Landfall Valve Installation (*also under the competency of the HSA*) at Glengad. Consequently the HSA must be report by the HSA to Mayo Co. Co. is now completely out of date and must be updated.

The application for the pipeline is now before the Strategic Infrastructure department of An Bord Pleanala. ABP did request the HSA to attend the oral hearing after it was pointed out to them that the LVI came under the competency of the HSA. The HSA said they could not attend the hearing but gave their views by letter on 19th June, 2009. It states, "The Authority is empowered to give LUP advice to planning authorities only in relation to these establishments and developments in their vicinity concerning major accident hazards at the establishment". In other words, HSA told ABP that it will not issue a safety report to them but only to the planning authority. However, as this is strategic infrastructure, the application went straight to ABP. Here are now four Competent Authorities, acting alone even though the IPPC Directive clearly states that they must co-operate with one another when more than one Competent Authority is involved in order to safeguard man and the environment and the EPA must have regard to that.

Footnote 2 In the closing days of the EPA oral hearing, it was disclosed that a proportion of the gas intended for cold venting would be directed to the maintenance flare and burnt. Furthermore, the ABP pipeline consultant questioned SEPIL's expert witness as to whether there was an alternative in place for the HP/LP system. The expert witness stated that they "*could rig something up*"!! On further questioning, he stated that they could re-direct it to the maintenance flare. He also admitted that the maintenance flare was not designed for this purpose. The maintenance flare was designed to cope merely with burning of gas from on-site equipment during maintenance. It does not have distance enough from other installations in this refinery or the height of the HP/LP flare system which is necessary for this type of use.

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