

Objection No. 1

Noeleen Keavey

From: Licensing Staff
Sent: 24 April 2015 10:02
To: Noeleen Keavey
Subject: FW: New Third Party objection entered for Reg no: P0968-01. (Reference Number: P0968-01-150424094906)
Attachments: P0968-01 Objection.pdf
Importance: High

From: Peter Sweetman [<mailto:sweetmanplannig@gmail.com>]
Sent: 24 April 2015 09:49
To: Licensing Staff
Subject: New Third Party objection entered for Reg no: P0968-01. (Reference Number: P0968-01-150424094906)
Importance: High

Objection submitted on: 24/04/2015 09:49

Title: Mr

First Name: Peter

SurName: Sweetman

Organisation Name: Peter Sweetman

Address Line 1: Rossport South

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County: Mayo

Post Code: 0000

Email: sweetmanplannig@gmail.com

Objector Type: Third Party

Oral Hearing: No

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PETER SWEETMAN & ASSOCIATES

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sweetmanplanning@gmail.com

Environmental Protection Agency
Johnstown Castle
Wexford

2015-04-24

RE: Objection to the Environmental Protection Agency proposed decision in.

P0968-01	MS Patterson Limited	Drumineney, Cooladerry and, Coolaghy, Raphoe, County Donegal.
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Dear Sir/Madam

The inspectors report stated;

11.1 Habitats Directive (92/43/EEC) & Birds Directive (79/409/EEC)

As part of the Appropriate Assessment screening to assess, in view of best scientific knowledge and the conservation objectives of the site, if the proposed activity, individually or in combination with other plans or projects is likely to have a significant effect on any European Sites, the SACs and SPAs located within a 15km radius of the installation were identified and assessed.

Surface water from the installation discharges into the Swilly Burn and Deelee Rivers, which both flow to the River Foyle and eventually to Lough Foyle. The River Finn SAC (Site Code:002301) and River Foyle and Tributaries SAC (UK 0030320) occur along the length of the River Foyle which receives the Swilly Burn and Deelee Rivers. Therefore, particular regard was had to the River Finn SAC and River Foyle and Tributaries SAC as these are connected to the installation via surface water pathways.

The River Finn SAC is selected for the following habitats and/or species listed on Annex I I 11 of the E.U. Habitats Directive: Oligotrophic Waters containing very few minerals; Wet Heath; Blanket Bogs (Active); Transition Mires; Atlantic Salmon and Otter. Golden Plover, Peregrine and Merlin, threatened species listed on Annex I of the E.U. Birds Directive, breed in the upland areas of the site. The Red Listed species Red Grouse occurs on the site, while the scarce Ring Ouzel, another Red List species, is also known to occur.

The River Foyle and Tributaries is a large, cross-border river in the north-west of Britain and Ireland. The primary reason for the selection of the River Foyle and Tributaries SAC (UK 0030320) as a protected site is because it is a water course of plain to montane levels with the Ranunculus fluitantis and Callitriche-Batrachion vegetation and because it contains Atlantic Salmon. Otters are also present. A screening for Appropriate Assessment was undertaken to assess, in view of best

scientific knowledge and the conservation objectives of the site, if the proposed activity, individually or in combination with other plans or projects, is likely to have a significant effect on a European Site. In this context, particular attention was paid to the European sites at the River Finn SAC (Site Code:002301) and River Foyle and Tributaries SAC (UK 0030320). The Agency considered, for the reasons set out below, that the proposed activity is not directly connected with or necessary to the management of these sites as European sites and that it can be excluded, on the basis of objective information, that the proposed activity, individually or in combination with other plans or projects will have a significant effect on a European site, and accordingly the Agency determined that an Appropriate Assessment of the proposed activity was not required.

This determination is based on the nature and scale of the activity. Ammonia emissions from this activity are not likely to have a significant impact on sensitive receptors (e.g. lichens, bryophytes etc.) based on the dispersion available and the nature of the designated habitats in the vicinity of the installation.

The correct test for screening is to be found in Finlay Geoghegan J. in Kelly -v- An Bord Pleanála 2013 802 JR at paragraph 26;

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

It is also necessary to screen the slurry spreading for such effects.

CJEU Case 50/09 states;

37 In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case.


As that is exactly what is done in the inspectors report in the section headed;

11.2 Environmental Impact Assessment Directive(85/337/EEC)

Conclusion

As no legal Environmental Impact Assessment or Appropriate Assessment Screening has been performed the Agency must uphold my objection and refuse a licence for this development.

Yours faithfully

A handwritten signature in black ink that reads "Peter Sweetman". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Peter Sweetman

Please respond by email to sweetmanplanning@gmail.com

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