



Objection

Objector:	Mr. Peter Sweetman
Organisation Name:	Mr
Objector Address:	ROSSPORT SOUTH BALLINA CO MAYO, F26 T2P4, BALLINA, Co. Mayo.
Objection Title:	Objection #OS006005 - 3rd party objection for Reg No:[P1103-01]
Objection Reference No.:	OS006005
Objection Received:	18 March 2020
Objector Type:	3rd Party
Oral Hearing Requested?	No

Application

Applicant:	Dairygold Co-Operative Society Ltd and TINE Ireland Ltd
Reg. No.:	P1103-01

See below for Objection details

Attachments are displayed on the following page(s).

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Environmental Protection Agency
Johnstown Castle
Wexford

2020-03-17

OBJECTION TO P1103-01 WITHOUT PREJUDICE

Applicant Name:	Dairygold Co-Operative Society Ltd and TINE Ireland Ltd
Location of Facility:	Mogeely, Mogeely, Cork

Dear Sir/Madam

The Environmental Impact Assessment Directive states at;

Article 11

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

(a) having a sufficient interest, or alternatively;

(b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.

The procedure of objecting to the EPA, who is the original body making the decision, does not comply with "have access to a review procedure before a court of law or another independent and impartial body"

On November 8, 2016, the Court of Justice of the EU issued a landmark ruling in case C-243/15 in which it established that authorization procedures such as the so-called appropriate assessments pursuant to the Habitats Directive fall within the scope of Article 6(1)(b) of the Aarhus Convention.

Therefor this procedure re the Habitats Directive is not in accordance with EU law.

The inspectors report states at 5.4

"Having specific regard to EIA, this inspector's report as a whole is intended to identify, describe and assess for the Agency the likely significant direct and indirect effects of the proposed activity on the environment, as respects the matters that come within the functions of the Agency, for each of the following environmental factors: human beings, flora and fauna, water, soil, air & climate, landscape, material assets and cultural heritage".

As this is the last process in the Environmental Impact Assessment it must assess the cumulative effects. Therefore *"as respects the matters that come within the functions of the Agency"* is flawed as the whole must be assessed.

16. Appropriate Assessment

The test for screening for Appropriate Assessment is not as suggested in the report it is as stated by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014)

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage of 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.

Put simply the test is, it is merely necessary to determine that there may be such an effect.

Taking into consideration *"in view of best scientific knowledge and the conservation objectives of the site, if the activity, individually or in combination with other plans or projects is likely to have a significant effect on any European Site."* Shows a lack of understanding of the basics of the implementation of the Habitats Directive.

The proposed RD requires the applicant to meet ELVs set under Schedule B.3 Emissions to Sewer for SEM1 (treated effluent discharge from the onsite WWTP).

This treated effluent is further regulated by the EPA by way of a WWDL (D0056-01) and subject to compliance with the limits specified in the Urban Waste Water Treatment Regulations, 2001.

The "Technical Amendment" to D0056-01 is the same as D0029-01 which was found to be flawed by the Simons J in the High Court Sweetman v EPA.

The inspectors report into D0056-01 states.

"The EIS addressed the impact of discharges on the North Channel SAC and Cork Harbour SPA. The provision of secondary treatment means that the primary discharge is not likely to have a significant effect."

There is no evidence that any assessment of the effects of the WWDL on the Natura 2000 sites has ever taken place.

The wastewater treatment plant itself is not overloaded as excess flows are discharged via overflows at the pump stations in the network. However, as a whole the Midleton agglomeration is hydraulically overloaded and this is subject to a Compliance Investigation.

Inspectors report page 40

While there is potential for accidents and unplanned releases from the installation, it is considered that the conditions of the RD in relation to bunding and the protection of surface water and groundwater are sufficient to ensure that accidental emissions from the activity will not impact on the qualifying interests of any of the European sites identified above. The RD specifies accident prevention and emergency response requirements.

Response requirements are not mitigation measures.

Best Available Techniques are not

18. Cross Office Consultation

I consulted with OEE Inspector, Thomas Wallace in relation to compliance and operation of the site. I consulted with OEA Scientist, Dr. SORCHA NI LONGPHUIRT in relation to coastal modelling, tidal movement and water quality of the North Channel and Cork Harbour. I consulted with Nigel Hayes (water management programme) in relation to WFD classifications and Philip Maher (hydrometric and groundwater section) in relation to groundwater abstraction. I consulted with licensing inspectors, Rachel Neeson and Marion Doyle in relation to AA and EIA. I consulted with Brian Coffey and John Feehan (wastewater enforcement team) in relation to Irish Water compliance with Midleton WWDL (D0056-01). In general, the OEE have no significant concerns regarding the proposed changes to the activity.

This is not a proper record as required under the 2011 regulations. I would be particularly interested as to what Thomas Wallace stated.po90

CJEU 258/11 states;

"44 So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned"

As a large part of the inspector's report relies on monitoring as a mitigation measure it is not mitigation. The inspector has failed to assess the validity of the mitigation measures proposed.

Best Available Techniques do not remove all reasonable scientific doubt.

Compliance with European Communities Environmental Objectives (Surface Waters) Regulations S.I No.272/2009, as amended does not remove all reasonable scientific doubt.

The RD requires that all storm waters exceeding trigger levels will be diverted for retention and suitable disposal does not remove all reasonable scientific doubt.

The Office of Environmental Enforcement (OEE) is responsible for the enforcement of EPA licences issued to industry and is committed to taking action against those who flout the law but not orders of the High Court.

Monitoring stipulated in the RD will ensure the emissions from the site will not negatively impact on the environment and will ensure the protection of human health. It will not.

Compliance with the European Communities Environmental Objectives (Surface Waters) Regulations 2009 (S.I No. 272 of 2009), as amended does not remove all reasonable scientific doubt.

There are no complete, precise and definitive findings in the Appropriate Assessment.

Yours faithfully



Peter Sweetman

And on behalf of Wild Ireland Defense CLG

Please respond by email to sweetmanplanning@gmail.com

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