



Submission

Submitter:	Mr. Paul Barlow
Organisation Name:	Woodstown Bay Shellfish Limited
Submission Title:	Submission Received by Email
Submission Reference No.:	S011297
Submission Received:	08 September 2023

Application

Applicant:	Uisce Éireann
Reg. No.:	D0139-03

See below for Submission details.

Attachments are displayed on the following page(s).

Dorota Richards

Subject: FW: Submission in Respect of License Reg. No. D0139-03 for Youghal WWDL

From: paul@wbsglobal.com <paul@wbsglobal.com>

Sent: Friday 8 September 2023 13:18

To: Licensing Staff <licensing@epa.ie>

Subject: Submission in Respect of License Reg. No. D0139-03 for Youghal WWDL

Good morning,

Please see attached urgent Submission on behalf of Woodstown Bay Shellfish Ltd. in respect of Licence Reg. No. D0139-03 for Youghal Waste Water Discharge Licence Application.

Please acknowledge receipt of the above ASAP.

Kind Regards,
Paul Barlow




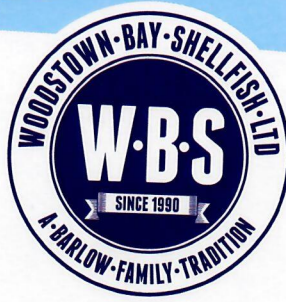
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Environmental Protection Agency
Johnstown Castle Estate
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8th September 2023

By EMAIL

Re: Submission on Wastewater Discharge Licence Application Reg. No. D0139-03 for Youghal WWTP, Mudlands, Youghal, County Cork.

A Chara,

This letter is the response of Woodstown Bay Shellfish Limited to your correspondence dated 4 August 2023 inviting submissions in relation to this licence application and EIAR. This submission should be read in conjunction with our related submission of 11 August 2022 and any other previous submissions made dating back to December 2012 and its enclosures.

Preliminary Matters

A. A grant of Planning Permission is required.

1. We are concerned that the Agency, by embarking on an EIA without first ensuring that the application is compliant with regulation 16 (3A) of S.I. No. 684/2007 - Waste Water Discharge (Authorisation) Regulations 2007, as amended by S.I. No. 214/2020 - European Union (Waste Water Discharge) Regulations 2020, will stray beyond its jurisdiction. This is an application to the Agency for a licence in respect of a wastewater

discharge that involves development for which a grant of permission is required, and therefore one to which reg. 16(3A) applies.

2. Uisce Éireann, in correspondence dated 10 November 2021, does not deny that the use of the existing outfall pipe at Dunnes Park for the conveyance of treated sewage from the Youghal wastewater treatment plant is development, but claims an exemption from planning permission under s.4 of the Local Government (Planning and Development) Act 1963 because the outfall pipe at Dunnes Park was constructed by Youghal Urban District Council in the 1970s (we understand that expenditure on the pipe construction was sanctioned in February 1973). Contrary to the position advocated by Uisce Éireann, no planning exemption applied to this outfall pipe. Section 4(1)(d) of the 1963 Act, as set out by Uisce Éireann in its letter, provided for a planning exemption for development by the council of an urban district *in its district*, i.e. within its own functional area. The outfall pipe at Dunne's Park was constructed on foreshore outside the then functional area of the UDC and therefore came outside any planning exemption that could have been anticipated at that time. The foreshore at this location is privately owned and it is clear from s.85 of the 1963 Act that a Local Authority had no statutory right to construct a sewer on private land. The definition of 'land' in the 1963 Act included, as it does now, land under water.
3. Even if Uisce Éireann could validly claim an exemption from planning by virtue of the 1963 Act (which is strongly denied by us), the current use of the outfall pipe to convey continuously the effluent from a 16,000 PE municipal wastewater treatment plant constructed in 2017 is materially different to, and an intensification of, its use in the 1970s, and also is a materially different use to its current *authorised intermittent use* (since 31 December 2015) as a stormwater overflow. The development of the Dunne's Park outfall as the effluent outfall for the 16,000 PE treatment plant is development and not exempted development and either the obligations under regulation 16 (3A) of S.I. No. 684/2007 must be complied with, or the Agency is *obliged* to refuse the application under regulation 18(3A).
4. This licence application concerns a wastewater treatment plant having a population equivalent of in excess of 10,000 PE. Any discharge licence granted would fall within that class. It is illogical for the Agency to be invited to consider the project as a WWTP

for the purpose of EIA but as a stand-alone pipe for the purpose of avoiding the planning permission requirements of the licensing legislation.

B. Remedial Obligation

5. Since 31 December 2015, the outfall pipe at Dunne's Park has Agency approval *only to operate as a storm water overflow*, i.e. for intermittent use as an overflow during high rainfall conditions; however, it has continued to operate as the main effluent outlet from the WWTP, without any licence authorisation to do so. The EIAR submitted with this licence review application does not address the environmental impacts of the almost 8 year period during which the discharge from the 16,000 PE plant operated outside of the permitting and environmental assessment obligations of EU law, or the unauthorised use of the outfall and overflow prior to then. If the Agency does not request a *Remedial EIAR* for that period, and in the absence of any substitute consent from An Bord Pleanála or remedial EIA to cover the periods of unauthorised use of the WWTP and the outfall pipe, it is difficult to see how the Agency can conduct an EIA for this application, or indeed an Appropriate Assessment under the Habitats Directive.

Comments on the EIAR

C. Failure to consider reasonable alternatives

6. The EIAR considers only the 'do nothing scenario' – i.e. to continue to discharge the effluent through the Dunne's Park outfall, with no alternative scenario considered.
7. Woodstown Bay Shellfish Limited, a titleholder of privately owned foreshore in Youghal Harbour, proposed to Uisce Éireann on or about 2016/2017 an alternative route for an outfall into Youghal Harbour which Uisce Éireann considered at that time to be reasonable but ultimately decided against developing it. We do not believe that there was any environmental basis to that decision. A map of the outfall proposed by WBS and considered by Uisce Éireann is enclosed at Appendix I.

D. *Errors and inconsistencies in the AECOM Reports*

8. In an attempt to justify its adoption of the 'do nothing scenario' in retaining the short outfall at Dunne's Park rather than proposing an appropriate long outfall solution, Uisce Éireann relies on modelling exercises conducted by its consultant AECOM to conclude that there will be no significant impact to the waters of Youghal Harbour, the bathing areas or the shellfish areas by maintaining the discharge through the short outfall. We have identified a number of errors and inconsistencies in the inputs to the AECOM models and the conclusions made. The following should not be considered an exhaustive list. The Agency should ensure that it has access to the appropriate technical resources to conduct a thorough appraisal of the assumptions made by AECOM and the findings reached.

- a. Marine Modelling Study Addendum (May 2023) – Table 2-3 model inputs for BOD (5mg/l), Ammonia (1.3 mg/l), Orthophosphates (1.4 mg/l) and Dissolved Inorganic Nitrogen (2.2 mg/l) are inconsistent with the discharged effluent monitoring data set out at Table 2 of the Natura Impact Statement which records a large number of dates where significantly higher concentrations were discharged than those modelled by AECOM e.g. BOD (7.1 mg/l on 5/2/2020; 14.0 mg/l on 30/9/20; 11 mg/l on 15/6/21; 39 mg/l on 9/3/22), Ammonia (1.7 mg/l on 5/2/20; 1.8 mg/l on 4/3/20; 3.4 mg/l on 20/5/20; 2.3 mg/l on 15/7/20; 8mg/l on 9/12/20; 2.3 mg/l on 15/06/21; 4.6 mg/l on 7/7/21; 9 mg/l on 18/8/21; 4.4 mg/l on 1/9/21; 2.5 mg/l on 3/11/21; 8.7 mg/l on 1/12/21; 6.3 mg/l on 6/1/22; 18.8 mg/l on 2/2/22; 21.24 mg/l on 9/03/22; 5.4 mg/l on 13/04/22; 7.5 mg/l on 5/5/22).
- b. The mass balance results presented in Table 6-1 of Marine Modelling Study Addendum (May 2023) i.e. BOD (497.7 kg/annum), Ammonia (66.3 kg/annum), orthophosphates (68.5 kg/annum) and DIN (0.03 kg/annum) are inconsistent with the mass balance that results from using the design Mean Flow Rate of 41.67 litres per second in Table 2-2 and the mg/l concentrations in Table 2-3 which would result in BOD (6,570 kg/annum), Ammonia (1,708 kg/annum), orthophosphates (1,839 kg/annum) and DIN (2,891 kg/annum). These annual discharges would be even more significant if calculated using the higher

concentrations recorded on multiple dates in Table 2 of the NIS as discussed above. The consequence of using the higher mass balance values resulting from Table 2-2 and Table 2-3 is that the proportional impact of the WWTP on the receiving waterbody is significantly higher than what was concluded by AECOM.

- c. In Table 2-3 of the 2023 AECOM report, ‘typical concentrations’ are used for BOD, Ammonia, Orthophosphates and DIN in the effluent discharged from a list of 7 no. active storm water overflows in Youghal, rather than measured values. No source is given for the ‘typical values’. Our experience, as the landowner of foreshore where 3 of these overflows discharge, is that so called ‘emergency overflows’ occur on a very regular basis. The Annual Environmental Reports submitted by Uisce Éireann to the Agency confirm that emissions from overflows are not monitored. There has been no report of a site visit by the Agency to Youghal since 2019 and we are not aware of any unannounced inspection by the Agency or any reports of inspections by the Agency of overflows in Youghal when actively discharging. In our opinion, the licensing of overflows has become a form of loophole which allows an operator to maintain the legal fiction of compliance at the WWTP, while increasingly becoming more reliant on the use of unmonitored overflows to discharge untreated sewage. Of the 6 no. overflows described in the 2021 AER, only 1 (SW007) was metered and almost 40,000 m³ was stated to have been discharged through that single overflow in a year, but no chemical or biological sampling is reported for any of these emission points. The other 5 SWOs mentioned in the report are not monitored at all. All 6 were stated in the AER to comply with an outdated document produced by the Department of Environment in 1995 entitled ‘*Procedures and Criteria in relation to Stormwater Overflows*’ but none is properly monitored, and compliance with EU law is not addressed in the reporting of SWO information to the Agency. The use by AECOM of ‘typical’ values for modelling the impacts from the combined operation of the 7 overflows and the main outfall pipe does not represent best scientific practice and is not an application of the precautionary principle. Without actual measured emission data relevant to these overflows, and a projection of the impacts of climate change on SWO operation in this location, it is difficult to

see how the Agency can ensure that the licensing of the activity will not continue to cause environmental pollution.

- d. It is not clear if the AECOM modelling relies on single point measurements for the assumptions made for *Escherichia coli* and Intestinal enterococci in Table 2-3 for the purpose of assessing impacts on bathing water quality and shellfish water quality. These values do not appear to have resulted from a programme of background monitoring over any reasonable period of time.
- e. In the AECOM Modelling Report (Dec 2020) Table 1.5 summarises the key model parameters for Summer and Winter. These values are much lower than the actual measured by the EPA in Youghal Harbour as set out in Table 4 of the NIS. It is another example of inconsistencies between the AECOM approach and the NIS which in itself relies on the AECOM conclusions.
- f. The AECOM modelling and conclusions has had no regard to the compliance failures in the operation of the WWTP. The emission monitoring results summarised in Table 2 of the NIS illustrate non-compliances with the Emission Limit Values for the listed parameters. There is also an issue about the failure of the plant to achieve the required percentage reductions in nutrients discharged to a sensitive waterbody. The current licence has no limit for phosphates and the operator appears to have taken this as an authorisation to discharge above the limits for percentage removal required to comply with the Urban Waste Water Directive.
- g. Questions arise about why the AECOM conclusions are not consistent with the Agency's own reporting of the Water Framework Directive status and objectives for this catchment and receiving waterbody. The Agency reports indicate that there is a risk that the WFD objective of 'good status' will not be met.

E. Chlorination

9. The EIAR does not address the use of chlorine, also known as sodium hypochlorite, or any other type of chemicals for disinfecting overflows. Bleaches are used freely by authorities as a means of disinfection for bathing areas and has been the subject of investigations by the Agency in the Waterford Area in recent times. Chlorine and other chemicals have detrimental negative effects on the eco-systems, habitats and on the primary producers i.e., phytoplankton which all life depend on. Chlorine is also known to have a significant negative effect on the oxygen levels, larvae, reproduction and spat settlement. Chlorine and other bleaches react with organic matter in the water to form even more lethal by-products such as trihalomethanes (THMs). This is an issue that the Agency has so far failed to resolve by licence condition, enforcement and environmental impact assessment.

F. The Natura Impact Statement

10. The NIS relies heavily on the modelling and conclusions in the AECOM reports which for reasons including those set out above are not robust or reliable and do not adopt a precautionary approach. They are also inconsistent with the effluent and receiving water monitoring data set out in the NIS itself. For this reason, the Natura Impact Statement does not come to reliable conclusions, is not best scientific information and is not a basis for any valid Appropriate Assessment by the Agency.
11. There is no information in the NIS that would allow a retrospective assessment to be conducted of the impacts on habitats and species over the prolonged periods of unauthorised emission of treated and untreated sewage to Youghal harbour.
12. The NIS was prepared internally by Uisce Éireann. We are concerned that this has introduced an element of objective bias into the material that is before the Agency.

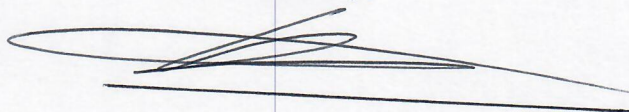
G. Absence of Foreshore Licence

13. The proposal involves the use of the Dunne's Park outfall and other overflows constructed on and/or discharging to privately owned foreshore. For the avoidance of doubt, no valid EIA or AA has been conducted on the emissions from the Youghal sewerage system to Youghal harbour in any other process.
14. The Dunne's Park outfall was erected on private foreshore in Youghal Bay. Dunnes Park, Paxes Lane, and foxhole, do not hold any of the following permissions, which are required by both Irish and European Law:
 - Planning Permission
 - A legal interest in the foreshore from the landowner by way of permanent wayleave
 - Consent from the lessee and occupier
 - Foreshore licence from the Minister granted under the Foreshore Act 1933
 - Compliance with the EU Water Framework Directive (2000/60/EC)
 - Compliance with the EU Marine Strategy Framework Directive (2008/56/EC)
 - Compliance with the EU Habitats Directive (92/43/EEC)

For the reasons set out above and in our earlier submission, we ask the EPA to reject this proposal to discharge the final effluent from the 16,000 PE WWTP at Youghal into the harbour through the outfall at Dunne's Park and a series of unmonitored overflows in the sewerage system. In the circumstances, the Agency cannot satisfy itself that planning permission is not required for the development involved. Furthermore, the EU requirement for retrospective environmental impact assessment of the long periods of unauthorised and unassessed operation of municipal waste water treatment in Youghal is not being addressed by this application. The EIAR and NIS, and the AECOM reports they rely on, are not robust and the modelling that they rely on has not taken a conservative or precautionary approach.

It is notable that the agency has not received a response and/or a submission from An Bord Pleanála or the NPWS in respect of the EIAR. The agency will appreciate a critical component of its deliberations on this application will be the input on statutory consultees such as An Bord Pleanála and the NPWS. Without that input it is difficult to see how the agency can complete an assessment of the proposed development having regards to all the direct and indirect effects. In addition, Woodstown Bay Shellfish Ltd. as submitters are at a particular disadvantage in making this submission without knowing the position of An Bord Pleanála and NPWS. We reserve the right to make further comments on the process once a reply has been received by both statutory consultees.

Yours faithfully,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

