

Objection

Objector:	Mr Paul Barlow
Organisation Name:	Woodstown Bay Shellfish
Objector Address:	The Harbour, Dunmore East, Waterford, Waterford, Co. Waterford.
Objection Title:	Objection #OS011377 - 3rd party objection for Reg No:[P1180-01]
Objection Reference No.:	OS011377
Objection Received:	07 November 2023
Objector Type:	3rd Party
Oral Hearing Requested?	No

Application

Applicant:	Kilkenny Cheese Limited
Reg. No.:	P1180-01

See below for Objection details.

Attachments are displayed on the following page(s).



EPA Headquarters,
P.O. Box 3000,
Johnstown Castle Estate,
County Wexford.
Y35 W821

7th November 2023

Re: Objection in Respect of the Proposed Determination P1180-01 issued to Kilkenny Cheese Limited.

To whom it may concern,

We write to you on behalf of Woodstown Bay Shellfish Ltd. in relation to the above-mentioned Proposed Determination which was issued by the EPA to Kilkenny Cheese Limited on the 12th of October 2023. This submission should be read in conjunction with our related submission of the 8th June 2023 and its enclosures.

Woodstown Bay Shellfish Ltd. is a huge stakeholder within the Waterford Estuary who depend solely on a healthy eco-system for the survival of their business. The Waterford Estuary is protected under the EU Water Framework directive (2000/60/EC) and lies within a Special Area of Conservation (SAC). In recent years, we have seen a shellfish dieback alongside a huge decline in Water quality and Biodiversity in the Estuary. The EPA's lack of enforcement and failure in their duty of care has resulted in an overall decline in water quality, inducing massive negative impacts on both marine life and shellfish production within the Waterford Estuary.

The Agency, in its Inspectors Report of an Industrial Emissions Licence Application dated 7th September 2023 state,

"As the applicant's discharge will be part of the Uisce Éireann Discharge, an assessment of the cumulative impact of the UWWTP Discharge and the proposed Kilkenny Cheese discharge is not required for the purposes of this assessment as it has been addressed under Reg No. D0022-01".

The EPA's view on this is in direct contravention to EU Law and the Habitats Directive (92/43/EEC). The EPA cannot suggest that such a discharge does not warrant a detailed assessment to address the cumulative impacts from both parties involved, Uisce Éireann and Kilkenny Cheese.

The licence application and Proposed Determination which has been recently issued has failed to access the cumulative effects from the effluent on the waterbody. It is apparent from the EPA inspectors report that *"The process effluent will be treated in the onsite WWTP and then discharged into the Uisce Éireann network via a dedicated pipe. This Pipe, will run along IDA Access Road, will connect into the Uisce Éireann outfall pipe associated with Waterford City Urban WWTP (Reg. No. D0022-01), downstream of the UWWTP"*.

The EPA noted in a Site Visit in November 2022 to Waterford City WWTP, licence Reg. D0022-01 that:

"It was stated by Irish Water and the DBO Operator (Celtic Anglian Water) that the local Glanbia plant is now providing 50% of the load to the Waterford wastewater treatment plant. It is also stated that Irish Waters source Control Team were liaising with Glanbia for information on the loading from their plant and were conducting a 'flow and load survey'. The DBO Operator reported that they were operating the plant in a 'shock load' mode and would benefit from more comprehensive and regular information on the loading from Glanbia to their plant."

Please see attached in Appendix 1. This Site visit report highlights the failure on behalf of the Agency to control and protect the surrounding Habitat and Marine Environment. We submit that no regard has been considered for the EU Water Framework Directive. The EPA has failed to consider the cumulative impacts of this new application alongside the existing pressures on the Waterford City WWTP from the above mentioned Glanbia installation.

We submit that Irish Waters Section 99E consent granted to the applicant to discharge to sewer is legally questionable. This section 99E consent raises the question of the legality of Irish Waters outfall under the Foreshore Act 1933. Irish Water has not taken The EU Water Framework Directive (2000/60/EC), The Habitats Directive (92/43/EEC), The EIA Directive (2011/92/EU), and The Maritime Spatial Planning Directive (2014/89/EU) into consideration which are in place to protect the surrounding Marine environment. By the granting of the above consent, Irish Water failed to satisfy the above listed EU Directives. Irish Water was made aware of the huge existing pressures on the Waterford City WWTP by the EPA in their Site Visit Report in 2022, however by granting this consent to the applicant, they have now added even more serious pressures to the Waterford City WWTP which is over capacitated as it stands.

It is apparent that this new connection to sewer can only be seen as a new development and should comply with the Planning and Development Act 2000 (as amended). We submit that this new sewer connection and the discharge from this connection warrant extensive environmental assessments and compliance with the EIA Directive (2011/92/EU) and amended (2014/52/EU). It is apparent that this sewer connection and its effluent constitutes a new project or development under the European Habitats Directive (92/43/EEC) and the EIA Directive and as a result requires compliance with the

relevant environmental assessments. We highlighted the issues surrounding the planning status of this new pipe in our original objection to the mentioned licence application. The EPA responded in their most recent inspectors report dated the 7th of September 2023 *"Issues related to the planning status of the D0022-01 discharge point and the Maritime Spatial Planning Directive are outside the scope of the assessment of the P1180-01 application"*.

The EPA states that the planning status of the main discharge point and its effluent is outside the remit of this licence application. The Proposed Determination is an attempt by the EPA to indemnify Kilkenny Cheese Ltd. from being held responsible for their discharges and consequential impacts on the surrounding environment. Irish Waters discharge licence granted and regulated by the EPA does not cover this discharge in its assessments. The addition of Kilkenny Cheese's discharge to the agglomeration constitutes a change in nature and volume of the overall discharge from the Waterford City D0022-01 licence.

The relevant waterbody at the discharge point have been characterised as at risk of not meeting good status currently. There has been no specific Water Framework Directive assessment carried out for this development, as required under Article 4 of the WFD. This assessment is crucial in determining whether this development may cause further deterioration to the status of the waterbody which lies within a Special Area for Conservation. The EPA must satisfy that they comply with Article 4 of the WFD.

"Article 4(1)(a)(i) to (ii) of Directive 2000/60/EC of the European Parliament and of the Council of the 23 October 2002 establishing a framework for community action in the field of water policy must be interpreted as meaning that the Member States are required:

- unless a derogation is granted

- to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential; and good surface water chemical status by the date laid down by the Directive".

The EPA must satisfy itself that the appropriate assessments it carries out have been robust enough to allow the agency to reach the conclusion that by licencing this discharge, the requirements of the Water Framework Directive will not be undermined. It must assess how increasing the load to a system which is already at risk of not achieving its WFD objectives is legally robust enough for the purposes of Article 4 of the Water Framework Directive.

The EPA have a responsibility under the Habitats Directive. The threshold the Applicant must pass in this context is explained in paragraph 44 of CJEU Case 258/11:

"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".

The EPA must assess the planning merits of this development in accordance with the Maritime Spatial Planning Directive (2014/89/EU) to ensure that the proposed development and discharge is in accordance with proper planning and sustainable development of the area.

The EPA must satisfy themselves that the Proposed Determination must adhere to the below:

The EU Water Framework Directive (2000/60/EC)

The Habitats Directive (92/43/EEC)

The EIA Directive (2011/92/EU)

The Maritime Spatial Planning Directive (2014/89/EU)

The Planning and Development Act 2000

The Foreshore Act 1933

We submit that the Proposed Determination is capable of having a negative effect on the waterbody in question. This proposed determination highlights the failure by the EPA in their duty of care in protecting the environment and the SAC's. The EPA must satisfy itself that the appropriate assessments it carries out have been robust enough to allow the agency to reach the conclusion that by licencing this discharge, the requirements of the Water Framework Directive will not be undermined.

Enclosed please find the appropriate fee for this objection.

Your Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'P' and 'B' followed by a horizontal line, enclosed within a large, hand-drawn oval.

Mr Paul Barlow

Appendix 1



Site Visit Report

The site visit process is a sample on a particular day of an installation's compliance with some of its licence conditions. Where non-compliance against a particular condition has not been reported, this should not be construed to mean that there is full compliance with that condition of the licence.

Instructions and actions arising from the visit shall be addressed, or where applicable noted, by the licensee in order to ensure compliance, to improve the environmental performance of the installation and to provide clarification on certain issues.

The licensee shall take the actions specified to close out the non-compliances and observations raised in this Site Visit Report.

The licensee may also be requested to provide a response to the Environmental Protection Agency (hereafter referred to as the Agency) in relation to the site visit report findings.

Licensee

Name of Installation	Waterford city
Licensee	Irish Water
Licence Register No.	D0022-01
CRO Number	
Site Address	Waterford, X91 WK77
Site Visit Reference No.	SV23797

Report Detail

Issue Date	11/11/2022
Prepared By	Dr John Feehan

Site Visit Detail

Date Of Inspection	28/09/2022		
Time In	11:00	Time Out	14:15
EPA Inspector(s)	Dr John Feehan		
Additional Visitors			
Licensee Personnel and Role	Representing Irish Water: Ms Christina Geraghty. Representing Celtic Anglian Water (working under contract to Irish Water): Mr Thomas Hayes; Mr Conor Rush.		

> Summary

The Waterford waste water treatment plant appeared to be operated and managed satisfactorily on the day of this site visit. However, it is noted with concern, that the plant is reported to be organically overloaded at present, is being operated in a "shock load" state and that 50% of the load to the plant is now coming from just one local food industry. Irish Water should ensure that the strong odours detected at a number of locations on site, does not give rise to odour complaints off site. Improvements in the handling of complaints is needed.

> Site Areas Inspected

Waste water treatment plant.

> Documents Inspected

- Effluent monitoring results for previous 2 years.
- A list of the critical spare parts required for the site.
- Calibration/maintenance records for all of the DO probe(s) on site.
- Records of Desludging at this plant for previous 2 years.

> 1. General

	Answer	Condition Number	Non Compliance	Observation
1.1	Is there a significant discharge from industry into the plant?	Yes		
Comment / Action Required				
It was stated by Irish Water and the DBO Operator (Celtic Anglian Water) that the local Glanbia plant is now providing 50% of the load to the Waterford waste water treatment plant.				
It was also stated that Irish Water's Source Control Team were liaising with Glanbia for information on the loading from their plant and were conducting a "flow and load survey". The DBO Operator reported that they were operating the plant in a "shock load" mode and would benefit from more comprehensive and regular information on the loading from Glanbia to their plant.				
Irish Water are required to:				
<ol style="list-style-type: none">1. request Glanbia to provide data on the effluent loading from their plant to the DBO Operator on a regular basis;2. ensure that there is a communications protocol in place between Glanbia and the plant operator; and3. provide data from the "flow and load" survey to the plant operator.				



2. Site Specific Issues

2.1

	Answer	Condition Number	Non Compliance	Observation
Strong odour detected on site.	Checked			

Comment / Action Required

A strong odour was detected just outside the main entrance gate to the waste water treatment plant. It was confirmed by Irish Water that this was emanating from a "breather" vent on an effluent line from the Glanbia plant to the Waterford waste water treatment plant.

It was noted that there was a strong H₂S type odour from the penstock influent line onsite. Strong H₂S type odours were also noted onsite at the primary settlement tank, at the pasteurisation tank and the digester holding tank which was also noted to be open on top.

Irish Water are required to:

1. Ensure that Glanbia are notified in writing each time an odour is detected from this "breather" vent.
2. Examine the feasibility of sealing the penstock influent line and covering the top of the digester holding tank.
3. Investigate the reason for the strong H₂S type odours at the primary settlement tank and the pasteurisation tank and identify measures that could be taken to reduce them.

2.2

	Answer	Condition Number	Non Compliance	Observation
Dealing with Complainants.	Checked			

Comment / Action Required

How Irish Water dealt with a number of complaints over the summer of 2022, alleging that the Waterford water treatment plant was giving rise to odours off site was reviewed. It is acknowledged that Irish Water requested both Waterford and Kilkenny County Council to conduct an investigation into the source of these odours and that a comprehensive written response was provided to the complainant. However, it was noted that no one from the local authorities or Irish Water ever visited / met up with the complainant. It was also noted that complainants, who call the waste water treatment plant telephone number were advised to "contact Irish Water directly" and that such calls are not logged by the DBO Operator.

Irish Water are required to:

1. Ensure that there is a protocol/procedure at the plant for dealing with all complaints received and ensure that all calls received are logged, that complainants are provided with the telephone number and an email address for Irish Water and that a mechanism is put in place, whereby Irish Water's Compliance Team are immediately made aware of any complaint received at the plant by telephone.
2. Ensure that personnel undertaking odour surveys are appropriately trained to conduct them.
3. Ensure that an Irish Water Representative visits the Waterford waste water treatment plant after receipt of alleged odour complaints, conducts an odour survey and establishes whether the plant is giving rise to odours off-site.

FOLLOW-UP ACTIONS

The licensee is required to complete the actions outlined in this site visit report within the specified timeframes. Where required, the licensee shall also respond to actions specified in Compliance Investigations and/or submit a response to this site visit report via the EDEN system. The licensee shall maintain a documentary evidence, for review by the Agency, that the prescribed actions were completed within the required timeframe.

(i) Compliance Investigations

The Agency may generate a Compliance Investigation through the EDEN system and issue instructions and actions to the licensee. The licensee will receive notification when an instruction or action is issued and the licensee must respond to the actions within the Compliance Investigation within the specified timeframe.

(ii) Response to Site Visit Report

Where the licensee is requested to (or wishes to) respond to the Agency in relation to this site visit report, the licensee may select the 'Make a Response' link on the actions taken by the licensee to address the issues raised in this site visit report and the target completion dates. This Licensee Public Response provides the licensee with an opportunity to inform both the Agency and the public about the implementing of actions set out in the Agency site visit report. The response must be submitted **within 30 calendar days** of the issue date of this site visit report.

(iii) Publication of Reports

The site visit report will be made available for public viewing via the Agency's Licence Enforcement Access Portal (LEAP), within one day of the issue date. The Site Visit Report and the Licensee Public Response will also be published on the Agency's website, www.epa.ie, 60 calendar days after the site visit report issue date (on the Licence Details Page for the relevant licence).

Please note that licensees are required to comply with the conditions of the licence at all times, and where non-compliance occurs, compliance must be restored within the shortest possible time. These actions will be verified during subsequent Agency visits. Please quote the above Inspection Reference Number in any correspondence in relation this Report.