 <p><b>epa</b>  <small>Environmental Protection Agency          An Ghníomhaireacht um Chaomhnú Comhshaoil</small></p>	<p><b>OFFICE OF ENVIRONMENTAL          SUSTAINABILITY</b></p>
<p><b>ENVIRONMENTAL LICENSING PROGRAMME</b></p>	
<b>TO:</b>	Sharon Finegan, Director
<b>FROM:</b>	Yvonne English, Inspector, Environmental Licensing Programme
<b>DATE:</b>	13 October 2021
<b>RE:</b>	Agency initiated Technical Amendments to Wastewater Discharge Licences to facilitate enforcement of the licences.

The Agency, in accordance with Regulation 33(1)(b) and 33(1)(c) of the European Union (Waste Water Discharge) Regulations 2007 to 2020, proposes to amend a number of licences granted to Irish Water. The licences to be amended are outlined in Table 1 below:

Table 1: Licences to be amended

D0003-01	Athy
D0025-01	Roscrea
D0027-01	Nenagh
D0049-01	Ballincollig and Environs
D0062-01	Carrickmacross
D0075-01	Kilrush
D0082-01	Cootehill
D0102-01	Enniscrone
D0106-01	Kilmallock
D0150-01	Manorhamilton
D0191-01	Moycullen
D0208-01	Dungloe
D0210-01	Glenties
D0243-01	Hacketstown
D0330-01	Cloughduv
D0455-01	Ballyclerihan
D0457-01	Limerick Junction
D0489-01	Drumlish
D0501-01	Ballinagh
D0507-01	Ballingarry

The Agency is minded to amend these licences arising from a combination of enforcement experience, legal cases and legal advice. The Agency considers the requested changes/amendments to the waste water discharge licences (WWDL) will improve the enforceability of the specific conditions which will in turn assist EPA enforcement of the

licences, provide consistency and clarity to the licensee, as well as helping to protect the environment.

Regulation 33(2) of the European Union (Waste Water Discharge) Regulations 2007 to 2020 allows the Agency to consult with licensees before amending a licence, a certificate or a revised licence or revised certificate.

In accordance with Regulation 33(2) the Agency issued a letter to Irish Water on 17/02/2021 outlining the proposed changes to be made to the relevant WWDLs.

Irish Water responded to this letter making comments on a number of the proposed amendments. Irish Water's comments are addressed below.

### **Proposed Amendment 1:**

The original definition for 'incident' in the Glossary of Terms of the licence included the word 'incident' within the definition. The inclusion of the word 'incident' within the definition creates a circular argument. In accordance with Regulation 33(1)(b), which allows matters in a licence to be clarified to the extent that no greater or lesser obligation is placed on Irish Water than was placed upon Irish Water by the original licence. The proposed amendment is intended to ensure that the definition of 'incident' is more easily understood. The proposed amendment is recommended as follows:

Replace existing definition of Incident, below:

- Incident** The following shall constitute an incident for the purposes of this licence:
- (i) any discharge that does not comply with the requirements of this licence;
  - (ii) any incident with the potential for environmental contamination of surface water or groundwater, or posing an environmental threat to land, or requiring an emergency response by the licensee and/or the relevant authorities.

with the amended definition of incident, as follows:

- Incident** The following shall constitute an incident for the purposes of this licence:
- (i) any discharge that does not comply with the requirements of this licence;
  - (ii) any discharge or occurrence with the potential for environmental contamination of surface water or groundwater, or posing an environmental threat to land, or requiring an emergency response by the licensee and/or the relevant authorities.

Comment: Irish Water has no comments on this proposed alteration.

### **Proposed Amendment 2:**

Condition 1.X is proposed to be amended as outlined below. The inclusion of the phrase 'there shall be no other discharges of environmental significance' is something that was implied at the time of licensing. The inclusion of the phrase now is to expressly make it clear as more

recent experience shows that the inclusion of these words helps to make the licence more easily understood and enforced.

From enforcement experience, there can sometimes be environmentally significant discharges from points other than the discharge points listed in the licence, e.g. from emergency overflows or blocked sewers. The proposed amendment will assist in the enforcement of such discharges from the waste water works directly or indirectly to the environment. These discharges may or may not occur through authorised discharge locations. Other licences issued by the EPA such as Industrial Emissions include standardised wording '*there shall be no other emissions of environmental significance*'. The proposed amendment brings the consistency of this standard licensing wording into Waste Water Discharge Authorisations and strengthens the EPA's environmental enforcement approach.

The proposed amendment is recommended in accordance with Regulation 33(1)(b) which makes provision for a licence to be amended where the amendment makes clearer something which was implicit at the time of licensing.

Irish Water Comment:

Irish Water seek clarification from the Agency, where additional storm water overflows not listed in Schedule A.3 Storm Water Overflows of the relevant licence are identified, if a letter of Notification under Condition 1.6 (or appropriate Condition No.) detailing the information relating to the Stormwater Overflow location and operation is deemed to be the only notification required.

Irish Water also note that the wastewater discharge licences references specifically the primary, secondary discharges and storm water overflows but do not specify the emergency overflows. They therefore seek clarification from the Agency, that the above condition does not include reference to emergency overflows from the wastewater works.

Response:

The Agency have issued 'EPA Guidance for Irish Water on Requests for Alterations to a Waste Water Discharge Licence or Certificate of Authorisation' which is available on the [EPA website](#). Irish Water are required to follow the steps provided in this guidance document and determine what action is required for the proposed alteration. The alterations guidance document is updated regularly in accordance with recent case law or legislative changes. Any proposed alteration to a licence is made on a case by case basis.

As highlighted above, although emergency overflows are not specified in the licence, these discharges too shall not be environmentally significant. The proposed amendment is recommended as follows:

Replace existing Condition 1.X<sup>1</sup>, below:

The discharge(s) to waters from the waste water works shall be restricted to those listed and described in *Schedule A: Discharges and Discharge Monitoring*, of this licence and shall be as set out in the licence application or as modified under Condition 1.6 {*insert appropriate Condition No.* } of this licence and subject to the conditions of this licence.

---

<sup>1</sup> As the numbering for the subconditions vary between licences, replace the appropriate subcondition.

With amended Condition 1. X<sup>1</sup>, as follows:

The discharge(s) to waters from the waste water works shall be restricted to those listed and described in *Schedule A: Discharges and Discharge Monitoring*, of this licence and shall be as set out in the licence application or as modified under Condition 1.6 *{insert appropriate Condition No. }* of this licence and subject to the conditions of this licence. There shall be no other discharges of environmental significance.

**Proposed Amendment 3:**

Condition 2 – Interpretation, has evolved over the years and a number of changes have been made to this condition as a result of Board decisions. In order to achieve a consistent approach across all licences, it is recommended that the following most up to date wording should be included in all licences.

The proposed amendment will bring consistency to the emission limit value interpretation for both the licensee and the EPA. From examination of all WWDA, 20 licences were identified as having interpretations that are not consistent with the standard Condition 2 Interpretation, which the Agency uses for Waste Water Discharge Authorisations. The type of issues/inconsistencies identified were as follows:

- There is no interpretation
- The interpretation is too high
- The interpretation is too low

In accordance with Regulation 33(1)(c), the proposed amendment to Condition 2 allows for a clearer interpretation for the purpose of the waste water licences and therefore facilitates the operation of the licence. The proposed amendment brings consistency to this condition and clarity to the licensee and EPA.

Irish Water Comment:

Irish Water welcomes the proposed amendments to 2.1.1.4 and 2.1.1.5. However, Irish Water proposes that an annual mean limit would be a more appropriate measure of determining compliance with the nutrient emission limit values (ELVs). Irish Water does not agree that an instantaneous upper tier limit should be set for nutrient parameters. In relation to the proposed wording of 2.1.1.7 for parameters other than BOD, COD, SS, Ammonia, PO<sub>4</sub>, TN/TP, Irish Water consider that the Agency should consider an upper tier limit of 100% for any other nutrient parameters. With regards to Condition 2.1.2, Irish Water queries the scientific basis for imposing an upper tier limit of 20% on discrete samples for parameters other than BOD, COD, SS and pH. Irish Water proposes that the same upper tier limit used for composite samples be applied to discrete samples.

Response:

The Agency is satisfied that the requirements of the condition as outlined are necessary to provide protection to the receiving water environment.

Amend Condition 2.X<sup>1</sup> as follows:

---

<sup>1</sup> As the numbering for the subconditions vary between licences, replace the appropriate subcondition.

2.1 Emission limit values for discharges to waters in this licence shall be interpreted in the following way:

2.1.1 Composite Sampling

2.1.1.1 No pH value shall deviate from the specified range.

2.1.1.2 For cBOD and COD, no more than the relevant number of samples specified in *Schedule A.4: Interpretation of Discharge Monitoring Results*– Column 2 or Column 4, of this licence, shall exceed the concentration Emission Limit Value based on the number of samples taken as listed in *Schedule A.4: Interpretation of Discharge Monitoring Results*– Column 1 or Column 3, of this licence. No individual result similarly calculated shall exceed the emission limit value by more than 100%.

2.1.1.3 For Suspended Solids, no more than the relevant number of samples specified in *Schedule A.4: Interpretation of Discharge Monitoring Results*– Column 2 or Column 4, of this licence, shall exceed the concentration Emission Limit Value based on the number of samples taken as listed in *Schedule A.4: Interpretation of Discharge Monitoring Results*– Column 1 or Column 3, of this licence. No individual result similarly calculated shall exceed the emission limit value by more than 150%.

2.1.1.4 << To be included where appropriate>> For Orthophosphate no more than the relevant number of samples specified in *Schedule A.4: Interpretation of Discharge Monitoring Results* – Column 2 or Column 4 <<ensure correct Schedule is inserted here>>, of this licence, shall exceed the emission limit value. No individual result similarly calculated shall exceed the emission limit value by more than 100%.

2.1.1.5 <<To be included where appropriate>> For Ammonia no more than the relevant number of samples specified in *Schedule A.4: Interpretation of Discharge Monitoring Results* – Column 2 or Column 4 <<ensure correct Schedule is inserted here>>, of this licence, shall exceed the emission limit value. No individual result similarly calculated shall exceed the emission limit value by more than 100%.

2.1.1.6 <<Include as appropriate.>>For parameters Total Phosphorus and Total Nitrogen the annual mean of the samples shall not exceed the emission limit value. No individual result similarly calculated shall exceed the emission limit value by more than 20%.

2.1.1.7 For parameters other than pH, cBOD, COD, Suspended Solids, Orthophosphate, Ammonia, Total Phosphorus, Total Nitrogen <<Include as appropriate.>> no more than the relevant number of samples specified in *Schedule A.4: Interpretation of Discharge Monitoring Results* – Column 2 or Column 4, of this licence, <<ensure correct Schedule is inserted here>> shall exceed the concentration Emission Limit Value based on the number of samples taken as listed in *Schedule A.4: Interpretation of Discharge Monitoring Results* – Column 1 or Column 3, of this licence <<ensure correct Schedule is inserted here>>. No individual result similarly calculated shall exceed the emission limit value by more than 20%.

2.1.2 Discrete Sampling

No cBOD or COD grab sample value shall exceed the concentration emission limit value by more than 100% and no Suspended Solids grab sample value shall exceed the

concentration emission limit value by more than 150%. For all other parameters, except pH, no grab sample value shall exceed the emission limit value by more than 20%.

- 2.2 No sample of the discharge taken at a time when unusual weather conditions are adversely affecting the operation of the waste water treatment plant, shall be taken into account in determining compliance with Conditions 2.1 of this licence. A replacement sample shall be taken within 72 hours of cessation of the unusual weather conditions. The licensee shall report the sample result including any justification of the basis for excluding the sample in the Annual Environmental Report.
- 2.3 On any occasion where unusual weather conditions affect the operation of the waste water works the licensee shall use its best endeavours to mitigate the effect of the unusual weather conditions.

#### **Proposed Amendment 4:**

At the time of licensing it would have been implicit that SWO should not cause environmental pollution, however some discharges from SWOs cause environmental pollution. In order to strengthen the enforcement of discharges from SWOs and make this condition more easily understood it is recommended to state this explicitly in the waste water discharge licences.

Earlier licences had various storm water overflow condition wording and formatting. From examination of all Waste Water Discharge Authorisations, there were approximately four different iterations of the storm water overflow condition historically. The proposed amendment brings consistency to the condition and clarity to the licensee on the requirements for storm water overflows. There can be instances where discharges from storm water overflows cause environmental pollution and the proposed wording will strengthen the EPA's environmental enforcement approach.

The proposed amendment is recommended in accordance with Regulation 33(1)(b) which makes provision for a licence to be amended where the amendment makes clearer something which was implicit at the time of licensing and makes the Waste Water Discharge Licences more easily understood.

#### Irish Water Comment:

Irish Water would welcome clarification from the Agency, where additional storm water overflows not listed in Schedule A.3 Storm Water Overflows of the relevant license are identified, that a letter of Notification under Condition 1.6 (or appropriate Condition No.) detailing the information relating to the Stormwater Overflow location and operation is deemed to be the only notification required.

#### Response:

The Agency have issued 'EPA Guidance for Irish Water on Requests for Alterations to a Waste Water Discharge Licence or Certificate of Authorisation' which is available on the [EPA website](#). Irish Water are required to follow the steps provided in this guidance document and determine what action is required for the proposed alteration. The alterations guidance document is updated regularly in accordance with recent case law or legislative changes. Any proposed alteration to a licence is made on a case by case basis. The proposed amendment is recommended as follows:

Condition 3. X<sup>1</sup> - Storm water overflows (SWO).

Replace existing Condition 3. X<sup>1</sup>, below:

Storm water overflows shall be as specified in *Schedule A.3: Storm Water Overflows*, of this licence. The licensee shall carry out an investigation to identify any additional storm water overflows within the waste water works as part of the programme of improvements. The Agency shall be notified in writing of any additional storm water overflows not listed in *Schedule A.3 Storm Water Overflows*, of this licence. All storm water overflows shall be in compliance with the criteria for storm water overflows, as set out in the DoECLG '*Procedures and Criteria in Relation to Storm Water Overflows*', 1995 and any other guidance as may be specified by the Agency.

With amended Condition 3. X<sup>1</sup>, as follows:

- 3.6 Storm Water Overflows
  - 3.6.1 Storm water overflows shall be as specified in Schedule A.3: Storm Water Overflows, of this licence. The licensee shall carry out an investigation to identify any additional storm water overflows within the waste water works as part of the programme of improvements. The Agency shall be notified in writing of any additional storm water overflows not listed in Schedule A.3 Storm Water Overflows, of this licence.
  - 3.6.2 All storm water overflows shall be in compliance with the criteria for storm water overflows, as set out in the DoECLG '*Procedures and Criteria in Relation to Storm Water Overflows*', 1995 and any other guidance as may be specified by the Agency.
  - 3.6.3 Discharges from storm water overflows shall not cause environmental pollution.

**Proposed Amendment 5:**

This proposed amendment arose from enforcement experience relating to emergency overflows. Condition 4.10 as originally written required corrective actions to be taken 'should the specified requirements of the licence not be fulfilled. As there are no specific conditions in the licence around the requirements for emergency overflows, it may be difficult to clearly demonstrate that an emergency overflow is a failure to fulfil a specified requirement of a licence. However, with the redrafted text to Condition 4.10 along with the clearer definition for an incident, it would be possible to show that an emergency overflow is an incident. Therefore improving the enforceability of the licence. The proposed amendment is recommended in accordance with Regulation 33(1)(c) facilitating the operation of the licence on the basis of the Agency's enforcement experience.

Irish Water Comment:

Irish Water recommends this condition should be amended as follows:

'The licensee shall establish and maintain {for new licences only OR} maintain {for reviews only} corrective action procedures. In the event of an incident and/or should the specified requirements of this licence not be fulfilled, the licensee shall take corrective action as soon as practicable.'

Irish Water state that the revised text is recommended as the responsibility for further investigations and corrective actions will vary depending on the site and Irish Water believe that defining the responsibility to a specific role for the purposes of complying with this condition is not necessary or practical.

Response:

The Agency has no objection to the suggested change in the wording that was proposed in the consultation on this condition. The Condition shall therefore read as follows:

Condition 4. X<sup>1</sup>, – Corrective action.

Replace existing Condition 4. X<sup>1</sup>, below:

The licensee shall establish and maintain *{for new licences only OR} maintain {for reviews only}* corrective action procedures and shall take corrective action should the specified requirements of this licence not be fulfilled. The responsibility and authority for persons initiating further investigation and corrective action in the event of a reported non-conformity with this licence shall be defined by the licensee.

With amended Condition 4. X<sup>1</sup>, as follows:

The licensee shall establish and maintain *{for new licences only OR} maintain {for reviews only}* corrective action procedures. In the event of an incident and/or should the specified requirements of this licence not be fulfilled, the licensee shall take corrective action as soon as practicable.

**Additional Proposed Amendment**

Upon examination of the WWDLs during the course of this project, it was noted that approximately 21 licences do not include the definition for 'Environmental Pollution'. This is a standard term included in the Glossary of Terms of all WWDLs. It is proposed that the Agency take the opportunity now to include this standard term into the 21 WWDLs where it is not included. In accordance with Regulation 33(1)(c), the inclusion of the definition of 'Environmental Pollution' allows for a clearer interpretation for the purpose of the waste water licences and therefore facilitates the operation of the licence on the basis of the Agency's enforcement experience.

It is proposed in these circumstances that the definition for 'Environmental Pollution' be inserted into the Glossary of Terms as follows:

Insert the definition of Environmental Pollution as follows:

<b>Environmental Pollution</b>	Means, in relation to waste water discharges, the direct or indirect introduction, as a result of human activity, of waste water discharges, substances (including any explosive, liquid or gas) or polluting matter (including any poisonous or noxious matter) into waters which may endanger human health or harm the aquatic environment, and in particular: (i) create a risk to waters, sediment, plants or animals.
--------------------------------	---

---

<sup>1</sup> As the numbering for the subconditions vary between licences, replace the appropriate subcondition.



- (ii) deleteriously interfere with the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems including by:
  - Rendering those or any other waters poisonous or injurious to fish, shellfish, spawning grounds or the food of any fish, or
  - Impairing the usefulness of the bed and soil of any waters as spawning grounds or impairing their capacity to produce the food of fish or shellfish,
- (iii) impair or interfere with amenities and other legitimate uses of the water, or
- (iv) result in water failing to meet any environmental quality standards prescribed in regulations for the purposes of giving effect to the requirements of any Directive relating to the quality or use of water for the time being in force.

### **Appropriate Assessment**

A screening for Appropriate Assessment was undertaken to assess, 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.

The activity is not directly connected with or necessary to the management of any European Site and the Agency considered, for the reasons set out below, that it can be excluded, on the basis of objective information, that the activity, individually or in combination with other plans or projects, will have a significant effect on any European Site and accordingly determined that an Appropriate Assessment of the activity was not required.

This determination is based on the fact that the proposed amendment will not result in a change to the protections provided to the environment or the nature/volume of the discharges from the agglomeration.

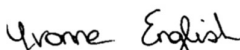
### **Requested changes from Irish Water**

In response to the Article 33(2) notice issued to Irish Water by the Agency, Irish Water requested additional changes be made to the licences. These changes fall outside the scope of this project.

### **Recommendation**

I recommend that the licence amendments be approved as set out in the attached recommended Technical Amendments. Such amendments do not result in the relevant requirements of Regulation 6(3) of the European Union (Waste Water Discharge) Regulations 2007 to 2020, ceasing to be satisfied.

Signed



Yvonne English

Environmental Licensing Programme