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

The Agency, in accordance with Regulation 33(1)(b) and Regulation 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

D0083-01	Kingscourt
D0255-01	Virginia
D0514-01	Castlefinn
D0520-02	Kilcar
D0545-01	Durrus

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.X¹, 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.

With amended Condition 1. X¹, 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:

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.

¹ As the numbering for the subconditions vary between licences, replace the appropriate subcondition.

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. X¹ - Storm water overflows (SWO).

Replace existing Condition 3. X¹, 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. X¹, 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 4:

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. X¹, – Corrective action.

Replace existing Condition 4. X¹, 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.

¹ As the numbering for the subconditions vary between licences, replace the appropriate subcondition.

With amended Condition 4. X¹, 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.

Proposed Amendment 5:

The current wording of Condition 5.4 which includes the wording ‘... in order to ensure compliance with the emission limit values as set out in Schedule A: Discharges and Discharge Monitoring, of this licence.’, could be interpreted to mean that the condition does not include improvements to the waste water works/ network as a whole as set out in Schedule C: Specified Improvement Programme, because such improvements may not be directly related to compliance with emission limit values. The proposed rewording of this condition will make the licence more easily understood and enforceable.

The proposed amendment is recommended in accordance with Regulation 33(1)(b) as it is making express of something which was implicit at the time of the decision to grant the licence. Based on the Agency’s enforcement experience, the proposed amendment will allow for the licence to be cleared and more easily understood.

Irish Water Comment:

Irish Water states that the Authorisation Regulations relate specifically to the regulation and control of waste water discharges from the wastewater works and plant. Therefore, Irish Water welcomes that the specified improvement programme detailed in the licences are solely to ensure compliance with the emission limit values set out in Schedule A. Further to the above Irish Water request that improvements set out in Schedule C of the licences that require updates to sewer, pumping station or other works which do not impact on the emission limit values being complied with be removed from the licences.

Irish Water would welcome the opportunity to review the proposed improvements to be specified in Schedule C before a final determination is made in order to ascertain what programme of works would need to be prioritised for funding in the future Capital investment programme as permitted under Regulation 28(3) of the European Union (Waste Water Discharge) Regulations 2007 to 2020.

Response:

In relation to the request from Irish Water to remove the requirements for certain aspects of *Schedule C: Specified Improvement Programme*, it is considered that in order to ensure the adequate conveyance and treatment of all waste water generated, it is necessary to specify that certain improvement works are planned for and undertaken within the wider waste water works. For this reason the wording is specified as above.

In relation to Irish Water having the opportunity to review the proposed improvements to be specified in a licence as permitted under Regulation 28(3), the Agency highlights that Regulation 28(3) states that the Agency may require an applicant to provide confirmation that

all programmes of works that would be required to comply with the licence have been given appropriate prioritisation for funding. Regulation 28(3) applies prior to the granting of a final licence or a review licence, it does not apply to technical amendments. The proposed amendment is recommended as follows:

Condition 5. X¹ Specified Improvement Programme

Replace existing Condition 5. X¹, below:

The licensee shall complete the improvements as set out in *Schedule C: Specified Improvement Programme*, of this licence, in order to ensure compliance with the emission limit values as set out in *Schedule A: Discharges and Discharge Monitoring*, of this licence.

With amended Condition 5. X¹, as follows:

The licensee shall complete the improvements as set out in *Schedule C: Specified Improvement Programme*, of this licence.

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.

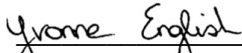
Requested changes from Irish Water

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