


This document has been cleared for submission to the Programme Manager by the Senior Inspector,
Pamela McDonnell

Pamela McDonnell

Signed:

Date: 10/12/2021

 <p>epa Environmental Protection Agency <i>An Ghníomhaireacht um Chaomhnú Comhshaoil</i></p>	OFFICE OF ENVIRONMENTAL SUSTAINABILITY
ENVIRONMENTAL LICENSING PROGRAMME MEMORANDUM	
TO:	Marie O'Connor, Programme Manager
FROM:	Eoin McCaffrey, Inspector, Environmental Licensing Programme
DATE:	10 December 2021
RE:	Recommendation to consider the following IED licence application to have been abandoned: William Connolly & Sons Unlimited Company, Grange Lower, Goresbridge, Kilkenny (P1069-01).

Recommendation:

The Programme Manager is asked to approve the recommendation of this memo that the Agency moves to consider the above referenced application to have been abandoned and that a notice under Regulation 19(2) of the EPA Act (Industrial Emissions)(Licensing) Regulations 2013 should be served to the applicant. This notice requires that the applicant within **14** days, beginning on the date of this notice, make a response in writing as to why the application should not be regarded as having been abandoned.

I recommend that after the expiration of the specified period of **14** days if;

- No response is received or;
- If a response is made to the Agency pursuant to the notice, and after an assessment of that response the Agency considers that insufficient information has been received to enable a proposed determination to be made,

the Agency will consider making a declaration under Reg 19(3) that the application be regarded as having been abandoned.

Introduction:

The First Schedule of the EPA Act 1992 as amended, indicates that the following classes of activity require a licence:

7.8 (a) The treatment and processing, other than exclusively packaging, of the following raw materials, whether previously processed or unprocessed, intended for the production of food or feed from:

- (ii) only vegetable raw materials with a finished product production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year.*

In relation to the licence application William Connolly & Sons Unlimited Company (P1069-01), it is noted that the applicant has failed to provide all of the information required under Regulation 9 of the EPA (Industrial Emissions)(Licensing) Regulations 2013. The correspondence history between the applicant and Agency is outlined in the 'Assessment' section below.

Regulation 19(2) of the EPA (Industrial Emissions)(Licensing) Regulations 2013

In accordance with Regulation 19(2) of the *Environmental Protection Agency (Industrial Emissions)(Licensing) Regulations 2013*, where the Agency is of the opinion that an application for a licence has been abandoned, it may give to the applicant a notice stating that fact and require that person, within a period specified in the notice (being a period of not less than 14 or not more than 28 days beginning on the date of the giving of the notice), to make to the Agency a response in writing as to why the application should not be regarded as abandoned. Regulation 19(3) provides that where such a notice has been given, the Agency may, at a time after the expiration of the period specified in the notice and after considering the response (if any) made to the Agency pursuant to the notice, declare that the application to which the notice relates shall be regarded as having been abandoned.

The 'Assessment' section below examines whether the provisions of Regulation 19 should be used for the above referenced application.

Assessment

William Connolly & Sons Unlimited Company made an application on 06th March 2018 for an existing feedmill operation located in Goresbridge, Co. Kilkenny. Following the transposition of the Industrial Emissions Directive 2010/75/EU in April 2013, it is a requirement for feedmills using only vegetable raw materials with a finished production capacity greater than 300 tonnes per day or 600 tonnes per day where the installation operates for a period of no more than 90 consecutive days in any year, to hold an Industrial Emissions Licence from the Agency.

In relation to the current application, at the time of writing three third party submissions have been received. There was one submission from the Health Service Executive and one submission from Kilkenny County Council Planning Department. The third submission identified that the application must comply with the Habitats Directive (Directive 92/43/EEC), the Birds Directive (Directive 2009/147/EC) and various judgements of the Court of Justice of the European Union (CJEU).

As noted above, the applicant's initial licence application was received by the Agency on 06th March 2018. There has been substantial correspondence between the Agency and the applicant in the intervening years as summarised in the table below. An 'inadequate response' is defined as one that does not fully address all queries in the Agency's request for further information with sufficient information and detail to allow the inspector to progress the application. To date, the applicant has failed to provide all of the information required under Regulation 9 of the EPA (Industrial Emissions)(Licensing) Regulations 2013.

Notable ELP Communication	Date issued	Applicant's response
Appropriate Assessment (AA) screening Determination (Screened In)	20/11/2018	
AA Screening Determination Cover Letter	20/11/2018	

A request for Further Information (RFI) Notice issued under Regulation 10(2)(b)(ii) of the EPA (Industrial Emissions)(Licensing) Regulations 2013. Including a request for a Natura Impact Statement (NIS) to be submitted.	20/11/2018	Inadequate response to Agency's communication of 20/11/2018 received on 30/10/2019. A NIS was not submitted.
Environmental Impact Assessment (EIA) screening Determination (Screened Out)	30/07/2019	N/A
RFI Reminder Notice	18/12/2019	Inadequate response to Agency's communication of 18/12/2019 received on 15/05/2020
RFI Reminder Notice	08/07/2020	No response received
RFI Reminder Notice	13/05/2021	Inadequate response to Agency's communication of 13/05/2021 received on 03/06/2021
William Connolly requested meeting with the Agency to discuss the licence application.	30/06/2021	
The Agency met with the applicant and Environmental Consultants Malone O'Regan	08/07/2021	Applicant outlined programme to respond in full to the outstanding RFI by 30/11/2021.
Applicant submitted documentation in response to RFI issued on 20/11/2018	30/11/2021	Inadequate response to enable an assessment of the licence application by the Agency.

The applicant was informed, directly and through their consultant, in the RFI Reminder Notice dated 13th May 2021 that failure to supply the Agency with the outstanding information, by 10th June 2021, may result in the Agency activating Regulation 19 of the *EPA (Industrial Emissions)(Licensing) Regulation 2013* and deeming the application to have been abandoned. An inadequate response to the Agency's communication of 13th May 2021 was received on the 03rd June 2021.

On the 30th June 2021, the applicant requested a meeting with the Agency to identify and propose a schedule of works for all outstanding information to be submitted as required in order for the Agency to progress the licence application and make a determination. A meeting between the Agency, the applicant and environmental consultants took place on 08th July 2021 in which the applicant requested an extension of time to submit all outstanding information. The applicant identified that monitoring and assessments would be undertaken during the upcoming harvest season (July/August/September) and all outstanding information would be submitted by 30th November 2021. The Agency agreed to this request and the applicant submitted a schedule of works to the Agency as unsolicited information to its licence application on 12th July 2021.

On the 30th November 2021 the Agency received documentation from the applicant in response to the outstanding RFI. In accordance with Section 83(5) the Agency shall not grant a licence for an activity unless it is satisfied that all emissions from the activity will not result in the contravention of any relevant environmental standards in relation to emissions or discharges to air, water, noise or other, and that any emissions from the installation will not cause significant environmental pollution, BAT will be employed, waste efficiencies & energy

efficiencies will be employed, accident prevention measures are in place, measures for permanent cessation of the activity, and that the applicant is a fit and proper person.

Having reviewed the documentation supplied on 30th November 2021, in conjunction with the information supplied previously by the applicant in response to the RFI issued on 20th November 2018, the inspector deems that the applicant's response does not fully address all of the Agencies queries in the RFI to allow the Agency to progress the licence application and make a determination.

The applicants response has failed to provide sufficient information with regard to, but not limited to: emissions to air, discharges to surface water including the performance to date of the Integrated Constructed Wetland (ICW) which discharges directly to a Special Area of Conservation (SAC), impacts of noise from the installation including exceedances of noise limits at the nearest noise sensitive locations, and details of specific noise mitigation measures to be employed and their effect in ensuring the installation will comply with standard noise limits.

In addition, it is clear from the applicants written response on the 30th November 2021 that the proposed installation as applied for in 2018 has changed substantially and now includes significant increases in the boundary to include an increase in the size of the ICW which is located partly within the neighbouring SAC, two new grain storage sheds and dryers to the north of the site and new process activities such as oat cleaning. The changes identified in the RFI response also involve changes in fuel use on-site and decommissioning of plant and infrastructure. The applicant's response has failed to provide sufficient information regarding these substantial changes in order for the Agency to assess and make a determination.

Of note, the applicant has failed to provide evidence of planning consent for the development of new storage sheds and dryers to the north of the site. The applicant has also failed to provide written confirmation from the planning authorities that the 30-meter-high stack associated with the new oat cleaning process is exempt from planning consent as stated in Section 2.5 of the Air Dispersion Modelling Report dated 30/11/2021.

As the applicant has failed to provide the Agency with the additional information required to enable the Agency to progress with the assessment of the application, it is considered that it is appropriate to issue a Notice under Regulation 19(2) of the *EPA (Industrial Emissions)(Licensing) Regulation 2013*.

Recommendation

I recommend that in accordance with Regulation 19(2) of the *Environmental Protection Agency (Industrial Emissions)(Licensing) Regulation 2013*, that the Agency take the opinion that the identified application a licence has been abandoned. I recommend that a notice under Regulation 19(2) of these Regulations be served on the applicant requiring the applicant, within a period of **14** days, beginning on the date of the giving of the notice, to make a response in writing as to why the application should not be regarded as having been abandoned. Any such notice should be issued to both the applicant and the consultant acting on behalf of the applicant.

I recommend that after the expiration of the specified period of **14** days if:

- No response is received or;

- If a response is made to the Agency pursuant to the Notice, and after an assessment of that response the Agency considers that insufficient information has been received to enable a proposed determination to be made,

the Agency will consider making a declaration under Reg 19(3) that the application be regarded as having been abandoned.

The applicant has confirmed that the installation identified currently operates at a capacity above the threshold for licensing. In the event that the application is considered to be abandoned, I also recommend that OEE should be notified that a licensable activity may be operational in the absence of a licence or licence application and that further investigation and, as relevant, enforcement may be required.

Signed,



Eoin McCaffrey
Inspector
Environmental Licensing Programme