

29th July 2022.

**Mr. Eoin McCaffrey,
Inspector II,
Environmental Licencing Programme,
Office of Environmental Sustainability,
Johnstown Castle Estate,
Co. Wexford,
Y35 W821**

By EDEN

Re: Response to Further Notice under the EPA (Industrial Emissions) (Licensing) Regulations 2013, in respect of a licence application from William Connolly & Sons Unlimited Company for an installation located at William Connolly & Sons Unlimited Company, Grange Lower, Goresbridge, Kilkenny, R95 EKH4, dated 14th July 2022 - IE Licence Reg No. P1069-01

Dear Sir/Madam,

Please find below Connolly's Red Mills (Red Mills) response to the EPA's correspondence dated 14th July 2022, in respect of a licence application Reg No. P1069-01 from William Connolly & Sons Unlimited Company (hereafter referred to as Red Mills), in accordance with the EPA (Industrial Emissions) (Licensing) Regulations 2013.

The Agency's letter dated 14th July 2022 requested the following information:

1. *Provide confirmation from the relevant planning authority that the amended stack heights requested for inclusion in the licence, as detailed in 'Attachment 7.4.1 – Emissions to Atmosphere – Main' and as modelled in Scenario 3.2 of the Air Dispersion model dated March 2022, are planning exempt (Regulation 9(2)(e)).*

On behalf of Red Mills, Malone O'Regan Environmental (MOR) submitted a Section 5 Exemption request to the Planning Authority, Kilkenny County Council on the 15th June 2022, to confirm whether a Section 5 exemption would apply to the proposed amendments to stack heights that are deemed to be warranted to mitigate air emissions at the facility. The Planning Authority responded on 18th July 2022, with a determination that the proposed works would not be exempted development, please refer to Attachment A.

Red Mills obtained expert legal advice from Arthur Cox regarding amending the stack heights and the requirement to obtain planning consent. This expert advice confirmed that if such works are conditioned in the IE licence, then the works would be exempted development under Section 86(8) of the EPA Act 1992, as amended, as detailed below:

- Works consisting of or incidental to the carrying out of development referred to in section 86(8) of the EPA Act 1992, as amended (the "EPA Act") for the purpose of

giving effect to a condition attached to a licence granted by the EPA are exempted development.

- Section 86(8) of the EPA Act provides:

(8) Where a permission under section 34 of the Act of 2000 has been granted or an application has been made for such permission in relation to development comprising or for the purposes of an activity, the Agency—

(a) may consult with the planning authority in whose functional area the activity is or will be situated in relation to any development which is necessary to give effect to any conditions to be attached to a licence or revised licence and which the Agency considers is not the subject of a permission or an application for a permission under section 34 of the Act of 2000, and

(b) may attach to the licence or revised licence such conditions related to the above-mentioned development as may be specified by the planning authority for the purposes of the proper planning and sustainable development of the area or stricter conditions as the Agency may consider necessary for the prevention, limitation, elimination, abatement or reduction of emissions.

- Section 86(11) provides that works consisting of, or incidental to, the carrying out of development referred to in paragraph (a) of subsection (8) in respect of which conditions have been attached under paragraph (b) of that subsection to the licence concerned shall be exempted development within the meaning, and for the purposes, of the Act.

Legal precedent exists for such exemption. In *O'Connell v Dungarvan Energy Limited*^[1], an IPC Licence obtained by the Respondent contained a condition imposing certain noise restrictions in relation to the development. The steel structure of an existing CHP building on site was of insufficient structural strength to support cladding which would enable compliance with the condition. It was therefore necessary that a stronger steel structure be provided. The High Court found that the replacement of the steel structure was a direct consequence of the imposition of the noise condition in the licence and was therefore exempted development.

Red Mills have previously submitted a legal opinion in relation to exemption available under Article 86(8). Please refer to Arthur Cox letter in Appendix A of MOR's report entitled 'Additional Technical Information' dated 7th January 2022 and submitted via Eden on the same date. For ease of reference, this same letter has been provided in Appendix B to this letter.

Subject to receipt of a proposed licence determination from the EPA including such a condition, we would propose to submit a revised Section 5 application to Kilkenny County Council, supported with a legal opinion to confirm that the works would be exempted development under the EPA Act. We would propose to engage with the Council in advance of making any such application.

Red Mills remain fully committed to implementing these mitigation works. As agreed during the recent EPA inspection, due to the complexity of these works, supply chain issues resulting in delays in receiving the required plant and equipment and operational requirements, that a period of 2 years will be required in order to fully complete these works.

We trust this submission will again demonstrate to the Agency that Red Mills remain fully committed to addressing all of the Agency's requirements to allow for a proposed licence determination to be issued on Reg No. P1069-01 in a timely manner.

^[1] Unreported, High Court, Finnegan P., February 27 2001

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eugene Brennan". The signature is written in a cursive style with a horizontal line underneath.

EUGENE BRENNAN B.Agr.Sc.
EHS Manager.

Appendices

Appendix A



Comhairle Chontae Chill Chainnigh

Halla an Chontae Sraid Eoin Cill Chainnigh
R95 A39T

Pobail agus Áiteanna Inbhuanaithe a Chruthú

Kilkenny County Council

County Hall John Street Kilkenny
R95 A39T



Creating Sustainable Communities and Places

Our Ref: DEC 706

18th July 2022

Registered Post


William Connolly & Sons
c/- Kevin O'Regan,
Malone O'Regan Environmental,
Bracken Business Park,
Ground Floor – Unit 3,
Bracken Rd,
Sandyford,
Dublin
D18 V32Y

Re: Application for Declaration under Section 5 of the Planning & Development Acts 2000- as amended
ADDRESS OF DEVELOPMENT: Connolly's Red Mills, Grange Lower, Goresbridge Co. Kilkenny.

A Chara,

I refer to the above application and now attach Declaration relating to same.

Mise le meas,


Una Kealy
Administrative Officer
Planning Section



**Declaration and Referral on Development and Exempted Development under
Section 5 of the Planning & Development Acts 2000-2021**

Kilkenny County Council Reference: Dec 706

WHEREAS a question has arisen as to

Is the modification of the feed mill building at Connolly's Red Mills in Goresbridge and relocation stacks on the roofs of the feed mill building, as required to comply with environmental emission limit values of EPA licence application P1069-01, a development and if so, is it exempt development?

AND WHEREAS the said question was referred to Kilkenny County Council by Malone O'Regan Environmental acting on behalf of William Connolly and Sons at Connolly Red Mills, Grange Lower, Goresbridge, Co. Kilkenny on the 20th June 2022.

AND WHEREAS Kilkenny County Council, in considering this referral, had regard to:

- (a) Section 2, 3 and 4 of the Planning and Development Acts 2000-2021.
- (b) Section 4(1)(h) of the Planning Act
- (c) Article 7 of the Planning and Development Regulations 2001 (as amended)
- (d) Article 9 of the Planning and Development Regulations 2001 (as amended)
- (e) Schedule 2, Part 1, Class 21 – Development for Industrial Purposes of the Planning and Development Regulations 2001 (as amended)
- (f) The plans and particulars submitted

AND WHEREAS Kilkenny County Council has concluded that:

- (a) The proposed modification of the feed mill building and relocation of stacks on the roof of the feed mill building as required to comply with environmental emission limit values of EPA licence application P1069-01 at Connolly Red Mills, Grange Lower, Goresbridge, Co. Kilkenny is not exempted development as proposed building modifications when cumulatively assessed does not comply with condition limitations (1) and (2) of Schedule 2, Part 1, Class 21 – Development for Industrial Purposes of the Planning and Development Exempted Regulations 2001 (as amended), as it the cumulative impact of the development would materially alters the appearance of the building and exceeds 15m above ground level.

NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Act, hereby decides that proposed modification of the feed mill building and relocation of stacks on the roof of the feed mill building as required to comply with environmental emission limit values of EPA licence application P1069-01 at Connolly Red Mills, Grange Lower, Goresbridge, Co. Kilkenny constitute development works and is not exempted development.

MATTERS CONSIDERED

In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard.


Una Kealy
Administration Officer

Date: **18/07/2022**

Footnote:

Section 5 (3)(a) of the Planning & Development Acts 2000-2021 states: '*Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.*'

An Bord Pleanála, 64 Marlborough Street, Dublin 1, Tel 01 8588100 or LoCall 1890 275175,
www.pleanala.ie

Appendix B

7 January 2022

BY EMAIL ONLY - KORegan@mores.ie

Dear Kevin,

Just to address your concerns before you submit the further information to the EPA on 7 January 2022.

1. *Abandonment of the application.* In our opinion, the EPA could not legally conclude that the application was abandoned. We are instructed that there is no intention to abandon that application and that this has been conveyed to the EPA. The EPA's decision to have recent meetings with your client on the 8th July 2021 and on the 21st December 2021 to discuss the on-going application and agreeing different deadlines for the submission of information of the 30th November 2021 and 7th January 2022 stops them from now concluding that the application is abandoned. There are other reasons too but we are so confident in this opinion that we do not feel further research is justified.
2. *Re the re-configuration of onsite drainage network to ensure all storm water from the Site will drain into the expanded ICW and the installation of a new large scale interceptor to replace two existing interceptors to improve the quality of the storm water discharging to the wetlands.* We consider that those works are exempted works under the Planning and Development Regulations 2001-2021 provided the limitations on the exemption are satisfied under (CLASS 21 (a) exempts works constituting (ii) *the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus*).

The replacement of the interceptors is doubly exempted under Class 21(a) being the provision or replacement of plant and *apparatus*. *Apparatus* is defined as equipment.

The limitations on these exemptions are:

- Any such development shall not materially alter the external appearance of the premises of the undertaking.

ARTHUR COX

- The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

Since we are instructed that the drainage works are largely underground and the interceptors less than 15 metres high, it is clear that these limitations are observed.

We are instructed that the storm water will be discharged to the wetlands and not discharged to any European site and that the effects of possible discharges of storm waters *from* the wetlands to the protected river have been subjected to an appropriate assessment by the planning authority and deemed not to have a significant adverse effect on the integrity of any European site by Kilkenny County Council. [See Planning Register No 19/235.]

In addition, these drainage works were envisaged in the application for planning permission for the wetlands and in the planning permission for them granted. See Planning Register No 19/235. Condition 6(d) of this planning permission provides “*No discharges of environmental significance shall be made from the development during the operational phases to the surface water drains or to the River Barrow.*” Consequently, discharges *from* the wetlands are regulated and have been subject to AA.

3. *Re the decommissioning and removal of Dryer 6. Decommissioning of plant and equipment is a standard activity at any industrial facility and planning permission is not required for this normal industrial activity. If it were, industrialists would have to apply for planning permission to remove plant and equipment.*
4. *Installation of replacement Dryer 6. We understand that works are ongoing and scheduled to be completed in the next few weeks. These works are exempted development under CLASS 21 of the Planning and Development Regulations 2001-2021 provided the limitations on the exemption are satisfied. . CLASS 21 (a) — (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures in the nature of plant or machinery.*
Provided:

- Any such development shall not materially alter the external appearance of the premises of the undertaking.
- The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

ARTHUR COX

We are instructed that the maximum height of the former dryer and associated structures including the conveyors / enclosures that need to be replaced is 24.9M and that the maximum height of the replacement dryer and associated structures including the stacks will be 24.5M i.e. not higher than the replaced structure. The height limitations on the exemption would be met in this case also.


5. It should also be noted that the legislation is in place that would allow the EPA during the licencing process to improve the environmental performance of an activity without obliging the licensee to get a new planning permission if some development is proposed during the licensing process which is not exempted or covered by a planning application or permission. See Scannell Environmental and Land Use Law (2006), at para 11-123. Any development required by such a condition in an EPA licence is exempted development under Regulation 7(1) of the Planning and Development Regulations 2001-21. Given the complexities of upgrading such an historic site, this may be an option that would be worthwhile to engage with the EPA on. Regulation 7(1) provides that the following are exempted development:

7. (1) Works consisting of or incidental to the carrying out of development referred to in section 86(4) of the Environmental Protection Agency Act, 1992 (No. 7 of 1992) for the purpose of giving effect to a condition attached to a licence or revised licence granted by the Environmental Protection Agency under Part IV of the said Act shall be exempted development.

Development referred to in section 86(4) includes “*(d) in addition to conditions that may be, or are required to be, attached to a licence or revised licence by reason of the foregoing or any other provision of this Part, enable the Agency to attach to a licence or revised licence in respect of a specified class or classes of activity such conditions as the Agency considers appropriate in the circumstances*”.

If you have any other matters for consideration, contact me by phone. Good luck with the application.

Best wishes,



Dr Yvonne Scannell

Environmental and Planning Group, Arthur Cox, Solicitors

Ph: 087 903 9666