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19th June 2017

Dear Mr Blackwood

I refer to your letter of 27th May 2017 in respect of the Stage 1 Complaint regarding 91 Glenshane Road, Drumahoe, Derry.

I have considered each point you have raised under the Summary of Formal Complaint section of your letter and have responded below. All other queries and questions set out in your letter are answered in Annex 1 of this letter as they fall outside the remit of DAERA customer service complaints procedure.

“NIEA has failed to adequately address or respond to the reasonable questions raised by our voluntary organisation in our letter to you dated 8th April 2017.”

NIEA responded to your letter on 10th May 2017 in an open and transparent manner. NIEA answered each question in turn providing truthful and accurate information in relation to the Water Order Discharge Consent.

“Many of the answers provided by NIEA appear deliberate attempts to mask or distract from serious failures of environmental governance.”

In the response to you on 10th May 2017, NIEA answered each question in turn providing truthful and accurate information in relation to the Water Order Discharge Consent.

“ There has been a failure to keep adequate records”

The DAERA Information Branch will carry out a review of the information held by Water Regulation and will respond to you separately on this matter.

“ In dealing with this complaint NIEA has made the unreasonable assumption that its term “site licence” refers to a Consent to Discharge, when it was always clear from the Department’s records that this was not the case. RFA believes this assumption is an attempt to distract from the point below”

NIEA made the assumption that when the RFA made reference to “ Site Licence” that it was infact referring to the Consent to Discharge. This assumption was based on the following facts:

- That RFA in their letter of the 8th April referred to dates which corresponded with the granting of the Consent to Discharge.
- The site has not been granted a Site Waste Management Licence
- The RFA letter dated the 8th April 2017 was written in response to the release of information by NIEA under the Environmental Information Regulations. RFA had asked for all copies of information relating to the Consent to Discharge for the site a 91 Glenshane Road.
- The RFA letter dated 8th April 2017 continually made reference to the granting of a consent.
- The RFA letter made reference to the terms of the consent
- The RFA letter made reference to the Water Order 1999 Consent to Discharge Application Form.

“NIEA has turned a blind-eye to the fact that extensive illegal landfilling was allowed to take place at this site and was even monitored by Departmental officials without it ever having received permission under the Landfill Regulations (NI)”

There is no evidence to suggest illegal infilling occurred at the site.

NIEA, ECU considered the RFA concerns and information provided in 2015 in relation to the alleged illegal infilling. ECU concluded that although development had occurred on the site during the period 1997 – 2004 any of the materials used for further development (post Jan 2004) were not deemed to be imported controlled waste and therefore no waste management authorisation would be required. In addition any development works that had occurred were subject to planning Approval and/or immune from planning enforcement.

The Water Order Discharge Consent for the “Landfill Site” was issued in November 2003, before the Landfill Regulations (NI) 2003 came in to force. NIEA officials visited the site to assess compliance with the Discharge Consent. The last known site visit of the Landfill Site Discharge Consent was recorded on 23rd March 2005 where it was observed that the site was compliant and contoured.

“The position adopted by NIEA in terms of granting Consents to Discharge without considering the relevance of planning history and other environmental requirements represents bad and unacceptable regulatory practice.”

The Planning Order, Water Order and the Waste Management and Contaminated Land Order are three completely separate and discrete legal processes. There is no legislative requirement for Planning Permission or a Waste Management Licence to be in place prior to making a decision on a Water Order discharge consent

“The unwillingness to openly engage with RFA and address our genuine concerns is placing significant and undue pressure on the limited resources of our voluntary organisation as it is repeatedly forced to write seeking open and truthful answers to our reasonable questions.”

NIEA are willing to engage with RFA in relation to this site. In April 2015 RFA met with the Minister and NIEA officials to discuss the site in question. Tracey Teague also extended an invite to the RFA to meet on the matter in February 2017 and that invitation remains open. I am happy to meet to discuss the matters you have raised.

If you are not content with the response, or the way your complaint has been dealt with, you have the right to escalate your complaint to Stage 2 of our process. Under DAERA procedures where an Agency is involved in a Stage 2 complaint this is referred to the Chief Executive so if you wish to proceed to stage 2 please write to:

Mr David Small
Chief Executive
Northern Ireland Environment Agency
Klondyke Building
Cromac Avenue
Gasworks Business Park
Lower Ormeau Road
Belfast BT7 2JA

Yours sincerely,



Stephanie Millar
Head of Water Regulation Group
Regulation Unit, Resource Efficiency Division
Northern Ireland Environment Agency

Annex 1

1. *Please can you set out what it is your Department understands is meant by “ site licence”as cited by it in the context of this site?*

The Department understands that the term “ site licence” is a reference to a Site Waste Management Licence granted under the Waste Management and Contaminated Land Order 1997. It is the opinion of the Department that the quote you refer to in your letter is stating that the operator was obliged to obtain a Site Waste Management Licence in relation to the operation of a landfill site. NIEA did not receive an application for a Site Waste Management Licence for this site. NIEA has not granted a Site Waste Management Licence for this site.

2. *If, as seems clear, a “site licence” refers to a licence to carry out landfilling , why would NIEA assume RFA is referring to a Consent to Discharge?*

NIEA made the assumption that when the RFA made reference to “ Site Licence” that it was infact referring to the Consent to Discharge. This assumption was based on the following facts:

- That RFA in their letter of the 8th April referred to dates which corresponded with the granting of the Consent to Discharge.
- The site has not been granted a Site Waste Management Licence
- The RFA letter dated the 8th April 2017 was written in response to the release of information relating to the Consent to Discharge by NIEA under the Environmental Information Regulations. RFA had asked for all copies of information relating to the Consent to Discharge for the site a 91 Glenshane Road.
- The RFA letter dated 8th April 2017 continually made reference to the granting of a consent.
- The RFA letter made reference to the conditions of the consent
- The RFA letter made reference to the Water Order 1999 Consent to Discharge Application Form.

3. Is NIEA aware of any “site licence” for landfilling having been granted at this site?

No Site Waste Management Licence has been granted at this site for infilling.

4. Is NIEA contending that by granting a Consent to Discharge it can authorise operational development, in this case landfilling with out a “site licence”

No, a Consent to Discharge does not authorise operational development.

5. Is NIEA contending that by granting a Consent to Discharge for inert landfilling it can negate the need for a “site licence” under either of the regulatory regimes operating in accordance with (i) the Local Government Pollution Control Act 1978 and (ii) the Landfill Regulations (Northern Ireland)2003?

No, a Consent to discharge does not negate the need for a Site Waste Management Licence.

6. What checks did NIEA conduct to ensure the necessary “site licence” was in place and was being adhered to when it i) granted the Consent to Discharge and (ii) claims to have been monitoring the landfill operations after 11/11/03?

No checks had been carried out in relation to a Site Waste Management Licence for this site when a Water Order Discharge Consent was granted. There is no legislative requirement for Waste Management Licence to be in place prior to making a decision on a Water Order discharge consent.

NIEA, (EHS, at the time in question) visited the site to assess compliance with the Consent to Discharge Consent. There is no evidence in the Discharge Consent file to indicate that checks had been made in relation to a Site Waste Management Licence.

7. Does NIEA believe it is good environmental governance/ practice to grant a Consent to Discharge to a development that has (i) been refused Planning Permission and (ii) no “site licence” to carry out landfilling

The Planning, Water Order Consenting and Waste Management Licensing regimes, are three completely separate and discrete legal processes. There is no legislative requirement for Planning Permission or a Waste Management Licence to be in place prior to making a decision on a Water Order discharge consent. However, when applying for a Waste Management licence the applicant must provide evidence of a Consent to Discharge and Planning Permissions. The appropriate level of governance is applied to the various authorisations given the impacts of the activity. As stated previously a Consent to Discharge does not authorise development.

8. Given you believe the status of planning permission is irrelevant to the determination of a discharge consent application, why are specific questions on the status of planning permission included on the Consent to Discharge application form?

The status of the planning permission is included on the Consent to discharge application form for information only. NIEA advises applicants to apply for a Discharge Consent before they seek planning approval for all discharges regulated under the Water Order. This ensures that the design of the site drainage can be agreed before Planning Permission is applied for. The Planning and Water Order consenting regimes, are, however, two completely separate and discrete legal processes. There is no legislative requirement for Planning Permission to be in place prior to making a decision on a Water Order discharge consent application, and vice versa.

9. Do you accept as accurate the site operator’s admission and the Department’s subsequent confirmation as previously set out to NIEA by RFA, that the interiors of the lagoons were being desludged and dumped on site?

NIEA consider that the removal of material from the settlement ponds would, in normal circumstances, have been a necessary and responsible part of site management. Not

doing so would have increased the water levels in the ponds and therefore left them more vulnerable to flooding.

10. Does such action comply with the conditions of the Consent to Discharge granted on 11/11/03?

Maintenance / management of the settlement lagoons is not a condition within the Consent to Discharge.

11. Should these records have been retained on file?

Yes the documents you requested and listed below should have been retained.

- Chambers reply to anglers query
- Letter 8b wmunit.doc

The DAERA Information Branch will carry out a review of the information held by Water Regulation and will respond to you separately on this matter.

12. What steps is the Department taking to recover those documents in the interest of complying with the Environmental Regulations 2004?

The DAERA Information Branch will carry out a review of the information held by Water Regulation and will respond to you separately on this matter.

13. Please can you confirm that the site granted consent for infilling in October 2002 as indicated on the map contained on the file, had already been infilled and concreted over by 25th August 2000 and that your files suggests officials appear to have been essentially supervising landfilling on an area that it did not give consent for?

The Consent for the inert landfill was granted in November 2003. There is no evidence contained within the Consent to Discharge File to support your averment.

14. Is it the view of NIEA that the “inert process waste/ “inert landfill” it refers to in relation to the Consent to Discharge granted on 11/11/03 took place after that date

Evidence contained within the Consent to Discharge file indicates that the inert landfill was operational and waste had been deposited at the site.

15. Is it accepted by NIEA that unauthorised/ illegal landfilling took place outside of the area covered by the Consent to Discharge granted on the 11/11/03 as was demonstrated on the map provided along with my previous letter dated 8th April 2017?

There is no evidence on the Consent to Discharge file to indicate that infilling had taken place outside of the consented boundary.

16. What is NIEA's position on the acceptability of granting a Consent to Discharge for landfill in the absence of any "Site Licence" for the depositing of waste?

The Planning, Water Order Consenting and Waste Management Licensing regimes, are three completely separate and discrete legal processes. There is no legislative requirement for Planning Permission or a Waste Management Licence to be in place prior to making a decision on a Water Order discharge consent.

17. Please can you confirm if it was unauthorized landfilling, outside of the area on the map marked "LANDFILL SITE" which NIEA claims to have been "regularly monitoring"?

There is no evidence on the Consent to Discharge file to indicate that infilling had taken place outside of the consented boundary.

18. What evidence did your Department hold in relation to a valid "Site Licence" being in place for landfilling when it granted a Consent to Discharge on 11/11/03?

On review of the Consent to Discharge file, Environment and Heritage Service (EHS) had no evidence in relation to a Site Waste Management Licence when granting the Consent to Discharge.

19. Please can you confirm that after visiting the site and issuing warnings to the operator about illegal landfilling on 9th March 2004 and 22nd November 2004, NIEA was now the authorised authority with responsibility to regulate the deposit of waste to land under the Landfill Regulations (Northern Ireland) 2003, which came in to effect on 6th January 2004?

NIEA, (EHS, at the time in question) visited the site to assess compliance with the Consent to Discharge Consent. On both dates you quote NIEA observed materials which did not comply with the terms of the Consent. As a result, NIEA wrote to the operator in relation to a range of issues seeking compliance with both Discharge Consents.

I can confirm that at that time NIEA became the regulating authority in January of Landfill sites under the following regulatory regimes:

- Waste Management licensing (NI) Regulations 2003
- Landfill Regulations (NI) 2003
- Pollution Prevention and Control (NI) Regulations 2003.

20. Please can you confirm if the waste deposited after 6 January 2004 and “regularly monitored” by NIEA is defined as “controlled waste” under the Landfill Regulations (Northern Ireland) 2003?

The Consent to Discharge, limited the type of waste to be deposited at the site to Type A waste. The Wastes listed in the Consent to Discharge would be considered to be Controlled Wastes as defined by Schedule 1 of The Landfill Regulations (NI) 2003 as amended.

21. Please can you confirm if a “site licence” was (i) required and (ii) granted by NIEA for the extensive landfilling deposited after 6 January 2004 which it permitted to take place outside of the area covered by the Consent to Discharge granted on 11/11/03?

No Site Waste Management Licence has been granted at this site for infilling. There is no evidence on the Consent to Discharge file to indicate that infilling had taken place outside of the consented boundary.

NIEA, Environmental Crime Unit (ECU) considered the RFA concerns and information provided in 2015 in relation to the alleged illegal infilling. ECU concluded that although development had occurred on the site during the period 1997 – 2004 any of the materials used for further development (post Jan 2004) were not deemed to be imported controlled waste and therefore no waste management authorisation would be required. In addition any development works that had occurred were subject to planning Approval and/or immune from planning enforcement.

22.If no “site licence was granted for the area of landfilling shown on the map previously provided along with my letter dated 8th April 2017, please explain how this complied with the Landfill Regulations (Northern Ireland) 2003?

There is no evidence on the Consent to Discharge file to indicate that infilling had taken place outside of the consented boundary. As this site does not have a waste licence, it has not been regulated under the Landfill Regulations (NI) 2003.