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22 August 2016

**To issue via e-mail**

Dear Mr. Orth,

The EPA has reviewed your correspondence dated 16<sup>th</sup> June 2016 concerning Dumping at Sea permit Reg. No. S0004-01 held by Dublin Port Company (DPC).

The issues outlined in your correspondence are responded to in Appendix 1. For convenience the text of your complaint has been included, with the EPA's response to each part of the complaint provided below. A large amount of supporting information referred to in Appendix 1, which is too voluminous to send via e-mail, is available in the sharefile at the following link: <https://epaireland.sharefile.com/d-s31dac58a5484243a>

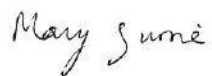
The EPA investigates all complaints and takes every complaint seriously. We are open to receiving complaints and queries so that any concerns can be thoroughly investigated and addressed appropriately. As set out on the EPA website it is recommended that complaints and/or information requests in relation to permitted activities be made to the permit holder in the first instance (<http://www.epa.ie/enforcement/report/>). This will ensure the matter can be promptly dealt with. Under the permit Dublin Port Company is required to maintain a Public Awareness and Communication Programme to ensure members of the public can obtain information at reasonable times.

Following investigation of your complaint a number of non-compliances have been identified by the Agency in respect of activities at Dublin Port during the 2012 loading and dumping campaign. Any impacts arising from these non-compliances are being assessed, after which the Agency will consider what further enforcement action, if any, is required in line with our enforcement policy.

The EPA does not accept your contention that it has failed in upholding its values and responsibilities in relation to the licensing and enforcement of this permit, nor that it has a case to answer regarding the complaints made in your submission which are comprehensively addressed below.

If you have any further queries, please contact the Office of Environmental Enforcement using the email address [das@epa.ie](mailto:das@epa.ie) and use the reference number COMODAS06 in future correspondence on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mary Gurrie'.

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Mary Gurrie  
Programme Manager  
Office of Environmental Enforcement, EPA

## **Appendix 1:**

### **Complaint 1 Appropriate Assessment (AA) of Permit Reg. No. S0004-01 missing, unavailable or requirement misinterpreted by EPA**

- a) There is no AA of Das Permit Reg. No. S0004-01 with respect to the Rockabill to Dalkey Island SAC.
- b) It is not clear that there was ever any AA of Permit Reg. No. S0004-01.
- c) AA is a requirement for every dredging campaign, not a single AA for a DAS permit that covers multiple dredging campaigns.

#### **EPA Response to Complaint 1a, 1b and 1c:**

You are referred to previous replies from the EPA on the 24/03/2016, 12/04/2016 and 15/04/2016 (in sharefile folder) to your colleague Dr. Tim Butter.

### **Complaint 2 Ineffective Public Consultation**

- a) Ineffective public consultation due to incorrect dates of dredging operations being notified to the public
- b) Dumping of contaminated material under DAS Permit Reg. No. S0004-01 without public consultation
- c) Failure to prosecute the permit applicant for providing misleading information in a DAS permit application
- d) Failure of the EPA to respond appropriately to a complaint relating to public participation in DAS Permit Reg. No. S0004-01.

#### **EPA Response to 2a, 2b, 2c and 2d:**

You are referred to previous replies from the EPA on the 24/03/16, 12/04/2016 and 15/04/2016 (in sharefile folder) to your colleague Dr. Tim Butter.

### **Complaint 3 Ineffective/non-existent monitoring or control by the EPA of DAS Permit Reg. No. S0004-01**

- a) DAS Permit Reg. No. S0004-01 is an open-ended permit where the regulatory authority has no control over the active dates.
- b) Failure to control dumping of materials outside the defined dump site and failure to raise these occurrences as official incidents.
- c) DAS Permit S0004-01 does not make direct reference to disposal of contaminated material
- d) Non-compliance with Condition 3.10(ii) of DAS Permit Reg. No. S0004-01
- e) Non-compliance with Condition 3.10(iii) and 3.10(iv) of DAS Permit Reg. No. S0004-01.

#### **EPA Response to 3a:**

You are referred to previous replies from the EPA on the 24/03/16, 12/04/2016 and 15/04/2016 (in sharefile folder) to your colleague Dr. Tim Butter.

#### **EPA Response to 3b:**

The logs for the 2012 campaign were initially examined during an EPA site visit to Dublin Port on 27<sup>th</sup> September 2012 (see EPA Site Visit Report in sharefile folder) and found to be compliant.

Following complaints received from a third party on 18/05/2016 and 24/05/2016, the EPA wrote out to Dublin Port Company (DPC) for further information on dumping activities, including in relation to the dumpsite location. The EPA has reviewed DPC's responses (in sharefile folder) to these issues and completed a second review of the matter. While there were typographical errors in some of the dumping co-ordinates reported in the AER, the EPA is satisfied that the loads were dumped within the permitted dumping area during the 2012 campaign.

**EPA Response to 3c:**

With regard to the disposal of contaminated material, data on the composition of the material to be disposed of was included and available to view in the permit application documents available on the EPA website during the application process. Chemical analysis data of the material was submitted as part of the application form and was also available to view on the EPA website during the application process. Furthermore, the Inspector's Report (in sharefile folder) outlined in detail the composition of the material and clearly stated that some of the material was contaminated. It should be noted that the disposal at sea of contaminated material is considered acceptable by OSPAR under certain conditions. The Inspector's Report and permit conditions (e.g. relating to sequencing and capping) set out the measures required to be implemented to ensure protection of the environment when carrying out the activity.

**EPA Response to 3d & 3e:**

The EPA is satisfied that the licensee complied with Condition 3.10(ii) and 3.10(iii) during the 2012 dredging campaign. The logs for the 2012 campaign were examined during an EPA site visit to Dublin Port on 27<sup>th</sup> September 2012 and were found to be compliant. *Schedule C: Annual Environmental Report* of the permit requires a register/log of loading and dumping at sea activities to be included in the AER. The EPA does not require that all of the detail automatically recorded under Condition 3.10 be included in the register reported in the AER. The EPA is satisfied that DPC has a record of the information required to be automatically recorded available for inspection at DPC's office.

Whilst every effort is made to ensure the accuracy of AER information on the EPA website, it is not possible to guarantee that it is accurate in all cases. Information compiled by third parties is provided as is.

**Complaint 4: Inability of EPA to provide verified evidence of compliance of DAS Permit Reg. No. S0004-01**

- a) Compliance with Condition 3.4 of DAS Permit Reg. S0004-01 cannot be verified.
- b) Compliance with Condition 3.5 of DAS Permit Reg. S0004-01 cannot be verified.
- c) Compliance with Condition 3.7 of DAS Permit Reg. S0004-01 cannot be verified.
- d) Compliance with Condition 3.8 of DAS Permit Reg. S0004-01 cannot be verified.
- e) Compliance with Condition 3.9 of DAS Permit Reg. S0004-01 cannot be verified.

**EPA Response to 4a):**

Following complaints received from a third party on 18/05/2016 and 24/05/2016, the EPA sought further information from DPC relating to compliance with Condition 3.4 during the 2012

campaign. The EPA has reviewed the DPC responses which show that DPC failed on six occasions to conduct loading and dumping in sequence (see attached Notification of Non-compliance issued dated 16/08/2016). The EPA will continue to review the matter to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

**EPA Response to 4b)**

The EPA has reviewed the DPC responses and is satisfied that DPC complied with this condition during the 2012 campaign and the information is maintained by DPC.

**EPA Response to 4c)**

Following complaints received on 18/05/2016 and 24/05/2016, the EPA sought further information from DPC relating to Condition 3.7 during the 2012 campaign. The EPA has reviewed the DPC responses which show that DPC failed on four occasions to dump material from the North Quay Extension (B006) and River Area A (B007) within 30 minutes either side of slack water (see attached Notification of Non-compliance issued dated 16/08/2016). The EPA will continue to review the matter to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

**EPA response to 4d)**

The EPA has reviewed the DPC responses and is satisfied that DPC complied with this condition during the 2012 campaign and the information is maintained by DPC.

**EPA response to 4e)**

Following complaints received from a third party on 18/05/2016 and 24/05/2016, the EPA sought further information from DPC relating to Condition 3.9 during the 2012 campaign. The EPA has reviewed the DPC responses which state that DPC failed on six occasions to cap material from the North Quay Extension (B006) and River Area A (B007) with a capping layer of clean coarse material from River Area B (B011) (see Notification of Non-compliance issued dated 16/08/2016 in sharefile folder). The EPA will continue to review the matter to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

**Complaint 5:**

**Ineffective monitoring by the EPA of DAS Permit Reg. No. S0004-01 in relation to misleading information provided by DPC**

- a) Factual error in AER with regards reporting vessel logs
- b) Spurious locations in register of loading & dumping at sea activities, and failure to record tonnage of material dumped
- c) Return to port times not recorded
- d) Failure to take dump site monitoring samples on time
- e) Late submission of Aftercare Management Report
- f) Aftercare Management Plan not fit for purpose

- g) Ineffective audit procedure at the EPA
- h) Failure to comply with Condition 7.1 of DAS Permit Reg. No. S0004-01
- i) Failure to comply with Condition 7.4 of DAS Permit Reg. No. S0004-01
- j) Failure to comply with Condition 2.2 of DAS Permit Reg. No. S0004-01
- k) Failure to comply with Condition 7.8 of DAS Permit Reg. No. S0004-01
- l) Failure to comply with Condition 8.3.1 of DAS Permit Reg. No. S0004-01
- m) Monitoring at dump site methods developed with no public participation.

#### **EPA Response to 5a), 5b) and 5c)**

The EPA is satisfied that the licensee complied with Condition 3.10 during the 2012 dredging campaign. The logs for the 2012 campaign were examined during an EPA site visit to Dublin Port on 27<sup>th</sup> September 2012 and were found to be compliant. *Schedule C: AER* of the permit requires a register/log of loading and dumping at sea activities to be included in the AER. The EPA does not require that all of the detail automatically recorded under Condition 3.10 is included in the register reported in the AER. The EPA is satisfied that DPC has a record of the information required to be automatically recorded available for inspection at DPC's office. It should be noted that whilst every effort is made to ensure the accuracy of AER information on the EPA website, it is not possible to guarantee that it is accurate in all cases. Information compiled by third parties is not necessarily correct, and is provided as is. The fact that it is included in the EPA website does not mean that the Environmental Protection Agency (EPA) accepts or agrees with it.

#### **EPA response to 5d)**

During the EPA site inspection on the 27<sup>th</sup> September 2012 (see attached EPA site visit report) the timing and frequency of the bathymetry and sediment sampling was addressed. The EPA is satisfied that there are no issues that warrant intervention or enforcement action by the EPA at this stage; notwithstanding this the EPA will continue to review the matter to assess compliance with the requirements of the permit.

#### **EPA Response to 5e) and 5f)**

The issue of the submission of the Aftercare and Management plan was discussed during the EPA site inspection on 27<sup>th</sup> September 2012. The Aftercare and Management Plan (in sharefile folder) was submitted on 7<sup>th</sup> February 2013 and approved on 22<sup>nd</sup> February 2013.

#### **EPA Response to 5g)**

Enforcement activities carried out by EPA Inspectors involve inspections, audits and emission monitoring. Inspectors assess the results of emissions monitoring carried out at licensed facilities to determine the impact, if any, of emissions on the environment. As such, enforcement is a combination of field and desk based work. It is a matter for the EPA to decide when a site inspection is appropriate. It should be noted that the site visit process is a sample on a particular day of compliance by the permit-holder with some of its permit conditions.

An EPA site visit took place on 21<sup>st</sup> and 22<sup>nd</sup> June 2016 to coincide with the commencement of the 2016 campaign. A further EPA site visit took place on 29<sup>th</sup> July 2016 coinciding with the ending of the 2016 campaign. Please see attached site inspection reports.

**EPA Response to 5h) and 5i)**

Please see previous responses to Complaints 3 and 4 above. The EPA has reviewed the DPC company responses and taken enforcement action as deemed appropriate (see Notification of Non-compliance issued dated 16/08/2016). The EPA will continue to review the matter to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

**EPA Response to 5j)**

As per response to complaint 3b above, the EPA has completed a review of the dumpsite location. While there were typographical errors in some of the dumping co-ordinates reported in the AER, the EPA is satisfied that the loads were dumped within the permitted dumping area during the 2012 campaign.

**EPA Response to 5k)**

The EPA is satisfied that all information required to be maintained in accordance with Condition 7.8 is available for inspection at DPC's office.

**EPA Response to Complaint 5l)**

DPC confirm, in their Aftercare Management Plan (in sharefile folder), that they have the necessary financial provision in place to comply with the permit.

**EPA Response to Complaint 5m)**

The complainant is referred back to the responses to Complaints 2, 3 and 5. The Alexandra Basin Redevelopment project is being dealt with under DAS permit application S0024-01.

**Complaint 6 Total disregard to the monitoring of previously dumped contaminated soil on the designated dump site using the Cap Method.**

- a) No effective monitoring of cap depth and cap maintenance
- b) Monitoring of cap chemistry is ineffective for control purposes
- c) Condition 3.9 of the permit is unworkable
- d) No monitoring of contaminants in biological samples

**EPA Response to Complaint 6a)**

The AER contains a monitoring summary and it is not a requirement that every detail of the procedures, equipment, calibration, accuracy of the monitoring is contained in the AER. Condition 7.6 (iii) requires that the permit-holder keep the detailed records of sampling, analyses, measurements, examinations, calibration and maintenance for inspection dating back at least three years.

Following complaints received on 18/05/2016 and 24/05/2016, the EPA sought further information from DPC relating to Condition 3.9 during the 2012 campaign. The EPA has reviewed the DPC company responses and identified a number of non-compliances (see Notification of

Non-compliance issued dated 16/08/2016). The EPA will continue to review the matter to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

#### **EPA Response to 6b)**

The issue of compliance with the bathymetry and sediment monitoring requirements of the permit for the 2012 campaign were considered in response to Complaints 5 and 6 above.

The permit requires sediment monitoring and analyses to be conducted in accordance with the analytical and quality requirements set out in *M. Cronin et al 2006. Guidelines for the Assessment of Dredge Material for Disposal in Irish Waters. Marine Environment & Health Series. No. 24. Marine Institute.*

#### **EPA Response to Complaint 6c**

Following complaints received on 18/05/2016 and 24/05/2016, the EPA sought further information from DPC relating to the 2012 campaign. The EPA has reviewed the DPC company responses and identified a number of non-compliances (Notification of Non-compliance issued dated 16/08/2016). The EPA will continue to review the matter, and the implementation of the Aftercare Management Programme, to assess compliance with the requirements of the permit and may consider further enforcement action as it considers appropriate.

#### **EPA Response to Complaint 6d**

A full assessment of the environmental impacts of loading and dumping operations was carried out at the permit application stage. The permit issued by the EPA authorises the loading and dumping at sea of dredge material from Dublin Port, subject to conditions and schedules as set out in the permit. The EPA is satisfied that the operation of the activity, once carried out in accordance with the conditions attached, will not cause environmental pollution.

#### **Complaint 7 Misleading and inaccurate information regarding document control**

As previously stated in correspondence to Dr. Butter on 30/03/16 the EPA maintains documentation relating to DAS applications online. Enforcement correspondence is not maintained online with the exception of the AER's.

The EPA is working towards making more information on DAS enforcement available online. It should be pointed out that the EPA makes correspondence publicly available for other licences e.g. Waste licenses/Industrial Emissions Licenses and the intention is that in time DAS correspondence will also be similarly available. Currently the EPA endeavours to make information available to the public on request.

It is recommended that information requests in relation to the permit be made to the permit holder in the first instance as DPC are required, under Condition 2.7, to maintain a Public Awareness and Communication Programme to ensure members of the public can obtain information at reasonable times.

#### **Complaint 8 Ineffective management of freedom of information and EPA not acting as source of information re DAS Permit Reg. No. S0004-01**



**a) EPA not acting as source of information re DAS Permit Reg. No. S0004-01**

**b) EPA treat queries a complaints and vice versa**

**Response to Complaint 8a)**

Please see EPA's response to Complaint 7 above.

**Response to Complaint 8b)**

The EPA has endeavoured to handle all complaints and queries received in accordance with EPA policies and procedures. Complainants are always advised to contact the permit holder in the first instance. More details of How to Make an Environmental Complaint may be found at the following link: <http://www.epa.ie/enforcement/report/>

**Closing comments from IUC**

The EPA has reviewed all the complaints contained in the correspondence and provided a full response to these. The EPA takes every communication seriously and will continue to address issues brought to its attention so that any concerns can be thoroughly investigated and addressed.