

Save Our Sperrins Rebuttal of Dalradian Gold's Statement of Case in respect of the Discharge Consents TrC 080 20_1 & TrC 081 20_1.

November 2024

1. Lack of clarity over Discharge rates

The Dalradian Gold Statement of Case for Discharge Consents states: "In terms of discharge, the Curraghinalt Project requires the following: 1) Variation to the existing discharge consent (068/12/2) relevant to the Curraghinalt Burn with reference to the following: ... The proposed variation application requires a minor increase in the maximum flow of up to 12.6 L/s [45.36 cubic metres per hour] and revised water quality criteria / limit values will need to reflect this ... 2) A new consent enabling discharge into the Pollanroe Burn. This application was also submitted in April 2020, and requires a maximum discharge rate of 83.3 L/s [299.88 cubic metres per hour]." Dalradian Gold's application TrC 080/20_1 in April 2020 for a variation to Discharge Consent 068/12/2 requested a maximum flow of 9.75 L/s and this is the application that was referred to the PAC for this Public Inquiry. Furthermore, Application TrC 081/20_1 for a new Discharge Consent stated in W01 Annex 2 a maximum rate of discharge of 12L/s of trade effluent plus 0.2L/s of sewage. Discharge Consent Application TrC 081/20_1 has also been referred to the PAC for this Public Inquiry. Dalradian Gold cannot be allowed to change the goal posts at this late stage by proposing such significant increases in their discharge rates and quantities so as to become, in reality, new applications.

2. Disparity between Dgl SoCs for Water Abstraction & Discharge Consents

Save Our Sperrins cannot make any connection between Dalradian Gold's two Statements of Case for Water Abstraction and Discharge Consents (DCs). Their Statement of Case for Water Abstraction does not show any discharge into Curraghinalt Burn, let alone a discharge of 45.36 cubic meters per hour. Their Statement of Case for Water Abstraction shows a discharge into Pollanroe Burn of 87.9 cubic meters per hour from the Treatment Plant and 39.9 cubic metres per hour from runoff and 25.1 cubic metres from the Clean Water Pond, totalling 152.9 cubic metres per hour. (see Fig.3. Dalradian Gold's Statement of Case for Water Abstractions.) Save Our Sperrins have no idea where 299.88 cubic metres per hour is coming from, referenced in Dalradian Gold's Statement of Case for Discharge Consents.

3. Variations to Discharge Consents have not been subject to public consultation

Dalradian Gold's Statement of Case proposes new Discharge Consent parameters that have not been put out for public consultation as required. These "revised" limits and all the new information supplied by Dalradian Gold (including a Water Quality Baseline Report, dated October 2024, setting out new Discharge Consent concentrations and predictions of water quality as a result of the discharges), cannot be considered at the Public Inquiry as this information was not in the public domain until now. And even now is not available to the general Public. This would appear to be manifestly in contravention of the Aarhus Convention which guarantees the rights of access to information, public participation in decision-making and access to justice in environmental matters. Further, it cannot now be properly addressed by the other participants before the PAC. Furthermore, it is unacceptable for Dalradian Gold to now ask that certain substances, metals and non-metals be removed

from the Consent Applications which they had applied for in April 2020 and which are the subject of this Public Inquiry. Dalradian seek to justify this removal due to their equipment not being able to detect at the required level. This problem of inadequate testing equipment was exposed during the Judicial Review of Discharge Consent No. 068/12/3 (See point 5 below) and Dr Emerman advised on appropriate detection equipment that could be purchased at a modest cost. [See Appendix 1. Dr Steven Emerman 2018 Evaluation of the Use of a Mixing Model in a Water Discharge Consent issued by the Northern Ireland Environment Agency].

4. Laws/Regulations which would be breached by Dgl's Discharge Consents

The Owenkillew SAC is currently in an “unfavourable” condition. Dalradian Gold are aiming for “better than baseline” outcomes but that is not in keeping with Conservation Objectives for the Owenkillew River SAC that require it to be in favourable condition. NIEA/DAERA aim to ensure no deterioration in water quality and to improve the conservation status of the SAC. NIEA/DAERA is the government body charged with specific duties under various legislation mentioned below:

- 1) Water (NI) Order 1999: This order ensures that all activities comply with the duties to promote the conservation of biodiversity as detailed in the order.
- 2) Water Framework Directive Regulations (NI) 2015 & 2017 (which transpose the EU Water Framework Directive into NI law): These regulations focus on achieving ‘good’ water quality status. Save Our Sperrins asserts that the proposed discharges would fail to meet these conditions, especially given the current unfavourable status of the SAC.
- 3) Conservation (Natural Habitats, etc Regulations (NI) 1995 (which implements the EU Habitats Directive): The Dalradian Gold’s applications potential impacts have not been adequately assessed in terms of their effects on the integrity of the SAC. Furthermore, Dalradian Gold’s mitigation strategies are based on optimistic and unverifiable outcomes.
- 4) Wildlife and Natural Environment Act (NI) 2011: This act includes provision for the protection of biodiversity and a duty on public bodies to further the conservation of biodiversity. The proposed discharges both directly and indirectly threaten local wildlife species and their habitats. Sensitive species like Freshwater Pearl Mussels and Atlantic salmon in the SAC warrant particular stringent protections.
- 5) Environment (NI) Order. 2022: This order encompasses a broad range of environmental protection regulations.
- 6) Climate Change Act (NI) 2022 : This act is aimed at addressing climate change issues, including reducing greenhouse gas emissions and promoting sustainability. Dalradian Gold’s project conflicts with the overarching goals of the Climate Change Act to promote sustainability. The discharges would exacerbate environmental stress in a region already vulnerable to climate change impacts as well as changes in water flow and quality.

5. Gaps in relevant Background information

Under ‘Background’ section of their Statement of Case, Dalradian fail to mention the Discharge Consent No. 068/12/3 granted to them by NIEA in September 2017 and quashed by the High Court in Belfast following a Judicial Review in November 2019. This is a significant event in the history of their discharge consents. In terms of their three ecologists, Dalradian list qualifications for two of them but none for Mr Steve Coats. Save Our Sperrins queries is this the same Mr ‘Stephen Coates’ who appeared in Omagh Court on 30th June 2022 charged with and found guilty of leaving the scene of an accident in Greencastle? (PPS reference 1092175)

6. Policy Capture

For previous Discharge Consents, the parameters appear to have been set in discussion with Dalradian Gold. [See Appendix 2. 02/05/2017 NIEA Internal email with details of a meeting between NIEA & Dalradian Gold]. This includes a record of a meeting between NIEA and Dalradian to discuss a breach of the 068/12/2 Discharge Consent parameters and to review the Discharge Consent. This supports Save Our Sperrins belief that the planning and environmental regulatory authorities in NI have relied on Dalradian Gold and their consultants for specialist expertise and information. As Strecker states, “Such dependency facilitates policy capture by the mining industry and undermines the capacity of statutory agencies to regulate effectively.”¹

7. Past breaches of Discharge Consents & Lack of Enforcement

Dalradian acknowledges the deterioration in water quality over time in the Owenkillev and Owenreagh Rivers, which they attribute “notably to farming.” They seem to ignore the fact that they have been discharging into the Curraghinalt Burn for the past 10 years from their exploratory mine adit and from their water treatment plant, which is no longer operational on a site that has no planning permission. On several occasions over the years Dalradian Gold has breached the parameters set in earlier Discharge Consents, as referenced in Save Our Sperrins Statement of Case. Their past breaches of previous Discharge Consents should be a material consideration at this time. Unfortunately, there has been no enforcement by NIEA over the years & Save Our Sperrins has little confidence in NIEA changing their approach in the future [See Appendix 3. Irish News 23/11/24 Angry Anglers hit out at ‘broken’ oversight system]. That is why N Ireland needs an independent Environmental Protection Agency with teeth to ensure that the polluter pays principle is enforced.

8. Dalradian’s shadow HRA

Dalradian Gold’s Shadow Habitats Regulation Assessment (sHRA) identified that in some cases background water quality limits would be exceeded for key parameters following the proposed discharges; yet they conclude that no adverse impact on the integrity of the SAC would result from the proposed discharges. They do not appreciate the importance of

¹ Strecker, A. 2024. Curraghinalt Project (Dalradian Gold) and breaches of environmental law, cultural heritage law, and human rights.

<https://drive.google.com/file/d/1ljGHBR7b2jT11MJ2B1OSWGIwQ4qyd6g/view?usp=sharing>

protecting the Freshwater Pearl Mussels or the Atlantic Salmon and of adhering to the Conservation Objectives of the Owenkillev River SAC. Save Our Sperrins suspects that the assessment provided by Dalradian Gold may have been underestimated or not fully disclosed. This tendency was found in a study by Singh et al. (2020).²

“Few reports on mining projects consider temporal scales that are precautionary with regard to the effects of mines on water resources” and “few EIAs meaningfully consider the different ways that cumulative impacts can interact.”

9. ‘Betterment Plan’ a Red Herring

Save Our Sperrins believes that there is a low level of grazing and use of fertilisers in the area of the proposed goldmine as the local farmers view themselves as custodians of the earth and treat it with respect. The 2017 Owenkillev River SAC Condition Assessment³ recorded less than (estimated) 5% cover of filamentous algae which indicates low levels of nutrients (for example, phosphate and nitrate). This implies a low level of grazing and use of fertilisers and supports the above point about responsible farming, as opposed to Dalradian’s blame on farming for the deterioration in water quality in the Owenkillev and Owenreagh Rivers. Dalradian Gold’s ‘Betterment Plan’ is a complete red herring and is not a material consideration. Furthermore, it would be completely insufficient to offset the impacts of the proposed discharges and to meet the Conservation Objectives of the Owenkillev River SAC.

Conclusion:

The proposed discharges TrC 080 20_1 & TrC 081 20_1 would endanger the environmental integrity of the Owenkillev SAC, particularly in terms of water quality and habitat protection for the sensitive species of Freshwater Pearl Mussels and Atlantic Salmon, as well as leading to wider concerns about local wildlife (such as otters), habitats and biodiversity. There are broader implications for public health and the environment as the project could have irreversible impacts on local ecosystems, which in turn affect local communities. These have not been assessed by Dalradian Gold. Save Our Sperrins believes a precautionary approach is required and these Discharge Consent Applications dismissed and the overall goldmining Application refused.

² Singh, G et al. (2020) Scientific Shortcomings in Environmental Impact Statements Internationally. People and Nature. Vol.2 Issue 2. June 2020. Pp 369-379. <https://doi.org/10.1002/pan3.10081>

³ Horton, M. et al.(2018) Freshwater Pearl Mussel survey of Northern Ireland 2017. Report prepared by Ballinderry Rivers Trust for Northern Ireland Environmental Agency (NIEA). <https://jncc.gov.uk/jncc-assets/Art17/S1029-UK-Habitats-Directive-Art17-2019.pdf>

Appendix 1:

Extract from Dr Steven Emerman 2018 Evaluation of the Use of a Mixing Model in a Water Discharge Consent issued by the Northern Ireland Environment Agency

“Perhaps the most disturbing issue of all is that NIEA (2018) essentially admitted that NIEA does not possess the necessary infrastructure for providing high-quality water chemistry data. NIEA wrote, “NIEA laboratory analytical methods, as with all analytical methods, are only accurate down to a certain concentration, below which the method cannot provide an accurate result...In the case of copper, the consent limit is 16.2 µg/L, however the laboratory can only analyse down to a concentration of 20 µg/L” (Paragraph 101). NIEA (2018) continued, “Similarly, the consent limit for cadmium is 0.7 µg/L however the laboratory can only analyse down to a concentration of 10 µg/L.” It must be obvious that an analytical instrument with a detection limit of 20 µg/L is inappropriate for determining whether a consent limit of 16.2 µg/L has been met. Even more so, an analytical instrument with a detection limit of 10 µg/L is inappropriate for determining whether a consent limit of 0.7 µg/L has been met. This obvious point has been emphasized by Department of Environment, Food & Rural Affairs (2018), who

wrote, “Make sure the laboratory tests for all pollutants which you expect to find in the discharge and that they use an appropriate ‘limit of detection’ (LOD) (usually 10% of the environmental quality standards (EQS)).” The detection limits stated by NIEA (2018) are quite surprising since modern analytical instruments (such as the inductively-coupled plasma spectrometer or the atomic absorption spectrometer) routinely have detection limits of 0.1 µg/L or better. Even the Hach DR-1900 Portable Spectrophotometer, which can be purchased for only \$3369, has a detection limit of 1 µg/L for Cu and 0.7 µg/L for Cd (Hach, 2018).”

(Note that ‘NIEA’ has been substituted by Save Our Sperrins instead of the surname of the NIEA scientific officer who had made the decisions about the Discharge Consent.)

Appendix 2:

02/05/2017 NIEA Internal email with details of a meeting between NIEA & Dalradian Gold

Email 3 of 3
(1) 49.8 KB

J.T. Aug 2017

[Redacted]

From: [Redacted]
Sent: 02 May 2017 10:03
To: [Redacted]
Subject: Dalradian Gold Meeting Friday 28-4-17. To discuss Zinc Notice and consent review.

[Redacted]

Would you like to add or remove anything

Thanks

[Redacted]

Dalradian Gold Meeting Friday 28-4-17. To discuss Zinc Notice and consent review.

NIEA

[Redacted]

Dalradian Gold Ltd

[Redacted]

SB-Samples have been taken at the premises and the company have noticed some increases for ZINC in the groundwater.
Some EQS have been exceeded in some boreholes not all. Dissolved and total monitoring is taking place. Nothing being detected from waste rock or adit.
Most underground boreholes wells are < than detection. The elevated source appears to be coming from only some of the groundwater boreholes.
The new number for Zinc was looked at from the Priority Substances 2015. The company have used MBAT Tool to calculate the new Eqs =23.4ug/l
The company looked at the dissolved ZINC in the river and converted it to the new Eqs.
The company looked at 8 monitoring points and 8 samples were taken.
The company looked at 10% increase above the baseline.
pH and DOC were used in the calculation, TOC was not used.
The Eqs was averaged over a period of time.

RC- Monitoring data and flow at the site is required .
We would need the baseline date for our own MBAT Tool.
Although DGL have their own MBAT Tool, the Department will use their own.

SB- 12 Gauging stations are also in place at the site. Stephen explained that he only had data calculations for ZINC and nothing else.
The baseline data has expanded for the site.
The company expect to submit a planning application within 6-8 weeks.
There also may be a review needed on the current review down the line for a new flow TBC

RC- No enforcement will take place during the review process.

SB- The last test results took place by DGL at the site on 20-21 April.

RC- No results have been received from the laboratory within Lisburn to date.
SB- asked how the ZINC parameter was set before

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RC- Information provided by DGL and SLR the consultants.

RC-If we need more information for the review we will contact DGL

SB- A possible PAD meeting for the Owenreagh will be preliminary set for 12 May. Regarding the information provided to Graeme Walker Chief Planner's Office,

RC- Department will need to update existing HRA

Appendix 3:

Irish News 23/11/24 Angry Anglers hit out at 'broken' oversight system

Angry anglers hit out at 'broken' oversight system

NORTHERN Ireland's environmental oversight system is "broken" with polluters able to act with "impunity", according to an angling club that lost thousands of fish when slurry spilled into a Co Antrim river.

The Crumlin and District Angling Association has said it received confirmation this week from the Northern Ireland Environment Agency (NEA) that nobody will be prosecuted for the widely reported, major pollution incident in February 2023.

More than 3,500 fish were killed along a 6km section of Crumlin River in the incident which NEA blamed on farm slurry.

The club says that in recent years there have been 41 confirmed pollution incidents

on the same river, which runs into Lough Neagh, but not a single prosecution.

Crumlin and District Angling Association development officer David Kennedy for the club, as the managers of the waters.

"There is no way for us to restate what we have lost in terms of the number of fish and the damage to the entire ecosystem and habitat," he said.

"Our river is in a much poorer state due to this major pollution incident, as will be Lough Neagh, where ultimately all this pollution ends up."

Mr Kennedy said "polluters will continue to pollute

with impunity while the current approach continues".

"Quite frankly the system of reporting, investigating, tracking and bringing a case to completion is broken - of the major fish kills across Northern Ireland between 2019 and 2023, amazingly 32 out of 49 saw no prosecution," he said.

"It is our view the urgent change is needed - we will be writing to both the minister for agriculture, environment and rural affairs and the independent panel, asking for a meeting to urgently address these concerns."

Earlier this week, Agriculture and Environment Minister Andrew Muir appointed a



Allen Blanning (left) and David Kennedy of the Crumlin and District Angling Association and, inset, dead fish following the pollution incident in the Crumlin River in February 2023

three person panel to conduct a review of environmental governance, including "considering options for an independent environment protection agency".

SDLP MLA Patsy McGloone said the absence of "any meaningful action" following the Crumlin River fish kill undermined the "dire need" for an independent environmental protection agency, a commit-

ment in 2020's New Decade New Approach deal.

"For far too long people have been able to pollute our rivers and lakes, kill wildlife and destroy biodiversity while facing little consequences," the Mid Ulster representative said.

"This is nowhere near the first incident of its kind and it surely won't be the last unless something is done about it, in-

stead of bringing forward yet another review, the minister should be putting all his efforts into delivering the independent environmental protection agency to safeguard our environment and ensure that anyone who harms it faces the appropriate sanctions."

The Department of Agriculture, Environment and Rural Affairs has been approached for comment.