



**Final decision in respect of an appeal submitted by Dunbia (Wales)  
Ltd against Dŵr Cymru Welsh Water under section 126 of the  
Water Industry Act 1991**

**February 2014**

## 1 Executive Summary

- 1.1 On 3 November 2009, the Water Services Regulation Authority (“**Ofwat**”) received a trade effluent appeal from Dunbia (Wales) Ltd (“**Dunbia**”) under section 126 of the Water Industry Act 1991 (“**the Act**”). The appeal is against a direction issued by Dŵr Cymru Welsh Water (“**Welsh Water**”) varying Dunbia’s consent to discharge trade effluent into Welsh Water’s network.
- 1.2 This is a final decision. Before reaching this decision, we shared with the parties a draft decision which set out that we were minded to reject Dunbia’s appeal. The parties were given the opportunity to make representations to us on that draft decision.
- 1.3 Both parties responded. Welsh Water supported our draft decision but raised some minor facts that it considered should be corrected. Dunbia said that there had been material changes to the circumstances of the appeal and that these changes should be considered before a final decision is made.
- 1.4 As part of its original appeal, Dunbia wished to retain consent to discharge 180m<sup>3</sup>/d of trade effluent to Welsh Water’s Llanybydder Wastewater Treatment Works (“**Llanybydder WwTW**”) until it had its own Effluent Treatment Plant (“**ETP**”), at which point it would require a discharge consent of 180m<sup>3</sup>/d for intermittent use should it not be able to discharge via its ETP.
- 1.5 In its representations on the draft decision, Dunbia said that it now requires consent for discharge to be used for one planned maintenance event per annum for a 10-14 day period. Dunbia has said that this would only be in relation to its retail packaging production process as the slaughtering and deboning processes can now be re-located to a sister site for the required period. Dunbia has confirmed that consent for unplanned discharges is no longer needed.
- 1.6 We consider Dunbia’s representations on our draft decision raise materially different issues to those raised in its original appeal and are, therefore, outside the scope of this appeal. Moreover, to address these new issues Dunbia acknowledges that we would need to commission a new technical report to assess the capacity of the Llanybydder WwTW, which would effectively result in the appeal process starting again.
- 1.7 We do not consider that this is an appropriate use of our resources especially without giving the parties the opportunity to first resolve this issue without our involvement. Welsh Water is best placed to consider whether to accede to Dunbia’s changed request, and if so, on what conditions. The Act only

envisages our involvement if the incumbent undertaker refuses a request for consent or only provides consent on unacceptable terms.

- 1.8 In the light of the above, we consider that the changed facts presented to us by Dunbia are materially different from the original appeal and represent a new request for consent. Accordingly we have decided to resolve this appeal on the basis on which it was submitted to us. There is nothing preventing Dunbia from making a further request to Welsh Water for a new consent.
- 1.9 This document confirms the conclusions as set out in our draft decision.
- 1.10 The remainder of this document sets out our decision in detail and includes:
  - a. Part two, which sets out the legal background to this appeal;
  - b. Part three, which sets out the factual background to this appeal;
  - c. Part four, which sets out the draft decision and the parties representations on that decision; and
  - d. Part five, which sets out our decision and the reasoning behind that decision.

## **2 Legal background**

2.1 In this section, we set out the legal framework which governs trade effluent appeals and our role and powers in determining these appeals.

### **A Trade effluent**

2.2 Trade effluent is defined in the Act as:

- a. any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and
- b. in relation to any trade premises, any such liquid which is so produced in the course of any trade or industry carried on at those premises.

2.3 Companies can discharge trade effluent but only with the consent of a sewerage undertaker. This consent can be given either unconditionally or subject to such conditions (of which it is an offence to breach) as the sewerage undertaker thinks fit such as:

- a. the nature or composition of the trade effluent which may be discharged; and
- b. the maximum quantity of trade effluent which may be discharged on any day, either generally or into a particular sewer.

2.4 Sewerage companies charge for receiving and disposing of trade effluent and charges may be levied through companies' published charges schemes or by agreement with the discharger. Dischargers usually pay according to the Mogden Formula which takes into account standard characteristics which have a bearing on the treatment needed and, therefore, costs (for example, rate of discharge, suspended solids and oxygen demand).

2.5 A sewerage undertaker may give a Direction varying the conditions which have been attached to any of its consents. This power may not be exercised within two years of granting or varying a consent (except in specified circumstances and accompanied by compensation).

### **B Our role**

2.6 Owners or occupiers of any trade premises may appeal to Ofwat against a Direction which varies trade effluent consent conditions. They must do so,

however, within two months of receiving a notice of a Direction to vary consent conditions. If an appeal is submitted later than this, then the appellant will require our written permission.

- 2.7 On receipt of an appeal, we have the power to annul the Direction given by the sewerage undertaker and, where appropriate, substitute it for any other Direction, whether more or less favourable to the appellant.
- 2.8 Any Direction we give may include provision for charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.

### **Our approach to trade effluent appeals**

- 2.9 We receive a wide range of trade effluent appeals ranging in complexity from appeals focusing predominantly on price to appeals focusing predominantly on terms and conditions.
- 2.10 In considering a trade effluent appeal we must balance the interests of customers with the interests of sewerage undertakers – in particular to ensure that undertakers can carry out their functions. This balance is reflected in the duties set out in section 2 of the Act.
- 2.11 In considering an appeal we will take into account the practical and financial consequences for both sewerage company and discharger; health and safety requirements; and whether the discharge is likely to damage sewers, or cause special difficulty (or expense) in treatment. We will also consider the long-term cost implications, for the discharger and sewerage company respectively, of treating the effluent at minimum cost to meet environmental obligations.

### 3 Factual background

- 3.1 In this section, we set out the factual background to this appeal which includes details on Dunbia’s discharge consent and details of our investigation.

#### A Dunbia’s discharge consent

- 3.2 Dunbia (previously Oriel Jones Ltd) operates an abattoir at Teifi Park in Llanybydder Wales and it has consent to discharge trade effluent to Welsh Water’s Llanybydder Wastewater Treatment Works (“**Llanybydder WwTW**”) which is operated by Welsh Water<sup>1</sup>. Effluent is discharged from Llanybydder WwTW to the River Teifi under a consent granted to Welsh Water by National Resources Wales<sup>2</sup> (“**NRW**”).
- 3.3 Welsh Water granted an initial consent to Dunbia for the discharge of 7.3 m<sup>3</sup>/d of trade effluent on 18 December 1975 and there have been four further variations to this consent, culminating in the final variation of 7 September 2009. These are detailed in Table 1 below.

**Table 1 – Dunbia’s consent to discharge trade effluent to the Llanybydder WwTW**

Date	Previous volume	Consented volume	Status
18 December 1975	N/A	7.3 m <sup>3</sup> /d	Implemented
27 March 1981	7.3 m <sup>3</sup> /d	12.5 m <sup>3</sup> /d	Implemented
31 March 1987	12.5 m <sup>3</sup> /d	40 m <sup>3</sup> /d	Implemented
7 November 2005	40 m <sup>3</sup> /d	180 m <sup>3</sup> /d	Implemented
7 September 2009	180 m <sup>3</sup> /d	1 m <sup>3</sup> /d	Appealed

- 3.4 Whilst the subject of this appeal is the variation of 7 September 2009 it is important to note that Welsh Water and Dunbia have been in discussions over the quantity of effluent that may be discharged under Dunbia’s consent since prior to the previous consent variation of 7 November 2005. This was as a result of Dunbia’s increasing production and, accordingly, its requirement for a greater quantity of trade effluent to be permitted under the consent.

<sup>1</sup> In its representations to us on our draft decision, Welsh Water noted that prior to 1 April 2011, Llanybydder WwTW was operated by Kelda Water Services Ltd but since that date it has been operated by Welsh Water.

<sup>2</sup> Formerly the Environment Agency Wales

- 3.5 On 30 December 2005, as a result of the Urban Wastewater Treatment Directive and the Freshwater Fish Directive, NRW formally imposed an ammonia limit that stipulated that the final effluent from Llanybydder WwTW must not have an ammonia level higher than 5mg/l. This was the first time an ammonia limit had been imposed by NRW in respect of the Llanybydder WwTW.
- 3.6 Due to Dunbia's increasing effluent, and consequently the increase in its ammonia levels, Welsh Water could not comply with the 5mg/l ammonia limit imposed on it by the NRW. It therefore sought from NRW a temporary relaxation of ammonia levels, to 60mg/l, from December 2006 until 30 September 2009, specifically to accommodate Dunbia's discharge. NRW granted this but made it clear that no further extension would be granted and if there was a breach of the limit Welsh Water would be at risk of NRW taking enforcement action.
- 3.7 On 5 January 2006, Welsh Water wrote to Dunbia to inform it that the November/December 2005 readings for its discharge were in breach of the new consent conditions. Welsh Water offered a formal caution on 19 April 2006, which Dunbia accepted on 3 July 2006. Welsh Water also reminded Dunbia that new tighter NRW consent conditions were in place at its works and that Dunbia needed to discharge evenly throughout the day.
- 3.8 At a meeting with Welsh Water on 3 July 2006 Dunbia discussed its plans for its own Effluent Treatment Plant ("**ETP**") and its desire to use this ETP as its main point of treatment with Welsh Water's sewerage network and Llanybydder WwTW as back-up. Welsh Water expressed its concerns over its ability to manage intermittent flows and, as such, it informed Dunbia that it would not be happy to provide a back-up process which would result in effluent being discharged at any time without notice.
- 3.9 In July 2006, Dunbia began work on its ETP which, when operational, would be capable of discharging trade effluent directly into the River Teifi.
- 3.10 On 3 July 2007, Welsh Water wrote to Ofwat to inform it that once Dunbia's ETP was operational, its consent to discharge would be revoked.
- 3.11 On 21 January 2009, Welsh Water wrote to Dunbia stating its intention to revoke Dunbia's consent as it had reservations over Dunbia's wish to retain its consent in order to discharge in the event of a breakdown. Welsh Water said that firstly the Llanybydder WwTW required steady conditions to function successfully and shock loads would almost certainly cause Llanybydder

WwTW to fail and secondly it could not justify retaining a large capacity when it would, for the large part, remain unused.

- 3.12 On 7 September 2009, Welsh Water issued a notice of variation of consent to Dunbia to vary the conditions of Dunbia's existing trade effluent consent from 180m<sup>3</sup>/d to 1m<sup>3</sup>/d to be effective from 9 November 2009. The NRW relaxation of Welsh Water's ammonia limit came to an end of 30th September 2009.
- 3.13 On 3 November 2009, Dunbia appealed to Ofwat against the variation of 7 September 2009 stating that it wished to retain a consent for a daily discharge of 180m<sup>3</sup>/d of trade effluent.
- 3.14 Dunbia carried out final commissioning of the ETP and signed off on successful commissioning with the supplier, [S&C], in July 2010, and, on 10 August 2010, NRW granted consent to Dunbia for 630m<sup>3</sup>/d discharge of effluent to the River Teifi.

## B Our investigation

- 3.15 We have investigated this appeal in accordance with our powers as set out in the Act. In conducting our investigation into this appeal we have sought to gather information from both parties whilst also seeking independent advice on matters of a technical nature.
- 3.16 Details of our investigation are in Table 2 below.

**Table 2 – Our investigation**

Date	Action
3 November 2009	Dunbia appealed the variation of 7 September 2009
18 November 2009	Ofwat wrote to Welsh Water seeking its representations
18 November 2009	Ofwat wrote to Dunbia indicating we had written to Welsh Water seeking its representations on the appeal
8 February 2010	Welsh Water provided its representations to Ofwat
8 February 2010	Dunbia provided an update to Ofwat
11 March 2010	Dunbia provided further submissions to Ofwat
16 March 2010	Welsh Water wrote to Ofwat in response to Dunbia's letter to Ofwat of 8 February 2010

1 April 2010	Dunbia wrote to Ofwat in response to Welsh Water's letter to Ofwat of 16 March 2010
May 2010	Ofwat commissioned CookPrior Associates Ltd to produce a report on the technical limits of the Llanybydder WwTW
8 October 2010	Dunbia wrote to Ofwat providing comments on the draft CookPrior technical report
26 October 2010	CookPrior Associates Ltd produced report for Ofwat. Dunbia and Welsh Water commented on the report
30 November 2010	All parties met at Ofwat
23 December 2010	Dunbia wrote to Ofwat providing its comments on options available to Dunbia
23 June 2011	Dunbia wrote to Ofwat requesting an update
6 August 2013	Ofwat issued the draft decision
21 August 2013	Welsh Water provided its representations
3 September 2013	Welsh Water provided further representations
25 October 2013	Dunbia provided its representations
13 February 2014	Final decision

## C CookPrior Associates - Technical Report

- 3.17 In May 2010, we commissioned a technical assessment from an independent and expert trade effluent consultant, CookPrior Associates Ltd ("**CookPrior**") to evaluate the technical limits of the capacity of the Llanybydder WwTW. Cook Prior was asked to calculate the maximum volume of Dunbia's raw effluent that could be safely accommodated, given the operational limits of the plant and the environmental restrictions imposed by NRW, such as an ammonia limit.
- 3.18 In October 2010, CookPrior submitted its final report. Both parties commented on the report, of which the key findings were not disputed. The report's main finding was that there was a technical need for a variation because of the limited capacity available at Llanybydder WwTW. The report found that if capacity was reserved for intermittent discharges from Dunbia the following technical limits would apply for raw effluent produced by Dunbia (i.e. the

quality of effluent actually produced by Dunbia on a day to day basis and without pre-treatment):

- a. if the discharge was pre-planned, allowing for acclimatisation of the treatment works, a total volume of 28.8 m<sup>3</sup>/d could be discharged into Llanybydder WwTW; and
- b. if the discharge was unplanned (i.e. a “shock load” to an un-acclimatised treatment works) a total volume of 4.34 m<sup>3</sup>/d could be discharged into Llanybydder WwTW.

- 3.19 Under both scenarios the CookPrior report has highlighted that any discharge would need to be evenly discharged over 24 consecutive hours to avoid shock or over loading of the Llanybydder WwTW.
- 3.20 According to the report, the predominant factor constraining the amount of raw effluent that could be treated was the ammonia limit imposed by NRW.
- 3.21 Given that these limits represent a level beyond which the safe operation of the treatment works cannot be guaranteed we have treated these limits as the maximum possible volume that Llanybydder WwTW could presently be obliged to take from Dunbia (at the quality of effluent considered by CookPrior).

## **D Previous views of the parties**

### **(i) Dunbia**

- 3.22 Prior to receipt of Dunbia’s representations on the draft decision, we understood that Dunbia wished to retain consent to discharge 180m<sup>3</sup>/d of trade effluent to Welsh Water’s Llanybydder WwTW. It wished to retain this consent for intermittent use should it not be able to discharge via its ETP (i.e. as a back-up option).
- 3.23 As part of its appeal Dunbia calculated how much it would cost to tanker to a licenced facility. It said that this could cost up to [redacted] per m<sup>3</sup> and with an average daily flow over the year of 220m<sup>3</sup> this could equal [redacted] per day.

### **(ii) Welsh Water**

- 3.24 Welsh Water varied Dunbia’s consent to discharge trade effluent to the Llanybydder WwTW from 180m<sup>3</sup>/d to 1m<sup>3</sup>/d. It stated that its main reason for this action was to protect its assets and the receiving watercourse into which Welsh Water is permitted to discharge.

## **4 Draft decision**

- 4.1 On 6 August 2013, we issued a draft decision setting out that we were minded to reject Dunbia's appeal. As set out earlier, this document confirms the conclusions as set out in our draft decision and the reasoning behind this decision is set out in section 5.
- 4.2 Both parties provided representations on the draft decision.

### **A Welsh Water**

- 4.3 On 21 August 2013, Welsh Water responded to the draft decision supporting its findings and offering no further representations. Welsh Water also provided a further letter on 3 September 2013 making some minor comments and also highlighting its concerns with any potential reservation of capacity in the public sewer as this would it said, "impact on our ability to provide a service to other potential customers". On this point, Welsh Water noted that regard must be given to the right to connect to the public sewer and the implications of such rights on the sewerage undertaker's apparatus.

### **B Dunbia**

- 4.4 In its representations, Dunbia confirmed that it continues to appeal Welsh Water's variation of consent to 1m<sup>3</sup>/d. It has put forward, however, that whereas it previously required consent for intermittent use should it not be able to discharge via its ETP, it now requires reserved capacity for one planned maintenance event per annum for a 10-14 day period.
- 4.5 We consider Dunbia's representations on our draft decision raise materially different issues from those raised in its original appeal and are, therefore, outside the scope of this appeal. Moreover, to address these new issues we would need to commission a new technical report to assess the capacity of the Llanybydder WwTW, which would effectively result in the appeal process starting again. Dunbia acknowledges this in that it submits that "an up to date expert report be obtained in order to establish the maximum volume of discharge which could be permitted on a planned basis from Dunbia."
- 4.6 We do not consider that this is an appropriate use of our resources especially without giving the parties the opportunity to first resolve this issue without our involvement. Welsh Water is best placed to consider whether to accede to Dunbia's changed request, and if so, on what conditions. The Act only envisages our involvement if the incumbent undertaker refuses a request for consent or only provides consent on unacceptable terms.

- 4.7 In the light of the above, we consider that the changed facts presented to us by Dunbia are materially different from the original appeal and represent a new request for consent. Accordingly we have decided to finalise Dunbia's appeal on the basis on which it was submitted to us. There is nothing preventing Dunbia from making a further request to Welsh Water for a new consent.
- 4.8 Dunbia also put forward that since 2010, the local area planning embargo on domestic and other commercial development has been relaxed and there are now no planning issues in relation to sewerage capacity. Dunbia says that planning applications for developments with a requirement for capacity from the local sewer have been made and have subsequently been approved showing there is available capacity. Dunbia attached an email from the relevant planning division of the county council to confirm the above.
- 4.9 Our view is that the email does not confirm that there are no longer any planning restrictions. It goes no further than advising that Welsh Water has not submitted any objections to applications for individual dwellings on the grounds of capacity in the sewerage system.
- 4.10 Dunbia also put forward that we have only considered the possibility of  $4.34\text{m}^3/\text{d}$  of trade effluent discharge as opposed to considering the possibility of allowing  $28.8\text{ m}^3/\text{d}$  of planned trade effluent discharge to the Llanybydder WwTW. It should be noted, however, that Dunbia's requirement when the draft decision was issued was for intermittent back-up and, as such, we considered the  $4.34\text{m}^3/\text{d}$  figure the relevant amount to consider.

## 5 Decision

- 5.1 Our approach in considering this appeal has been to break it down into two stages:

### A Stage One - Is a variation justified?

- 5.2 Dunbia is appealing against Welsh Water's variation to its consent from 180m<sup>3</sup>/d to 1m<sup>3</sup>/d. When Dunbia submitted its appeal on 3 November 2009, its future was uncertain. Its ETP was not yet fully operational and it had not received consent to discharge to the River Teifi from NRW. Since then, Dunbia's ETP has become fully operational and it has been granted consent to discharge into the River Teifi. Dunbia can now discharge up to 630m<sup>3</sup> of trade effluent on a daily basis.
- 5.3 Since receiving Dunbia's appeal we have considered the views of both parties and commissioned a technical consultant, CookPrior, to produce a report to evaluate the technical limits of the capacity of the Llanybydder WwTW. The conclusions from that report, which were not disputed by either party, provide a definitive answer to the question of whether a variation is justified. CookPrior concluded that there was a technical need for a variation in this case and that the preceding consent of 180m<sup>3</sup>/d could not be sustained. The reasoning behind this conclusion is predominantly due to two factors.
- 5.4 Firstly, a reduction in discharge volume was necessary in order for Welsh Water to comply with the environmental restrictions related to ammonia levels imposed on it by NRW. When this was imposed in December 2005, Welsh Water could not comply with the restriction and, as such, it secured a temporary relaxation of ammonia levels to accommodate Dunbia's consent. This relaxation was from December 2006 to September 2009.
- 5.5 Secondly, as Dunbia now discharges directly to the watercourse via its ETP, any discharge to the Llanybydder WwTW will be of a different nature from that covered by Dunbia's existing trade effluent consent. This is because the existing consent envisages daily constant flows, whereas the appeal relates to a request to use the Llanybydder WwTW for intermittent flows with potential to cause shock loading.
- 5.6 Given the above, it is clear to us that a variation was justified in this case.

## **B Stage two - Is this variation justified?**

- 5.7 Having established that Welsh Water was justified in varying Dunbia's consent we must now look at whether it was justifiable to vary the consent from 180 m<sup>3</sup>/d to 1m<sup>3</sup>/d.
- 5.8 Welsh Water reduced Dunbia's consent specifically from 180m<sup>3</sup>/d to 1m<sup>3</sup>/d as that was akin to a revocation. Welsh Water's reasoning behind effectively revoking Dunbia's consent was predominantly environmental restrictions imposed on the Llanybydder WWTW but it was also due to Dunbia commissioning its own ETP which would change the demand needs from constant to intermittent. This change in usage would, Welsh Water argued, potentially put its assets, and the receiving watercourse, at risk and effectively require Welsh Water to reserve a certain amount of capacity for Dunbia for when it is required. This was contrary to its policy of not retaining capacity either in the sewer or in any treatment works for a particular trader. Its basis for this policy is twofold.
- 5.9 Firstly, reserving capacity is likely to inhibit development in the catchment. If Dunbia was allowed to retain capacity in the public sewer this may hinder further development in the Llanybydder catchment without considerable capital investment from Welsh Water in the sewerage infrastructure.
- 5.10 We accept Dunbia's statement that the planning embargo may have been lifted (see paragraph 4.8). However, the evidence from the county council is only that there are currently no Welsh Water objections to individual dwellings. From its representations to the draft decision, it is clear that Welsh Water remains concerned about having to reserve capacity.
- 5.11 Secondly, Welsh Water is concerned that in many instances the need for back-up is not pre-planned and reserving capacity for a particular customer may result in shock loads, thereby exposing Welsh Water to a high level of risk. This is backed up by the CookPrior report which states that any discharge to the Llanybydder WWTW, including the limits set out in the CookPrior report, would have to be evenly discharged over 24 consecutive hours to avoid shock or over loading.
- 5.12 Whilst we do not accept an absolute policy on not reserving capacity, we remain of the view that the application of this policy in this case is reasonable.
- 5.13 In our draft decision we provisionally concluded that it would not be appropriate to allow Dunbia to discharge 4.34 m<sup>3</sup>/d into the Llanybydder WWTW in unplanned circumstances. Although this would have fallen within

the permitted parameters established by the CookPrior report, we considered that as this amount represented only approximately 2% of Dunbia's average discharge of trade effluent to sewer, this would not be a proportionate response, especially when weighed against Welsh Water's concerns regarding the ammonia restriction and avoiding intermittent discharges.

- 5.14 Furthermore, our conclusion in this regard was informed by the fact that Dunbia is required by its environmental permit to have an Accident Management Plan in place which means, amongst other things, that it must have in place some contingency arrangements. In its representations to us, Dunbia set out these contingency arrangements in detail noting that it includes an emergency preparedness and response procedure.
- 5.15 Given the above, it is our view that the variation is justified in this case.

## **C Conclusion**

- 5.16 We acknowledge that Dunbia's requirements have now changed, as per Dunbia's response to the draft decision. However, we consider that Dunbia's most recent requirements constitute a material change from its original appeal and, as such, have not been considered.
- 5.17 Accordingly, we maintain the findings of the draft decision, and reject Dunbia's appeal. This means that the consent to discharge only 1m<sup>3</sup>/d remains in place. However, all the parties have acknowledged that this minimal amount is akin to a revocation of the consent and it is therefore open to Dunbia to request a new consent from Welsh Water based on its current requirement for a planned annual discharge.