

# OEP Intervention on AIL Regulations

*Action Plan Update 30 September 2024*

*Sustainability at the heart of a living, working, active landscape valued by everyone.*



### Background

The Office for Environmental Protection (OEP) investigated a complaint against the Northern Ireland Environment Agency (NIEA) in 2023 about an abstraction from the Crumlin River for a fish farm.

The abstraction was operating under a “deemed” authorisation issued in line with the transitional arrangements of the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (Regulation 30 and Schedule 4). The OEP expanded this initial investigation to include all “deemed” authorisations and found that “there is an indication that the NIEA may have failed to comply with environmental law .... “.

An Action Plan to fully licence all the “deemed” authorisations was requested and an initial plan was provided to allow NIEA to assess the scale of the task and provide a fuller response by 30<sup>th</sup> September 2024. This report provides an update on progress to date.

### Transitional Arrangements

Under the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (AIL regs) <https://www.legislation.gov.uk/nisr/2006/482/made>, any applications received within 12 months of the commencement of the regulations (1<sup>st</sup> February 2007), that were carried on for the period of six months prior to the commencement of the AIL Regs, received what became known as a “deemed” authorisation to continue as before until such times as the application was determined by the Department. At the time of the OEP intervention, 87 such “deemed” authorisations had still to be determined.

### Initial Action Plan Delivery (Annex 1, Action Plan)

#### Assessment of Original Applications (Annex 1, Actions 1 & 2)

The initial Action Plan was issued to OEP on the 19 February 2024 (Annex 1) and outlined the steps required to verify which of the 87 original applications were still active and still required a licence determination to be carried out. That phase is now completed. An interrogation of the AIL database and the Content Manager system was carried out to populate an opening spreadsheet with the historic data provided with the original applications. This was then used to attempt to contact the original applicants. For a significant proportion of the applications the details were no longer valid, and further investigations had to be carried out by phone, email, online and at Companies House to determine who was responsible for the abstractions today. Multiple sites had changed ownership, some had gone out of business and two applicants were deceased. Finally, staff travelled to those sites they could not communicate with and physically contacted the current operators.

The finalised spreadsheet shows that 76 of the original applications still require to be determined and that 11 are no longer required (Annex 2). An analysis of the sectors involved indicates that 35 of the 76 applications relate to Quarrying/Mineral Washing activities, 18 relate to Fish Farms/Hatcheries (Aquaculture), 11 to Hydropower, 10 to Industrial Activities, 2 are for Agricultural use, 1 for Food and Drink and 1 for Amenity and Leisure.

#### Aquaculture Applications (Annex 1, Action 5)

The complexity of the freshwater aquaculture operations is recognised by the NIEA and a separate Operational Procedure is required to set out the considerations and assessment techniques NIEA intends to apply when determining the applications for these operations. Prior to the OEP's intervention, NIEA had already engaged with the industry on setting up a Working Group to licence these sites.

In line with the Action Plan, a meeting was arranged for the 5 March 2024 to appraise the Industry Representatives of the implications of the OEP's intervention and to update on the review of the Operational Procedure.

Regulation 18 of the AIL regs requires the applicant to supply the Department with the information it requires to determine an application. In this instance, such information as schematics, water sources, daily abstraction rates over time etc. will need to be supplied. Failure to supply the data could result in the application being refused. A draft Regulation 18 Notice was issued to the attendees outlining the type of information the Department will require to determine their applications.

With the initial phase of the Action Plan now completed, a further meeting will be scheduled for late October/ early November 2024 to discuss the implementation of the procedure and the issuing of formal Regulation 18 Notices. The Operational Procedure for determining the licences is still undergoing internal consultation and remains in draft form. It is expected that the finalised version will be shared at this meeting.

### **Risk Based Prioritisation (Annex 1, Action 3)**

The current constrained staffing resources will not allow for all the applications to be processed at the same time. The time frames for the applicant to supply the necessary data to determine a licence will automatically stream some of the applications with the remainder prioritised using one or more of the following risk-based criteria:

- Requirement for a Habitats Regulations Assessment (HRA)
- Volume of water abstraction
- Hydrological connection to Lough Neagh or other priority waterbodies (for surface water abstractions)
- Hydrological connection to the Sherwood Sandstone aquifer (for groundwater abstractions).

Processing of the applications will commence on the receipt of the additional information requested and it is expected that the first of the more straightforward applications will be licenced early in 2025 with a target to complete licencing the “simple applications” by the end of 2025. Applications from the Quarrying/Mineral Washing, Industrial, Agriculture, Food and Drink and Amenity and Leisure fall into this category. Given the complexity and cost of



supplying some of the data, it is expected that some applicants may withdraw their applications.

The more “complex applications” for Fish Farms and Hydropower installations will take at least 12 months to finalise and, depending on the extent and quality of information required, particularly in relation to flow data, HRAs etc. may well take more than 18 months to complete. A target to fully licence all these schemes has been set for the end of 2026.

Updates on progress against these targets will be issued to the OEP on six monthly intervals with the next progress report issued by 31 March 2025.

### **Next Steps (Annex 1, Action 4)**

An updated Action Plan will be issued to the OEP by the 1<sup>st</sup> October outlining the next steps in the process of determining the licences for these sites (Annex 3).

- A general communication will be issued to all the active sites in early October 2024 outlining the OEP’s intervention and advising the applicant that the Department will be moving to determine their applications.
- Those sites no longer active or no longer requiring a licence will have their application formally refused.
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- Regulation 18 Notices will need to be issued to all applicants outlining the information they will need to supply and the time frame in which it must be submitted. The Notices will be bespoke for each site which will require site inspections to be carried out to fully understand the ongoing processes at each site. It is also anticipated that, on inspection, some applications may be removed from the process as they may not require a licence.
- For some applications, particularly the quarrying/mineral washing applications, the information will be readily available and the time frames for receiving the additional information will be relatively short (in the region of a few weeks). However, for the more complex applications, such as Fish farms and Hydropower Installations, some of the information, such as flow data, may take 12 to 18 months to supply.

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- It is anticipated that the site inspections for all sites will be completed by 1<sup>st</sup> March 2025. The issuing of Notices will be carried out in parallel to the inspection programme and will be completed by 1<sup>st</sup> April 2025.
- Submit 6 month progress reports with an updated action plan to OEP to take account of the outworking of actions within the period. The next report will be issued to the OEP by 31 March 2025.

## Annex 1 March 2024 Action Plan

Action	Target Date for Completion	Progress / Status	Owner of Action
1. Interrogation of the historical information to secure an accurate list of sites which have received a deemed authorisation.	30 <sup>th</sup> April 2024	Complete	
2. Assessment (Mix of Desktop and Site Inspection) to ensure the activities remain operational and an abstraction is underway.	31 <sup>st</sup> July 2024	Complete	
3. Development of a prioritised risk-based approach to determine the outstanding applications within a timely manner.	31 <sup>st</sup> August 2024	Complete	
4. Submit an updated action plan to OEP to take account of the outworking of actions 1 to 3	30 <sup>th</sup> September 2024	Complete	
5. Specific action in relation to Deemed Authorisations for the freshwater aquaculture industry		Ongoing (Annex 3)	
5(i) Issue Notices to individual applicants operating Freshwater Aquaculture, seeking additional information to support their Application under the Abstraction and Impoundment Regulations 2006. Notices will include a minimum 12 month specified time period to enable representative data collection	31 <sup>st</sup> March 2024	Ongoing (Annex 3)	
5(ii) Continued engagement with the Aquaculture Industry at a 6 monthly meeting, to discuss the progress on application determination and development of Operational Procedures for the determination of Aquaculture Abstraction Licenses. Next Meeting Scheduled 5 <sup>th</sup> March 2024.	Ongoing 6 Monthly	Ongoing (Annex 3)	

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5(iii) Finalise and seek approval of the Operational Procedures for Licensing Abstractions from the Freshwater Aquaculture Industry.	31 <sup>st</sup> August 2024	Ongoing (Annex 3)	[REDACTED]
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## Annex 2

The table below holds information of the original applicants. The applications in red are no longer operational and no licence determination is required. The attached map shows the geographical spread of the sites.

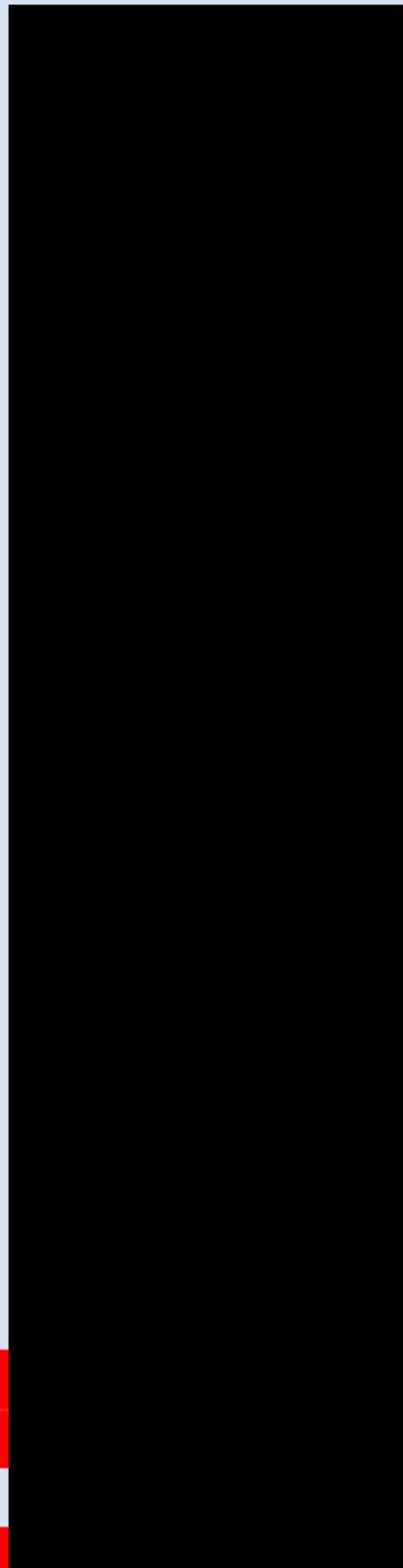
AIL Reference	Sector	Application Date	Applicant
AIL/2007/0067	Fish Farms & Hatcheries	30-Mar-07	
AIL/2007/0068	Fish Farms & Hatcheries	30-Mar-07	
AIL/2007/0075	Hydro Power	15-May-07	
AIL/2007/0077	Hydro Power	16-May-07	
AIL/2007/0083	Agricultural-Livestock	29-May-07	
AIL/2007/0087	Hydro Power	13-Jun-07	
AIL/2007/0090	Quarrying/Mineral Washing	25-Jun-07	
AIL/2007/0099	Hydro Power	30-Jul-07	
AIL/2007/0100	Hydro Power	30-Jul-07	
AIL/2007/0101	Hydro Power	30-Jul-07	
AIL/2007/0107	Food & Drink	15-Aug-07	
AIL/2007/0110	Fish Farms & Hatcheries	06-Sep-07	
AIL/2007/0114	Fish Farms & Hatcheries	13-Sep-07	
AIL/2007/0116	Quarrying/Mineral Washing	01-Oct-07	
AIL/2007/0125	Quarrying/Mineral Washing	22-Oct-07	
AIL/2007/0130	Amenity, Leisure & Recreation	09-Nov-07	
AIL/2007/0133	Industrial	15-Nov-07	
AIL/2007/0145	Quarrying/Mineral Washing	18-Dec-07	
AIL/2007/0149	Quarrying/Mineral Washing	18-Dec-07	
AIL/2007/0150	Quarrying/Mineral Washing	19-Dec-07	
AIL/2007/0153	Industrial	19-Dec-07	

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AIL/2007/0155	Quarrying/Mineral Washing	19-Dec-07
AIL/2007/0163	Quarrying/Mineral Washing	20-Dec-07
AIL/2007/0170	Quarrying/Mineral Washing	20-Dec-07
AIL/2007/0176	Quarrying/Mineral Washing	27-Dec-07
AIL/2007/0177	Quarrying/Mineral Washing	27-Dec-07
AIL/2008/0001	Hydro Power	02-Jan-08
AIL/2008/0013	Hydro Power	10-Jan-08
AIL/2008/0018	Hydro Power	15-Jan-08
AIL/2008/0019	Fish Farms & Hatcheries	11-Jan-08
AIL/2008/0020	Fish Farms & Hatcheries	11-Jan-08
AIL/2008/0021	Fish Farms & Hatcheries	11-Jan-08
AIL/2008/0025	Industrial	16-Jan-08
AIL/2008/0026	Industrial	16-Jan-08
AIL/2008/0027	Industrial	16-Jan-08
AIL/2008/0028	Industrial	16-Jan-08
AIL/2008/0029	Fish Farms & Hatcheries	17-Jan-08
AIL/2008/0030	Fish Farms & Hatcheries	17-Jan-07
AIL/2008/0031	Fish Farms & Hatcheries	17-Jan-08
AIL/2008/0041	Industrial	22-Jan-08
AIL/2008/0048	Hydro Power	23-Jan-08
AIL/2008/0054	Fish Farms & Hatcheries	28-Jan-08
AIL/2008/0056	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0057	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0058	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0059	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0060	Fish Farms & Hatcheries	25-Jan-08
AIL/2008/0062	Industrial	29-Jan-08

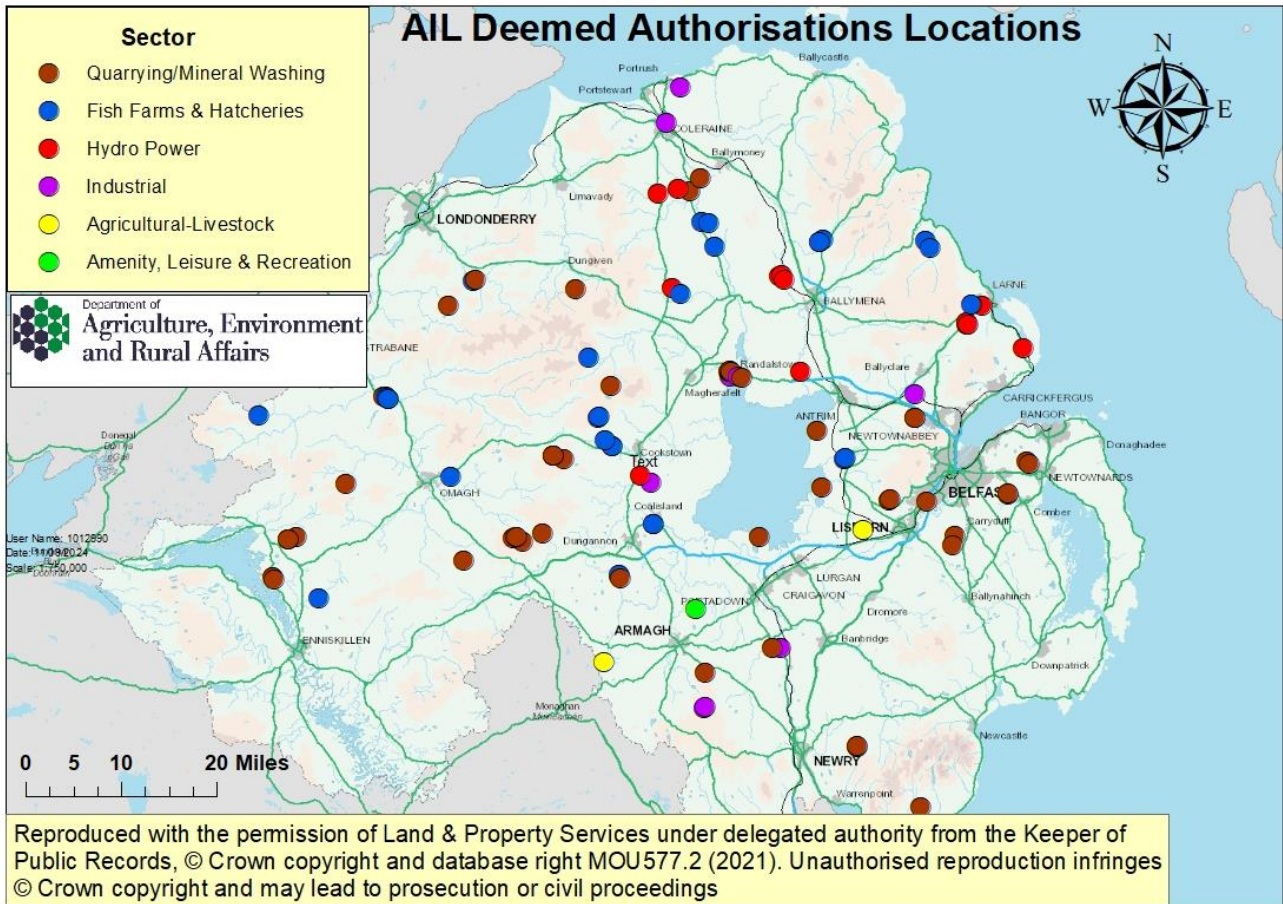
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AIL/2008/0063	Fish Farms & Hatcheries	29-Jan-08
AIL/2008/0064	Fish Farms & Hatcheries	29-Jan-08
AIL/2008/0065	Fish Farms & Hatcheries	29-Jan-08
AIL/2008/0076	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0077	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0078	Quarrying/Mineral Washing	28-Jan-08
AIL/2008/0086	Quarrying/Mineral Washing	30-Jan-08
AIL/2008/0087	Quarrying/Mineral Washing	30-Jan-08
AIL/2008/0089	Fish Farms & Hatcheries	30-Jan-07
AIL/2008/0090	Industrial	30-Jan-08
AIL/2008/0091	Quarrying/Mineral Washing	30-Jan-08
AIL/2008/0092	Industrial	30-Jan-08
AIL/2008/0095	Quarrying/Mineral Washing	30-Jan-08
AIL/2008/0102	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0116	Agricultural-Livestock	31-Jan-08
AIL/2008/0117	Hydro Power	31-Jan-08
AIL/2008/0119	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0121	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0122	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0124	Fish Farms & Hatcheries	31-Jan-08
AIL/2008/0129	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0130	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0131	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0133	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0134	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0135	Quarrying/Mineral Washing	31-Jan-08
AIL/2008/0136	Quarrying/Mineral Washing	31-Jan-08



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AIL/2008/0138	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0139	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0141	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0144	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0145	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0146	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0148	Fish Farms & Hatcheries	31-Jan-08	
AIL/2008/0149	Fish Farms & Hatcheries	31-Jan-08	
AIL/2008/0150	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0152	Fish Farms & Hatcheries	31-Jan-08	
AIL/2008/0162	Quarrying/Mineral Washing	31-Jan-08	
AIL/2008/0169	Hydro Power	31-Jan-08	



## Annex 3

### Updated Action Plan

No.	Action	Target Date for Completion	Actionee
1.	Issue communication to all active applicants outlining implications of OEP intervention and initiating determination process.	17 <sup>th</sup> October 2024	
2.	Issue communication to all non-active applicants formally refusing application.	17 <sup>th</sup> October 2024	
3.	Continued engagement with the Aquaculture Industry re progress on application determination and development of Operational Procedures for the determination of Aquaculture Abstraction Licenses. Arrange meetings (6 monthly) with Aquaculture representatives	15 <sup>th</sup> November 2024	
4.	Agree the Operational Procedures for Licensing Abstractions from the Freshwater Aquaculture Industry	31 March 2025	
5.	Complete site inspection for all active applications.	1 <sup>st</sup> March 2025	
6.	Submit 6 month progress report with an updated action plan to OEP that takes account of the outworking of actions 1 to 4	31 March 2025	
7.	Issue Regulation 18 Notices to all active applicants outlining the information they will need to supply and the time frame in which it must be submitted	1 <sup>st</sup> April 2025	
8.	Target date to licence all "simple" applications.	31 <sup>st</sup> December 2025	
9.	Target date to licence all "complex" applications.	31 <sup>st</sup> December 2026	
10.	Submit 6 month progress reports with an updated action plan to OEP to take account of the outworking of actions within period	30 September 2025	





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