

EEC EuroLaw Environmental Consultants

Implementing Community Environmental Laws

Sub (29)

Administration,
Office of Licensing & Guidance,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Co. Wexford.

Environmental
Protection Agency

60 St. Joseph's Terrace,
Portarlinton,
Co. Offaly.

28 MAR 2007

Re: Clarification of the Legal Status of License Application W0230-01

28th March 2007

Dear Sir/Madam,

On 25th March 2007, EEC informed the EPA that the EIS submitted by Valeco Ltd for a combined waste and facility at Ballard, Araglin, Co Cork was deemed inadequate by Cork County Council and An Bord Pleanala. These designated competent authorities to give effect to the provisions of the European (EIA) Directive 97/11/EC both agreed that the EIS failed to contain minimum information that was mandatory under the provisions of Article 5 of the European (EIA) Directive 97/11/EC.

In 1998, the European Commission informed EEC that: *...the information provided for in Article 5(2) of Directive 85/337/EEC is the minimum that a developer must provide. A failure to provide this information would mean that the overall environmental impact assessment would be legally flawed.*

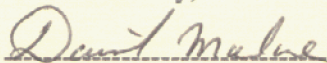
This is also an infringement of Article 6(2) of the European (EIA) Directive 97/11/EEC, which states that: -

"Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted."

In the European Court of Justice (ECJ) Case C-210/02 (*Wells v. Secretary of State for Transport, Local Government and the Regions*) [2004] the Court was asked to elaborate on the appropriate remedy where a national court finds that the requirements of the EIA Directive have not been met in a particular case. The Court confirmed the basic principle that pursuant to Article 10 EC 'the Member States are required to nullify the unlawful consequences of a breach of Community law'. Article 10a of the European Directive 2003/35/EC members of the public would have access to justice if their rights to participate in the EIA procedure was not respected the relevant competent authorities.

EEC letter to the EPA dated 25th March 2007, was a letter seeking clarification (not a submission) as to why the EPA is continuing to process a license application for Valeco Ltd now that it is fully aware that the requirements of the European (EIA) Directive has not been met ?

Yours sincerely,



David Malone
Environmental Development Officer EEC

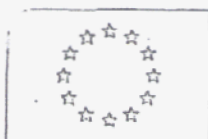
Contact: David Malone, 60 St. Joseph's Terrace, Portarlinton, County Offaly

Phone 057-8623567

Mobile 087-7754114

E-mail: davy.malone@eircom.net

Company Registration Number: 255842 B



EUROPEAN COMMISSION

DIRECTORATE-GENERAL XI

ENVIRONMENT, NUCLEAR SAFETY AND CIVIL PROTECTION

XI.B.3 - Legal affairs, activities related to legislation and enforcement of Community Law

Brussels, 20.10.98 /Xi/ 024581

Mr. David Malone,
60, St. Joseph's Terrace,
Portarlinton,
County Offaly,
IRELAND

Dear Mr. Malone,

Thank you for your recent submission to the Commission concerning clarification of Community law.

In your letter, you seek clarification on a number of issues concerning the need for an environmental impact assessment for pig farm developments in Counties Kilkenny and Carlow.

As you are aware, the relevant Community legislation is Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.

Article 2(1) of the Directive requires Member States to adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia of their nature, size, or location are made subject to an environmental impact assessment. These projects are defined in Article 4.

Article 4(2) in turn provides that projects of the classes listed in Annex II shall be made subject to an assessment where Member States consider that their characteristics so require. To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment.

Annex II(l)(f) comprises the class "pig-rearing installations."

The Irish legislation to give effect to these provisions provides for an assessment of pig-rearing installations in two separate sets of circumstances: firstly, where a fixed capacity threshold in the legislation have been exceeded; secondly, where, although a fixed threshold has not been exceeded, the competent decision-making authority nonetheless considers that other factors would make significant effects on the environment likely.

As regards the specific pig-rearing installations mentioned in your submission, it would be inappropriate at this stage, in advance of investigation, to comment on whether they are likely to have significant effects on the environment by virtue of their size and/or location. We would propose to register a complaint and to investigate the matter further.

However, in general, it is our understanding and expectation that, where an application for a pig-rearing installation is presented to the competent Irish authorities, they will firstly ascertain whether the fixed thresholds are exceeded, and, furthermore, they will seriously consider, in the case of sub-threshold projects, whether other factors make significant effects likely.

Irish river and lake water quality has shown evidence of steady and very disquieting deterioration since at least the 1970s, the failure to adequately address the pollution implications of increasing volumes of animal wastes (including wastes from pig-rearing installations) being a major factor. For purposes of consideration of the need for assessment in a sub-threshold case, it would seem to us of obvious relevance whether a proposed pig-rearing installation is located within the catchment of a river or lake which has shown a decline in water quality. Other factors might include the existing presence or proposed future presence of other pig-rearing installations in the same catchment; the risk to aquifers, particularly shallow aquifers, from land-spreading of wastes from the pig-rearing installation; the risk of nutrient saturation in land-spreading where soil phosphorous levels are already high; the risk to important or unique habitats.

With reference to the last factor, the River Nore hosts a unique type of fresh water pearl mussel (i.e. a species which is not recorded anywhere else in the world), *Margaritifera margaritifera dwrovensis*, which requires protection under Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna. The presence of this species is very important in European as well as Irish terms and it would be our expectation that the presence would be a major element in any consideration of the need for a sub-threshold assessment for a project in the Nore catchment which has implications for water quality, particularly as the River Nore has already shown evidence of water pollution.

As regards your third question, the information provided for in Article 5(2) of Directive-85/337/EEC is the minimum that a developer must provide. A failure to provide this information would mean that the overall environmental impact assessment would be legally flawed.

With reference to Article 11(2), we have requested information in relation to Ireland's threshold for pig-rearing installations, in particular on whether a boy is interpreted to include progeny through all their life-stages, including non-dependant stages. Further to your complaint P97/4792, information was requested from the Irish authorities on 6 January 1998. This information has not been provided, though we understand a very comprehensive response is in preparation covering the particular point as well as many others.

With reference to Article 12(2), Ireland has notified implementing legislation for Directive 85/337/EEC. Where thresholds are modified, Ireland is required to notify the new thresholds under this provision.

I hope you will find the above information of assistance.

Cc Messrs .Pleinevaux, Julien, O'Briain, DGXI

Yours sincerely,


G.KREMLIS