

# EEC Eurolaw Environmental Consultants

Sub (32)

ENVIRONMENTAL PROTECTION AGENCY  
Implementing Committee

25 APR 2007

WQ230-01

Licensing Section  
Environmental Protection Agency,  
PO Box 3000,  
Johnstown Castle Estate,  
Co. Wexford.

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

24<sup>th</sup> April 2007

## Re: Non Compliance with the European (EIA) Directives 97/11/EC

Dear Sir/Madam,

I have worked as a consultant in planning and environmental matters for approximately twenty years, making submissions to relevant authorities at local, national and European level. I have drafted and registered over 200 complaints with the European Commission concerning infringements of many different European Directives. In particular, the EIA, Waste, Asbestos, Nitrates, Groundwater, Surface Water and IPPC Directives. I am a member of the International Association of Impact Assessment (IAIA) for over 10 years and for the past 7 years I contributed to the UCD Diploma in EIA & SEA Management.

The European Court of Justice has successfully prosecuted Ireland over 6 times as a result of the detail and scope of these complaints. On 26<sup>th</sup> April 2005, the European Court of Justice in European Commission v Ireland [Case C-494/01] ruled that Ireland had failed to fulfill its obligations under the European (Waste) Directive 75/442/EEC, as amended by Directive 91/156/EC. EEC complaints concerning unauthorised waste activities at Ballymorris, Portarlinton Co Laois and at Ballard, County Cork were cited in this European Court Case.

Laois County Council and An Bord Pleanala refused planning permission and the EPA pursuant to its powers under Section 40(1) of the Waste Management Act, 1996, refuses to grant a waste licence (No. 96-1) to Advanced Environmental Solutions (Ireland) Limited trading as Erwin Cobbe Waste Disposal to carry on the waste activities that Ballymorris. The main reason for its decision was because there was insufficient information has been submitted in the application to allow an assessment of this waste activity. On the basis of the information before it, the Agency was not satisfied that the waste facility would comply with and not contravene the requirements of Section 40 (4) of the Waste Management Act, 1996.

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It is evident that the EPA does not have adequate information pertaining to the Valeco Ltd waste facility at Ballard to ensure that it would comply with the above mentioned requirements of Section 40 (4) of the Waste Management Act, 1996.

Article 14 (1) of the Environmental Protection Agency (Licensing) Regulations 1994, states that an environmental impact statement submitted to the Agency in accordance with any provision of this Part shall comply with article 25 of the Environmental Impact Assessment Regulations, or with any provision amending or replacing the said article.

On 20<sup>th</sup> June 2006, Cork County Council refused planning permission to Valeco Ltd for a combined waste and facility at Ballard, Araglin, Co Cork. A report from the Environmental Health Officer stated that the EIS submitted with the planning application was inadequate.

On 21<sup>st</sup> March 2007, An Bord Pleanala refused planning permission, because the EIS accompanying the application, which was lodged with the planning authority on 26<sup>th</sup> April, 2006, did not comply with the requirements of article 94 and Schedule 6 of the Planning and Development Regulations, 200. Accordingly the EPA does not have EIS in compliance with Article 14 of the Environmental Protection Agency (Licensing) Regulations 1994

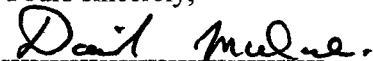
Article 3 of Directive 2003/35/EC brings Community EIA law into line with Aarhus requirements. A number of changes have been introduced to the text of the EIA Directive. For example, Article 6, which deals with inter alia public participation, has been expanded and strengthened, with a view to guaranteeing that 'the public concerned' by a proposed project have 'early and effective opportunities to participate' in the EIA procedure (see, Article 6(2), (4) and (6) of the amended Directive).

The Aarhus Convention 1998, the European Directive 2003/35/EC and Directive 2001/42/EC, all contain legal requirement for public participation in environmental decision making process. The European Directive 2003/35/EC inserts a new Article 10a into the text of the EIA Directive. Article 10a is based on Article 9 of the Aarhus Convention and concerns 'access to justice' where it is alleged that the right to participate in the EIA procedure has not been respected by the relevant competent authorities.

Valeco Ltd has not prepared an EIS in compliance with the European (EIA) Directive 97/11/EC. In particular, the company failed to provide the competent authorities with the minimum information specified under Article 5 of this Directive. As a result, the competent authorities did not have the relevant information to enable them to take a decision on a specific project in full knowledge of the project's likely significant impact on the environment. In addition, it excluded the general public from effectively participate in the decision making process.

Cork County Council and An Bord Pleanala both acknowledged that the inadequate EIS precluded them from considering a grant of planning permission in this instance. EEC claims that the inadequate EIS also legally precludes the EPA from considering a grant of a license to Valeco Ltd.

Yours sincerely,



David Malone  
Environmental Development Officer EEC