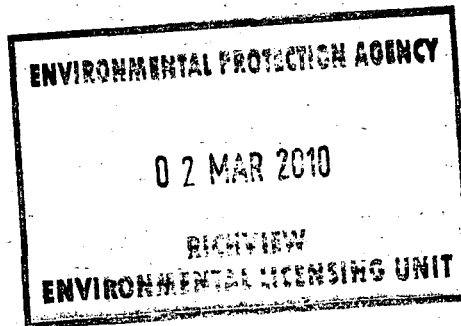


# EEC EuroLaw Environmental Consultants

Implementing Community Environmental Laws

SUB (3)

Mr. Patrick Byrne  
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> February 2010

**Re: Dublin City Council Urban Waste Water Discharge License No.D0034-01**

Dear Mr. Byrne,

EuroLaw Environmental Consultants (EEC) has over 20 years experience on the legal requirement of correctly transporting and the implementation European Environmental Directives. EAA-I has drafted and registered over 250 complaints to the European Commission with regard to infringements of the European Directives pertaining to EIA, Waste, Asbestos, Nitrates, Water, and IPPC. The European Court of Justice (ECJ) has successfully prosecuted Ireland over 8 times as a result of the detail and scope of these complaints.

On 7<sup>th</sup> December 2009, EEC registered a complaint with the European Commission, concerning infringements of several European Directives by Dublin City Council, Carlow County Council and the Environmental Protection Agency. (copy complaint enclosed)

On 16<sup>th</sup> July 2009, the ECJ in Case C-427/07 (Commission of the European Communities v Ireland) ruled that Ireland infringed Article 2(1) and Article 4(2) of the EIA Directive 85/337/EEC, as amended by Directive 97/11/EC. In particular, Ireland failed to ensure that, before consent is given, projects likely to have significant effects on the environment were made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with Articles 5 to 10 of the EIA Directive. In addition, the ECJ ruled that Ireland infringed Article 6 of Directive 2003/35 in failing to facilitate public participation.

In July 2008, the ECJ ruled (C-215/06) that the provisions of Irish law in allowing a planning application for retention permission were in breach of the EIA Directive. Following this Court ruling on 8<sup>th</sup> October 2008, the Department for Environment and Local Government issued a Circular Letter (PD 6/08) to the Minister and all Planning Authorities stating (page 2):-

*"The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities and An Bord Pleanala, being emanations of the State, are bound to comply with Community law and if necessary to misapply national law."*

Until there is an adequate EIS submitted with this license application, EEC and the general public are precluded from making an effective submission to the EPA. In addition, in compliance with European Law, the EPA is precluded from making a decision until the applicant has submitted an EIS in accordance with Articles 5 to 10 of the EIA Directive.

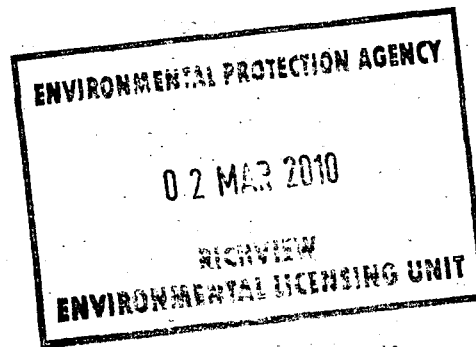
David Malone  
Environmental Development Officer, EEC

# EEC EuroLaw Environmental Consultants

Implementing Community Environmental Laws

Mr. Liam Cashman  
European Commission  
Rue de Loi 200  
B-1049 Bruxelles/Westraat  
B-1049 Brussels  
Belgium

7<sup>th</sup> December 2009



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

## Re: Infringements of Community Law

Dear Liam,

The following complaint concerns infringements of several European Directives by Dublin City Council, Carlow County Council and the Environmental Protection Agency. The complaint concerns sewage waste generated from the Ringsend Waste Water Treatment plant, stored at Thornhill, County Carlow without planning permission or a license prior to being spread on lands. This complaint will show that the Irish authorities do not give effect to ECJ Judgements or correctly transpose European Directives into Irish Law in order to achieve the objectives of the Directives.

On 26<sup>th</sup> April 2005 the ECJ Judgement in Case C-494/01, ruled that Ireland failed to fulfil its obligations under Articles 4, 5, 8, 9, 10, 12, 13 and 14 of the Waste Directive 75/442/EEC, as amended by Directive 91/156/EC. Over 4 years later (August 2009), the illegally disposed hazardous waste at the Ballymorris site in Portarlinton, was removed and disposed without planning permission or a license. The illegally disposed waste at Lea, Portarlinton has still not been removed. In addition, some of the waste illegally stored at the Ballard site in Cork was disposed of on land without a license and the rest is still illegally stored in lagoons.

Minister Gormley of the Department of the Environment in a reply on 28<sup>th</sup> January 2008, stated that the operational parts of ensuring compliance with the ECJ judgement is a matter for the statutory authorities involved, the relevant local authority and/or the Environmental Protection Agency (EPA). He gave the same reply when contacted concerning the unauthorised storage of sewage sludge from Ringsend at Thornhill, County Carlow. In April 2005, Deputy Gormley called for the then Minister for the Environment to initiate an investigation into the movement of sewage sludge from the Ringsend Plant to Thornhill, despite the fact that this facility was refused planning permission by An Bord Pleanála in 2002, and why the sludge from the Ringsend plant had a concentration of zinc more than twice the permitted level in 2003 (EPA Report). However, as the Minister for the Environment he is claiming that it is not his responsibility.

As Minister he has the responsibility to ensure that all ECJ Judgements should be complied with within 2 months. If the Irish authorities ignore the Judgement the Commission under Article 228 of the EC may refer the case to the Court of Justice and ask the Court to impose a lump sum or penalty payment on Ireland. In addition, the Minister is responsibility to ensure that European Directives are correctly transposed into Irish law and implemented in order to give effect to the objective of the Directives.

The Minister's reply depicts the complacency the Irish authorities have concerning ECJ and European Directives. This is the reason why after 20 years and several ECJ Judgements the Irish authorities have still not correctly transposed the EIA or Waste Directives into Irish law, and has still not ratified the Aarhus Convention signed over 10 years ago (June 1998).

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

Phone 057-8623567 Mobile 087-7754114 E-mail: davymalone@eircom.net Company Registration Number: 255842 B

## **Background History**

The Ringsend Waste Water Treatment Works (WWTW) is amongst the largest in Europe. It is part of a €300 million investment (Dublin Bay Project) in water quality, financed by the EU Cohesion Fund and the Department of Environment, Heritage and Local Government. In March 2008, An Bord Pleanála directed Dublin City Council to prepare an EIS in advance of the Council's submission of a planning application to extend the Ringsend plant. Under the provisions of section 38 of the Waste Management Act, 1996 (WMA) Dublin City Council has a Public Private Partnership (PPP) with Celtic Anghian Water to operate & maintain the Ringsend plant. Celtic Anghian Water has a contract with Quinns of Baltinglass for the receipt, storage and subsequent disposal of sewage waste by land spreading. The waste is presently illegally stored and disposed of, on lands by

Quinn's has no authorised storage facilities for the waste from the Ringsend plant. The waste is stored in an unauthorised building at Thornhill, Tullow, County Carlow on lands owned by Mr. Tom Nolan. This is an infringement of section 7 (1) of the European (Good Agricultural Practice for Protection of Waters) Regulations 2009.

On 13<sup>th</sup> December 2007, under the provisions of the Waste Water Discharge (Authorisation) Regulations 2007, Dublin City Council applied to the EPA for a multiple Water Services Authorities license (Reg. No. DO03401). The other authorities are Fingal County Council / South Dublin County Council / Dun Laoghaire-Rathdown County Council and Meath County Council.

The EPA does not have an adequate EIS in order to adjudicate on this application. The EIS prepared in 1997, under the EIA Directive 85/337/EEC is legally flawed and the plant has significantly increased since 1997. Accordingly, in accordance with Part 13 of Schedule 5 of the Planning and Development Regulations 2001 – 2006, a new EIS for the intensification is required.

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## **Infringements of European Directives**

### **Infringements of the EIA Directive**

Article 189 of the European Treaty indicates that European Directives shall be binding, as to the result to be achieved, upon each Member State to which it is addressed. Paragraph 65 of the Judgement in the Wells Case C-210/02, stated that the competent authorities are required to take *'all the general or particular measures necessary'* in order to ensure that the requirements of the EIA Directive are observed.

On 21<sup>st</sup> September 1999, the ECJ in Case C-392/96 ruled that Ireland had failed to fulfil its obligations under Articles 2 (3), 4 (2), 5 and 7 of the EIA Directive 85/337/EEC. On 3<sup>rd</sup> July 2008, the ECJ in Case C-215/06 again ruled that Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of the EIA Directive 85/337/EEC as amended by Directive 97/11/EC.

The two ECJ Judgements clearly show that the EIA Directive was never correctly transposed into Irish law. The development consent granted for the Ringsend Treatment Plant in 1997 was legally flawed, because the EIS infringed Article 5 of the (EIA) Directive 85/337/EEC. In particular, it failing to contain the minimum information specified in Article 5.

Notwithstanding this, the plant has significantly increased since 1997 and now requires a new EIS because of the intensification and the cumulative effects of the adjoining Poolbeg incinerator and the proposed 21 hectare extension to Dublin Port and associated dredging. In March 2008, An Bord Pleanála directed Dublin City Council to prepare the EIS in advance of the Council's submission of a planning application to extend the Ringsend plant.

On 13<sup>th</sup> December 2007, under the provisions of the Waste Water Discharge (Authorisation) Regulations 2007, Dublin City Council applied to EPA for a multiple Water Services Authorities license (Reg. No. DO03401). The other authorities are Fingal County Council / South Dublin County Council/Dun Laoghaire-Rathdown County Council and Meath County Council. The waste from Meath was not included in the EIS and Meath is not part of the Waste Management Plan for the Dublin Region 2005 – 2010. Yet the EPA is continuing to process this application despite the fact that the EIS submitted with the application is legally flawed. In fact only Parts 1 to 4 of the inadequate EIS was submitted to the EPA.

Carlow County Council and An Bord Pleanála infringed Article 1 of the (EIA) Directive in failing to request the applicant to submit an EIS for the Thornhill waste project. On 14<sup>th</sup> September 2006, Carlow Council granted planning permission subject to 19 conditions. This decision was overturned by An Bord Pleanála on 26<sup>th</sup> May 2007. The Board refused planning permission having regard to the nature and scale of the development proposed, the extent of the unauthorised buildings already on the site. The Board considered the proposed development would facilitate the consolidation an intensification of this unauthorised use.

In October 2007, the European Commission decided to again refer Ireland to the ECJ concerning further infringements of the EIA Directive 97/11/EC. The Environment Commissioner Stavros Dimas said: *"I am disappointed that Ireland has not accepted the Commission view that improvements are needed in its legislation on impact assessments in order to better safeguard, and give the public more say in decisions affecting, its rich archaeological heritage, and to better guarantee that industrial projects will be comprehensively assessed"*.

The Irish authorities have never complied with Article 2 (a) of the European (EIA) Directive, 97/11/EC in order to fulfill the requirements of the said EIA Directive and the IPPC Directive 96/61/EC on integrated pollution prevention and control.

### Infringements of the Waste Directive

In 1996, the Irish authorities adopted the Waste Management Act S.I. No. 10 of 1996. The purpose of this Act was to give effect to a list of 16 different European (Waste) Directives. The Waste Management Act was introduced because of the increased number of complaints to the European Commission of infringements of European (Waste) Directives. However, it is evident that the Irish authorities are still not complying with the European (Waste) Directives.

On 26<sup>th</sup> April 2005, the European Court of Justice ruled (C-494-01) that the Irish authorities infringed Articles 4, 5, 8, 9, 10, 12, 13 and 14 of the European (Waste) Directive 75/442/EEC, as amended by Directive 91/156/EEC. The Irish authorities failed to ensure that the disposal and/or recovery of waste did not present a risk to water, air, soil, plants and animals. On 29<sup>th</sup> October 2009, the ECJ in Case C-188/08, (*Commission v Ireland*) again ruled that Ireland failed to comply with Articles 4 and 8 of the Waste Directive 75/442/EEC, as amended by Directive 91/156/EEC, concerning septic tanks and other individual waste water treatment systems.

The sewage waste is coded number 19 08 05 in the European Waste Catalogue. This waste can only be spread on lands if it fulfils the requirements of Directive 86/278/EEC for the use of sludge in agriculture. Dublin City Council infringed Articles 4 and 8 of the Waste Directive 75/442/EEC, as amended by Directive 91/156/EEC, in failing to take the necessary measures to ensure that waste from the Ringsend Wastewater Plant was disposed of without risk to water, air, soil and plants.

Since 2001, all the biofert waste created at the Ringsend plant was stored in an unauthorized building at Tullow, County Carlow, owned by Tom Nolan. In 2007 over 42,000 tonnes of biofert from Ringsend was illegally stored on this site (*see appendix 1*). About 1,000 acres of suitable lands are required for this waste (4 tonnes per acre). This waste is illegally disposed in Counties Carlow, Laois, Kildare and Kilkenny without their permission. The EPA claims that sampling programmes at some local authorities where sludge is used in agriculture are either non-existent or in need of improvement, and that there is inadequate maintenance of sludge registers.

Under the provisions Article 4 of the (Waste) Directive 75/442/EEC when spreading treated or untreated biowaste on land, all necessary measures to ensure that this waste does not endangering human health and/or cause environmental pollution. The operator of a waste management facility is required to apply for a waste license under section 39 of the Waste Management Acts 1996 to 2008. There is no waste license for the storage or disposal on land of the biofert from the Ringsend Plant. Accordingly, it is deemed that the waste activity is operated in a manner that will cause environmental pollution.

Article 10 of the (Waste) Directive 75/442/EEC for the purposes of applying Article 4, any establishment or undertaking which carries out the operations referred to in Annex II B shall obtain a permit. Annex II B lists *Recycling/reclamation of organic substances which are not used as solvents* (R 3). In addition, R 13 of Annex II B lists the *Storage of wastes pending any of the operations numbered R 1 to R 12*.

The annual intake exceeds 10,000 tonnes. Therefore, a permit from a local authority cannot be granted under the Waste Management (Facility Permit and Registration) amendment Regulations of 2008. The annual intake is over 42,000 tonnes of biofert and sludge cake per year (800 tonnes per week). During the winter months (16 weeks) storage facilities are required for 12,800 tonnes of sewage waste. Accordingly, this is a waste facility of a class that must comply with the requirements of both the EIA and IPPC Directives.

The EPA inspected the facility at Thornhill on 16<sup>th</sup> March 2007, and claimed that it was completely satisfied with the arrangements. An EPA Audit Report to Dublin City Council, dated October 17<sup>th</sup> 2007 stated that in light of the positive findings in relation to Dublin City Council's handling of the sewage sludge the EPA will not be pursuing the matter further at this time, and considers its file on the matter to be closed. In other words, the EPA is of the opinion that the illegal waste facility at Thornhill can ignore all ECJ Judgments pertaining to the EIA and Waste Directives and continue causing environmental pollution.

### Infringements of the Sewage Sludge Directive 86/278/EEC

The purpose of this Directive is to regulate the use of sewage sludge in agriculture in such a way as to prevent harmful effects on soil, vegetation, animals and man, thereby encouraging the correct use of such sewage sludge. The Directive lays down limit values for concentrations of heavy metals in the soil, in sludge and for the maximum annual quantities of heavy metals which may be introduced into the soil.

Dublin City Council, Carlow County Council and the EPA infringed Article 5 (1) Directive 86/278/EEC in allowing sewage sludge from the Ringsend Plant be disposed on lands where the concentration of one or more heavy metals in the soil exceeded the limit values. In a report carried out by the EPA for the period 2001 and 2002 identified that heavy metals in the soil exceeded the limit. The 2003 and 2004 again identified concentration of heavy metals in the soil exceeded the limit. The two reports identified over 800 times the concentration of one or more heavy metals in the soil exceeded the limit. In other words, the waste from Ringsend was disposed on lands not tested or approved and over 800 times infringed Article 5 (1) of Directive 86/278/EEC, because the concentration of one or more heavy metals in the soil exceeded the limit values.

As a general principle there should be a clearly defined benefit to agriculture from the spreading of Biosolid waste on agricultural land. As this was clearly not the case, the Irish authorities and the EPA allowed waste to be illegally disposed on lands. Source control and monitoring of Biosolids are essential to food safety if they are to be land-spread on agricultural land used for food production.

The basic principles of EU legislation on contaminants in food are in Council Regulation 315/93/EEC which states:

*“Food containing a contaminant to an amount unacceptable from the public health viewpoint and in particular at a toxicological level shall not be placed on the market. Contaminant levels shall be kept as low as can reasonably be achieved following recommended good working practices.”*

It is estimated that over 100 different viruses are excreted by humans may be adsorbed onto sewage sludge from urban waste water treatment. When land-spreading is inappropriately practiced, there is an increased risk of contamination of food crops. Two reports by the Food Safety Authority of Ireland and the EPA in 2006 highlighted the fact that the majority of drinking water health related problems in Ireland are due to microbiological contamination. The FSAI acknowledges that there are gaps in current knowledge concerning the transfer of chemical contaminants and pathogens into the food chain through land spreading of sewage sludge (October 2008).

Mr. Tom Moran, Department of Agriculture, Fisheries and Food concerning the contaminated lands states that *“the content of heavy metals in soils in the East and South East of the country is naturally higher than in other parts of the country. This is mainly associated with the underlying bedrock geology”*.

The reason why the lands were contaminated is because the Irish authorities and the EPA are not giving effect to the objectives of the Sewage Sludge Directive 86/278/EEC. Instead they comply with the DEHLG Code of Good Practice for the use of biosolids in agriculture, which does not have any statutory basis.

## Summary

The following is a summary of the reasons why Dublin City Council, Carlow County Council and the Environmental Protection Agency are infringing the European EIA Directive 85/337/EEC, as amended by Directive 97/11/EC, the (Waste) Directive 75/442/EEC, as amended by Directive 91/156/EEC and the Sewage Sludge Directive 86/278/EEC

The Ringsend Plant has significantly increased since 1997, and now requires a new EIS in compliance with the EIA Directive 97/11/EC. This EIS must include the 42,000 tonnes of waste created from the Ringsend Plant. Also an IPPC license is required to store or dispose of the 42,000 tonnes of waste created per year.

Dublin City Council applied to the EPA for a multiple Water Services Authorities license (Reg. No. DO03401), under the provisions of the Waste Water Discharge (Authorisation) Regulations 2007. This application includes taking the sewage waste from Meath County Council. In addition, sewage waste from the Ringsend Plant is spread on lands in Carlow, Kildare, Kilkenny and Laois. This is an infringement of the Waste Directive as none of these Council's are part of the Dublin Waste Management Plan 2005-2010.

Article 4 and 8 of the (Waste) Directive 75/442/EEC were infringed by spreading biowaste on land without taking the necessary measures to ensure that this waste did not endanger human health and/or cause environmental pollution. Article 5 (1) of Directive 86/278/EEC was infringed in allowing sewage sludge from the Ringsend Plant be disposed on lands on 800 different occasions where the concentration of one or more heavy metals in the soil exceeded the limit values.

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Yours sincerely,

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David Malone EEC