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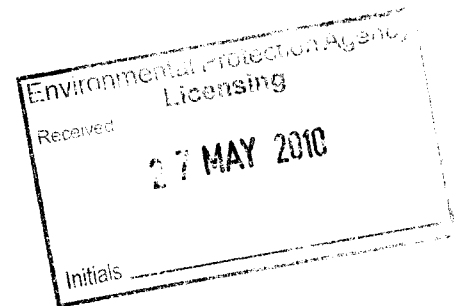
The Environmental Protection Agency
Johnstown Castle
Wexford.

2010-05-27

P0900-01

Applicant Name: Mr Owen Cunningham

Location of Facility: Ratheenagh, Ballagh, County Limerick,



Dear Sir/Madam,

We have been instructed by the Directors of the Swans and the Snails Ltd. to bring the following to the Director's attention.

No Environmental Impact Statement was submitted with this application.

The requirements for Environmental Impact Assessment are as follows;

Under Annex I of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC states that Environmental Impact Assessment is mandatory for the following projects;

17. Installations for the intensive rearing of poultry or pigs with more than:

(a) 85 000 places for broilers, 60 000 places for hens;

The requirement for Annex II as implemented in Ireland projects is at 1999 *Article 24* Part II: European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999. S.I. No. 93 of

(e) (i) Installations for intensive rearing of poultry not included in Part I of this Schedule which would have more than 40,000 places for poultry.

The above project exceeds the requirement for Environmental Impact Assessment, therefore the application is invalid.

We wish to draw the attention of the Directors to the declaration of the European Courts of Justice Case 06/66 which states at:

95. It follows from all of the foregoing considerations that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Directive 85/337, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, Ireland has failed to fulfil its obligations under the directive.

*1. Declares that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all the measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, **Ireland has failed to fulfil its obligations under the directive;***

As the above case specifically referred to the licensing of a fish farm, it is clear that the judgement refers to licensing, as performed by the Environmental Protection Agency.

We also wish to draw the Directors attention to the following extract from

Circular Letter PD 2008/05 from the Minister for the Environment Heritage and Local Government;

*It is understood that some planning authorities may have incorrectly taken the view that they must comply with and operate the relevant planning legislation as it currently stands, and therefore have to continue to make decisions on EIA/retention applications. The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities and An Bord Pleanála, being emanations of the State, are bound to comply with Community law **and if necessary to disapply national law.***

It is our submission that it is not legally possible for the Environmental Protection Agency to grant a licence for this development.

Yours faithfully



Peter Sweetman

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