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25 March 2012



Second Submission to:

Reg, No: P0738-02 IPPC licence application;
Review of IPPC licence, Reg No P0738-1
Corrib Gas Project

Dear Sir/Madam,

After submitting my submission to the above review, I took notice of the contents of the EPA's observation, dated 8 March 2013, to Mayo County Council, heading: "Request for Observation with regard to EIA Screening for Planning Application Re: P13/68: Bellanaboy Bridge Gas Terminal".

I submit that the EPA's observation is not compliant with applicable law.

I am a layperson who is not required to know legislation but I have a right to expect the EPA to be fully conversant and compliant with national and international legislative requirements and relevant ECJ case law which has direct effect on member states and therefore emanations of the state, like the EPA.

Bellanaboy Bridge Terminal is part of the Corrib Gas Project for which an IPPC Licence is required. IPPC Licence P0738-01 has been issued in 2007 for the Corrib Gas Project which since then has materially altered. P13/68 is a proposed alteration of the Corrib Gas Project, not a distinct development in its own right. Is the EPA willing to state that the 'development' would be capable of execution apart and away from Corrib Gas Project? If so please request Mayo County Council to confirm same.

The Corrib Gas Project is a plan/project that falls under the EIA Directive, including alteration thereof contrary to what the EPA observation states: *"it does not appear from the documentation supplied that the proposed development falls within any of the projects types or thresholds specified in Schedule 5 of the Planning and Development Regulations, 2001 (as amended)."*

The threshold in Schedule 5 of the Planning and Development Regulations 2001 are incompatible with the obligations of the EIA Directive.

Perhaps you not aware of the ECJ judgement in case 244/2012 which states:

*2. When a Member State, pursuant to Article 4(2)(b) of Directive 85/337, as amended by Directive 97/11, with regard to projects falling within the scope of Annex II thereto, establishes a threshold which is incompatible with the obligations laid down in Articles 2(1) and 4(3) of that directive, the provisions of Articles 2(1) and 4(2)(a) and (3) of **the directive have direct effect**, which means that the competent national authorities must ensure that it is first examined whether the projects concerned are likely to have significant effects on the environment and, if so, that an assessment of those effects is then undertaken.*

The EPA can not apply an attitude of project splitting and circumvent assessment of the cumulative effects. The EPA is duty bound to comply with the judgement in ECJ case 50/09 and the other findings explained in 'European Union, Environmental Impact Assessment of Projects, Rulings of the Court of Justice, 2013:'

Splitting of projects – cumulative effects

*The purpose of the EIA Directive cannot be circumvented by the **splitting of projects** and the failure to take account of the **cumulative effect** of several projects must not mean in practice that they all escape the obligation to carry out an assessment when, taken together, they are likely to have significant effects on the environment within the meaning of Article 2(1) of the EIA Directive.*

*(C-392/96, Commission v. Ireland, paragraphs, 76, 82
(page 24)*

The EPA observed "It is noted that EIS's have been prepared previously in respect of the activity to which the above referenced planning application relates. These EIS's may already address any likely significant effects on the environment from the changes proposed in planning application re: P13/68".

How can the EPA actually advice the planning authority that the EIS's 'may' already address impacts on the environment that the applicant hadn't thought about when producing the EIS's in 2003!! Is the EPA still reliant on the EPA Guidelines of 2002, defining the EIS as the outcome of the EIA?

I can't belief the EPA is not aware of the relevant judgements listed in The Environmental Impact Assessment of Projects, Rulings of the Court of Justice, 2013:

Criteria/thresholds

such as fauna and flora, soil, water, climate or cultural heritage, are sensitive to the
*Even a **small-scale project** can have significant effects on the environment if it is*
in a location where the environmental factors set out in Article 3 of the EIA Directive,
slightest alteration.

(C-392/96, Commission v. Ireland, paragraph 66)

*As regards the **cumulative effect** of projects, it is to be remembered that **the***
***criteria and/or thresholds** mentioned in **Article 4(2)** are designed to facilitate*
the examination of the actual characteristics exhibited by a given project in order to
determine whether it is subject to the requirement to carry out an assessment, and
*not to exempt in advance from that obligation certain **whole classes of projects***
listed in Annex II which may be envisaged on the territory of a Member
State

(C-392/96, Commission v. Ireland, paragraph 73)

The EPA states that the Proposed Decision does not address this planning application.

And probably does not intend address future changes to the plan/project either. However, the Commission clearly is of the view that the alterations of the plan/project have to be included.

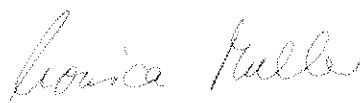
Overall environmental assessment

*The EIA Directive adopts an **overall assessment of the effects** of projects or **the alteration thereof** on the environment. It would be simplistic and contrary to that approach to take account, when assessing the environmental impact of a project **or of its modification**, only of the direct effects of the works envisaged themselves, and not of the environmental impact liable to result from the use and exploitation of the end product of those works. (page 28)*

I request the EPA to give me an assurance that the EPA will comply with the law in dealing with this application, including the Agency's flawed observation to Mayo County Council, i.e. withdraw the observation and correct the flaws.

I am confident that the EPA expects me to act within the boundaries of law and I expect the same when I am submitting my observations to the EPA.

Regards,



Monica Muller