Objection No. 4.

Noeleen Keavey

From: Licensing Staff
Sent: 08 May 2015 14:58
To: Noeleen Keavey
Subject: FW: New Third Party objection entered for Reg no: P0738-03. (Reference Number: P0738-03-150508024739)
Attachments: APPEAL.pdf

Importance: High

From: Peter Sweetman [mailto:sweetmanplanning@gmail.com]
Sent: 08 May 2015 14:48
To: Licensing Staff
Subject: New Third Party objection entered for Reg no: P0738-03. (Reference Number: P0738-03-150508024739)
Importance: High

Objection submitted on:	08/05/2015 14:47
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Objector Type:	Third Party
Oral Hearing:	No

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2015-05-09

The meaning of project is defined in the judgement of the CJEU in Case C-50/09 such;

"project" means:

– the execution of construction works or of other installations or schemes,

– other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

Therefor the project in this case must include;

The operation of a gas refinery,The operation of a combustion installations with a rated thermal input equal to or greater than 50MW,
The pipeline
The construction and operation of a gas pipeline and its associated parts
Peat depository
The wellhead

The inspectors report at 1. Installation states;

Corrib Gas Field Project
The Corrib Gas Field project is divided into a number of distinct but inter-related and inter-dependent elements as follows: the subsea facilities (wells, flowlines, manifold and offshore incoming gas pipeline), the onshore incoming gas pipeline, services umbilical and outfall pipeline, the gas refinery and the export gas pipeline up to the Block Valve 1 at Bellacorick (approximately 18.5 km from the gas refinery) which continues as the Mayo to Galway gas pipeline.

The purported assessments on which the inspector relies are;

The Environmental Impact Assessment carried out by An Bord Pleanála P03/3343 was dated 22nd October 2004.

The Environmental Protection Agency licence P0738-01 was granted on 12 November 2007.

2001 Corrib Offshore EIS and 2010 supplementary update. Granted 25 February 2011.

The CJEU in Case C-50/09 has found that Ireland has failed to fulfil its obligations under that directive concerning these decisions.

The date of the judgement in Case C-50/09 was 3 March 2011 therefore all these decisions predate the judgement.

16.207212 in this case the inspector stated;

> Environmental Impact Assessment, Parameters for this Assessment
>
> *15.2.0 I submit that the recent planning history for the terminal site is important in setting the parameters for this assessment. The previous Board decision under PL 16.126073, and the Board Direction, effectively define the starting point for those aspects of the proposal that are not materially different to the previous proposal. I intend to examine the previous decision and Direction in detail in order to ascertain the matters previously decided by the Board. The decision made by the Board on 29th April 2003 was unanimous.*
>
> ***I then intend to determine those aspects of the current proposal that are materially different than the proposal decided under PL 16.126073.***

The Board Direction in this case contains the following note;

> ***Note:*** *The Board accepted that the parameters set by the Inspector in his assessment were reasonable.*

Neither the Inspectors report nor the purported Environmental Impact Assessment of An Bord Pleanála in case 16.126073 are submitted with this application and therefor have not been considered by the Environmental Protection Agency.

Had the EPA inspector even had a cursory glance at the files re 16.207212 this would have become obvious. It would have been obvious that there was a serious lacuna re the information submitted re 16.207212 and 16.126073

It is therefore my submission that the EPA inspector had no regard to these decisions.

Therefor the Environmental Protection Agency proposed determination is fundamentally flawed as it did not even purport to assess the interactions between the parts of 16.126073 which were not considered in 16.207212.

The EPA Inspectors report states;

> *The Agency consulted with Mayo County Council and ABP in accordance with Section 87(1E)(a) of the EPA Act 1992, as amended, and also sought observations on same from DCENR, as consent bodies which had carried out EIA on the project.*

But as no Environmental Impact Assessments were submitted therefore could not have been had regard to.

The EPA inspector made a fundamental error in considering that the following gave any part of the development exemption from Environmental Impact Assessment.

> *Mayo County Council has advised SEPIL, in correspondence, that an Environmental Impact Statement (EIS) is not required for the proposed change to the discharge point for treated produced water (SW3).*
>
> *They confirm that the environmental impact assessment for planning permission P03/3343/ the parent permission/ was carried out by An Bord Pleanála and that it was determined by Mayo County Council that each of the amending applications did not require an EIA under the Planning and Development Acts 2000 as amended.*

The whole project for which this licence proposed Determination requires Environmental Impact Assessment.

The Environmental Protection Agency wrote to Department of the Environment, Community & Local Government, Dept of Communications, Energy & Natural Resources and An Bord Pleanála on the 19 February 2014 requesting;

> *Furnish **hardcopy** of all documents relating to any environmental impact assessment carried out by your Department in respect of any development or proposed development comprising part of the activity to which the grant of any authorisations refer.*

None of the above submitted an Environmental Impact Assessment which complied with the Directive and regulations.

The 2001 MLVC "assessment" was for a different terminal and a different pipeline to what we are the Environmental Protection Agency is purporting to assess.

The EPA inspectors report states;

> *The DCENR also required an EIS in support of Gas Networks Ireland (formerly Bord Gais Eireann) Mayo to Galway gas pipeline as part of their consent to construct (under section **8(7)** of the Gas Act 1976, as amended) and operate the pipeline (under Section 39A of the Gas Act 1976, as amended). The DCENR submitted to the Agency the associated EIS and addendum report which was part of the application*

for consents to construct and operate the pipeline. These consents were considered with the licence application.

No Environmental Impact Assessment was submitted and the Department failed to submit even the Volume I- Main Text so I find it incredible that the inspector took it into consideration.

The Mayo to Galway gas pipeline had a significant negative effect on SACs and no Appropriate Assessment was submitted, or considered by the inspector. To avoid confusion we attach the actual EIS.

An Bord Pleanála responded;

ABP acknowledges the extent of available information on the licence review application on the Agency's website/ together with volumes of information associated with the previous licence and planning applications applying to the gas refinery. ABP notes there is some lack of clarity that does not enable ABP to fully assess the material changes resulting such as to allow a comprehensive assessment of the physical planning implications arising that may require further planning permissions.

This shows that a complete Environmental Impact Assessment by the Environmental Protection Agency was not possible.

We are unable to find any assessment or even any details of the subsea facilities which the inspector agrees is part of the project.

An Bord Pleanála failed to submit any details of 16.126073in particular the reports on this file which could be considered to be an Environmental Impact Assessment.

As the inspector states;

Having specific regard to EIA, this report is intended to identify, describe and assess for the Agency the direct and indirect effects of the proposed activities on the environment, as regards the matters that come within the functions of the Agency, including any interaction between those effects and to propose conclusions to the Agency in relation to such effects.

The EISs submitted, the licence application, the submissions and observations received from third parties; the assessments carried out by the planning authority, An Bord Pleanala, DCENR and DECLG;

It is my submission that this shows that it is not possible for an Environmental Impact Assessment to have been carried out on this project.

It has been shown that that no Environmental Impact Assessments were carried out by An Bord Pleanála, DCENR and DECLG;

The fact that the inspector includes the Planning Authority shows a complete lack of understanding of the Environmental Impact Assessment process.

The assessment of 03/3343 was appealed and an incomplete assessment was purported to have been carried out by An Bord Pleanála.

Despite the findings of the CJEU that this is not the case the Agency still has not amended The EPA document 'Guidelines on the information to be contained in EIS (2002)', which states;

> *1.1 INTRODUCTION Environmental Impact Assessment (EIA) is a process for anticipating the effects on the environment caused by a development. An Environmental Impact Statement (EIS) is the document produced as a result of that process.*

This raises the question as to whether the Environmental Protection Agency has any understanding of the judgement 50/09.

The inspector quotes me as;

> *According to Mr Sweetman "no Environmental Impact Assessment was carried out by the Department for Environment, Communi& and Local Government".* Mr Sweetman in support of his submission included the European Court of Justice (Ea) findings against Ireland in Case C-66/06! Case C-215/06 and Case C-50/09 and the *Guidelines for Planning Authorities and An 60rd Pleanala on the carving out Environmental Impact Assessment* (DECLG, March 2013). Mr Sweetman states that *"This development has been substantially carried out without Environmental Impact Assessment makes it unauthorised. At this time there is no evidence before the Agency that an Environmental Impact Assessment has been carried out by any of the various consent authorities!'.*

What I actually stated is attached at appendix no 2.

The inspector summarised this submission as follows;

> *The CJEU Judgement in Case C50/09 relates to the manner in which the Environmental Impact Assessment Directive is transposed into Ireland's legislation. Following on from Case C50/09, national legislation has been amended to take account of the judgement. These changes included the insertion of Section 83(2A) and Section 87(1A) to (11) into the EPA Act 1992, as amended.*

The Directive requires that the submissions of the public be taken into consideration rather than be dismissed on an incorrect understanding of a judgement of the CJEU

The inspector had a duty to adequately consider the judgements of the CJEU in particular the following;

Case C-215/06

While Community law cannot preclude the applicable national rules from allowing, in certain cases, the ***regularisation of operations or measures which are unlawful in the light of Community law****, such a possibility should be subject to the condition that it does not offer the persons concerned the opportunity to circumvent the Community rules or to dispense with applying them, and that it should remain the exception.*
Under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU], Member States are required to nullify the unlawful consequences of a breach of Community law. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States.

Member States must implement Directive 85/337 in a manner which fully corresponds to its requirements, having regard to its ***fundamental objective*** *which, as is clear from Article 2(1), is that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location should be made subject to a requirement for development consent and an assessment with regard to their effects.*

A Member State fails to fulfil its obligations under the EIA Directive, which ***after the event*** *gives to* ***retention permission****, which can be issued even where* ***no exceptional circumstances*** *are proved, the same effects as those attached to a planning permission preceding the carrying out of works and development, when, pursuant to* ***Articles 2(1)*** *and 4(1) and (2) of that directive, projects for which an environmental impact assessment is required must be identified and then – before the grant of development consent and, therefore, necessarily before they are carried out – must be subject to an application for development consent and to such an assessment.*

Article 2(1) *of the EIA Directive must necessarily be understood as meaning that, unless the applicant has applied for and obtained the required development consent and has first carried out the environmental impact assessment when it is required, he cannot commence the works relating to the project in question, if the requirements of the directive are not to be disregarded. That analysis is valid for all projects within the scope of the EIA Directive, whether they fall under Annex I and must therefore systematically be subject to an assessment pursuant to Articles 2(1) and 4(1), or whether they fall under Annex II and, as such, and in accordance with Article 4(2), are subject to an impact assessment only if, in the light of thresholds or criteria set by the Member State and/or on the basis of a case-by-case examination, they are likely to have significant effects on the environment.*
A literal analysis of that kind of ***Article 2(1)*** *is moreover consonant with the objective pursued by the EIA Directive, set out in particular in recital 5 of the preamble to the EIA Directive, according to which 'projects for which an assessment is required should be subject to a requirement for development consent [and] the assessment should be carried out before such consent is granted'.*

Member States are required to nullify the unlawful consequences of a breach of Community law under the principle of cooperation in good faith laid down in Article 10 EC [Article 4(3) TEU]. The competent authorities are therefore obliged to take the measures necessary to remedy failure to carry out an environmental impact assessment, for example the revocation or suspension of a consent already granted in order to carry out such an assessment, subject to the limits resulting from the procedural autonomy of the Member States. This cannot be taken to mean that a ***remedial environmental impact assessment****, undertaken to remedy the failure to carry out an assessment as provided for and arranged by the EIA Directive, since the project has already been carried out, is equivalent to an environmental impact assessment preceding issue of the development consent, asrequired by and governed by that directive.*

The inspector either chose to ignore the above from 215/06 or has never read it.

Case C- 50/09

The judgment of the Supreme Court in O'Connell v Environmental Protection Agency gives, admittedly, in the passage upon which Ireland relies, an interpretation of the provisions of domestic law consistent with Directive 85/337. However, according to the Court's settled case-law, such a ***consistent interpretation of the provisions of domestic law cannot in itself achieve the clarity and precision*** *needed to meet the requirement of legal certainty (see, in particular, Case C-508/04 Commission v Austria [2007] ECR I-3787, paragraph 79 and the case-law cited). The passage in the judgment of the same court in Martin v An Bord Pleanála, to which Ireland also refers, concerns the question of whether all the factors referred to in Article 3 of Directive 85/337 are mentioned in the consent procedures put in place by the Irish legislation. By contrast, it has no bearing on the question, which is decisive for the purposes of determining the first complaint, of what the examination of those factors by the competent national authorities should comprise.*

Article 1(2) of Directive 85/337 defines the term 'development consent' as 'the decision of the competent authority or authorities which entitles the developer to proceed with the project'. Article 1(3) [1(2)(f) as per codification] states that the competent authorities are to be that or those which the Member States designate as responsible for performing the duties arising from that directive. For the purposes of the freedom thus left to them to determine the competent authorities for giving development consent, for the purposes of that directive, the ***Member States may decide to entrust that task to several entities****, as the Commission has moreover expressly accepted.*

Article 2(2) of Directive 85/337 adds that the environmental impact statement may be integrated into the existing procedures for consent to projects or failing that, into other procedures or into procedures to be established to comply with the aims of that directive. That provision means that the ***liberty left to the Member States*** *extends to the determination of the rules of procedure and requirements for the grant of the development consent in question. However, that* ***freedom may be exercised only within the limits imposed by that directive*** *and provided that the choices made by the Member States ensure full compliance with its aims.*

However, that obligation to take into consideration, at the conclusion of the decision-making process, information gathered by the competent environmental authority must not be confused with the ***assessment obligation*** *laid down in Article 3 of Directive 85/337. Indeed, that assessment, which must be carried out before the decision-making process (Case C-508/03 Commission v United Kingdom [2006] ECR I-3969, paragraph 103), involves an* ***examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it****, if appropriate, with additional data. That competent environmental authority must thus undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors. It follows therefore both from the wording of the provisions at issue of Directive 85/337 and from its general scheme that* ***Article 3 is a fundamental provision****. The transposition of Articles 4 to 11 alone cannot be regarded as automatically transposing Article 3.*

It should be noted that Article 3 of Directive 85/337/EEC as amended refers to the contents of the environmental impact assessment, which includes a ***description of direct and indirect effects of a project on factors listed*** *in the first three indents of this Article* ***and the interaction between them****.*
The task of carrying out such an assessment falls to the competent environmental authority.

As far as Spanish law is concerned, it should be noted, firstly, that Article 2(1) of Legislative Royal Decree No 1302/1986 as amended does not mention the interaction between the factors listed in the first to third indents of Article 3 of the EIA Directive.
Furthermore, Article 7 of Royal Decree No 1131/1988 establishes the list of documents that should be included in the environmental impact study entrusted to the developer, which includes an environmental inventory not specified in the relevant information to be made available under Article 5(3) of Directive 85/337/EEC as amended. This document, whose content is specified in Article 9 of the Royal Decree, must indeed describe the key environmental and ecological interactions.
However, although the environmental inventory is intended to describe the condition of the site on which the project is to be built as well as its environmental characteristics, including key ecological interactions, it nonetheless does not evaluate the effects of the project on the different environmental factors specifically mentioned in Article 3 of Directive 85/337/EEC as amended or the interaction between them. It appears that even if the administrative practice is to assess this interaction, this would not mean that Article 3 of Directive 85/337/EEC as amended was properly transposed.
According to established case-law, the transposition of a directive into domestic law must be completed by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations.

Considering the above it is hard to explain how the inspector interpreted the judgement as;

The CJEU Judgement in Case C50/09 relates to the manner in which the Environmental Impact Assessment Directive is transposed into Ireland's legislation. Following on from Case C50/09, national legislation has been amended to take account of the judgement. These changes included the insertion of Section 83(2A) and Section 87(1A) to (11) into the EPA Act 1992, as amended.

It is my submission that the only explanation id that the inspector has never read the judgement.

C-392/96,

*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.*

Case-279/11

Where failure to comply with a judgment of the Court is likely to harm the environment, the protection of which is one of the European Union's policy objectives, as is apparent from Article 191 TFEU, such a breach is of a particularly serious nature.

C-216/05

*A fee cannot, however, be fixed at a level which would be such as to prevent the directive from being fully effective, in accordance with the objective pursued by it. This would be the case if, due to its amount, a fee were liable to constitute an **obstacle to the exercise of the***

rights of participation conferred by Article 6 *of the EIA Directive. The amount of the fees at issue here, namely 20€ in procedures before local authorities and 45€ at the Board level, cannot be regarded as constituting such an obstacle.*

Considering the very poor quality of the assessment in this case it is my submission that the fee of 126 euro is excessive and should be returned.

In Case C- 50/09

37 In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of each individual case.

It is my submission that the purported Environmental Impact Assessment does not comply with the requirements of Irish and European Law.

10.5 Habitats Directive (92/43/EC) & Birds Directive (79/409/EEC)

The report states;

A screening for Appropriate Assessment was undertaken to assess, in view of best scientific knowledge and the conservation objectives of the site, if the proposed activities, individually or in combination with other plans or projects is likely to have a significant effect on a European Site(s). In this context, particular attention was paid to the European sites specified in Table 4 below. The Agency considered, for the reasons set out below, that the proposed activities are not directly connected with or necessary to the management of the site as a European Site and that it cannot be excluded, on the basis of objective information, that the proposed activities, individually or in combination with other plans or projects, will have a significant effect on the European sites listed below and accordingly determined that an Appropriate Assessment of the proposed activities on those sites is required. This determination is based on the proximity of the installation to the European sites and the nature and scale of the proposed activities at the installation.

This screening is fundamentally flawed for the following reasons;

1. **The development is in the following sites;**

   004037 Blacksod Bay/Broadhaven SPA

   000500 Glenamoy Bog Complex SAC

   000472 Broadhaven Bay SAC

2. **There is an discharge into ;**

   000476 Carrowmore Lake Complex SAC

The report uses the following as the test for screening " *will have a significant effect on the European"*

The actual test is described by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála 2013 802 JR as;

> *26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:*
>
> > *"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.*

As relevant SACs And SPAs were screened out it was not possible for the Environmental Protection Agency to make a decision which complied with the requirement set out in CJEU Case C- 258/11 which states at 44;

> *44 So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C-404/09 Commission v Spain, paragraph 100 and the case-law cited). It is for the national court to establish whether the assessment of the implications for the site meets these requirements.*

The Habitats Directive states at 6.3 3.

> *Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.*

As the Appropriate Assessment carried ou for this development failed to assess the entirety of this project.

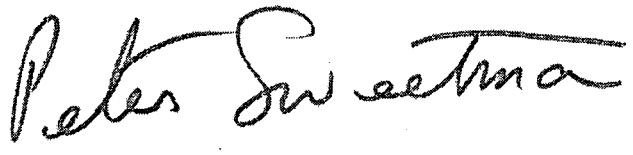
The Appropriate Assessment of Carrowmore Lake Complex Special Area of Conservation states;

> *This SAC is located approximately 0.6 km from the gas refinery footprint (17.97 km from emission point SWI).*
>
> *The increase of the suspended solids from 5 mg/l to 30 mg/l is addressed in Section 6.3.2 on page 29 above. The storm water discharge from SW2 is to a drainage ditch which feeds the Bellanaboy river, which ultimately flows into Carrowmore Lake.*

The biological water quality monitoring of the river from 1999 to 2012 indicates consistently high water quality, and there is no evidence of deterioration due to the discharge.

The failure of the Environmental Protection Agency to assess in appropriate manner the increase in the discharge from 5 mg/l discharge to 30 mg/l proves a lacuna, making the Appropriate Assessment illegal in EU law.

Yours faithfully



Peter Sweetman

Considering the fact that the public file contains 15443 pages submitted by the applicant, 414 pages originating from the Environmental Protection Agency and 7410 page from third parties which includes the other State Agencies, at total of 23,267 pages and the fact that the Agency refused an extension of time there may be lacunas and inaccuracies in this appeal.