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Environmental Protection Agency  
Johnstown Castle  
Wexford

2014-05-13

P0956-01	Mr John McCabe	Brandrum, Monaghan, County Monaghan.
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Dear Sir/Madam

In Case C-50/09, **European Commission v Ireland** the court explained  
under Legal context the following;

"development consent" means:

*the decision of the competent authority or authorities which entitles the developer to proceed with the project.*

*'(1) Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4.*

*4 Article 3 of Directive 85/337 provides:*

*'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:*

- human beings, fauna and flora,*
- soil, water, air, climate and the landscape,*
- material assets and the cultural heritage,*

– the interaction between the factors mentioned in the first, second and third indents.’

In the **Judgment the CJEU found;**

*By its action, the Commission of the European Communities requested the Court to declare that:*

*– by failing to ensure that, where Irish planning authorities and the Environmental Protection Agency (‘the Agency’) both have decision-making powers on a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of that directive;*

In this case the inspector found;

*As no EIS was submitted with the licence application, an EIS was requested by the Agency on the 17th January 2013 in accordance with section 87(11)(b) of the Environmental Protection Agency Act and it was subsequently submitted by the applicant in support of this IE licence application on 8th August 2013.*

*The Planning Authority has confirmed in correspondence to the applicant dated 6 February 2015 that they did not require an EIS and did not undertake EIA in respect of this planning permission.*

*Having specific regard to EIA, this report is intended to identify, describe and assess for the Agency the direct and indirect effects of the activity on the environment, **as respects the matters that come within the functions of the Agency,***

**This shows beyond doubt that an Environmental Impact Assessment has not been carried out on this project.**

The inspector’s application of law is fundamentally flawed, he abbreviated my submission as follows;

*The Agency received a submission on the 27th May 2013 from Mr. Sweetman & Associates.*

*The submission identifies the requirement for an Environmental Impact Assessment, as well as the information to be contained therein, in accordance with criteria outlined in Article 3 and Annex IV( 4) of the EIA Directive 2011-92-EU.*

*The submission draws attention to the European Court of Justice judgment by the Advocate General in Case C-113/12, stating that “it is for the producer of slurry to prove his intention to use it as fertiliser and to do so with a degree of certainty sufficient to dispel all reasonable doubt as to the risk of improper use”.*

*The submission also draws attention to OEU Case C-258/11, in relation to the correct interpretation of Article 6.2 and, specifically, the interpretation when*

screening for an Appropriate Assessment, to be understood as "whether the plan or project concerned is capable of having an effect".

The submission concludes (i) that the details of the proposed disposal of the slurry generated by the activity must be included in the EIS and made open to public consultation, and (ii) that the correct interpretation when screening for Appropriate Assessment is "is it [the activity] capable of having an effect?".

Response:

An EIS has been submitted in support of the licence application. The issues regarding the EIA are covered under the section entitled "Environmental Impact Assessment Directive (85/337/EEC)"~

Details of the quantity of poultry manure generated by the activity have been provided in the EIS, and as further outlined in this Inspectors Report. In Appendix 3 of the EIS to this activity, the applicant provides a statement from the contractor currently involved in removal off-site of poultry manure generated by this activity, which identifies McCartney Contractors Ltd, Moynalty, Kells, Co. Meath, as the present receivers of poultry manure from Mr. John McCabe. Poultry manure generated by this activity is currently sent to mushroom compost production facilities and **or to customer farmers for application to land as a fertiliser.**

He further states;

*It is important to note that the licence relates to the site of the activity for which the licence application is made and does not extend to the lands on which organic fertiliser may be used as fertiliser.*

The CJEU explained Article 3 of Directive 85/337 provides:

'The environmental impact assessment will identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and **indirect effects of a project** on the following factors.

**It is my submission that the spreading of slurry generated from the project is a direct effect, it is impossible for it not to be an indirect effect.**

#### *12.1 Habitats Directive (92/43/EC) & Birds Directive (2009/147/EC)*

*The Agency considered, for the reasons set out below, that the activity is not directly connected with or necessary to the management of the sites as European sites and that it can be excluded, on the basis of objective information, that the activity, individually or in combination with other plans or projects will have a significant effect on a European site, and accordingly the Agency determined that an Appropriate Assessment of the activity was not required.*

*This determination is based on the nature and scale of the activity, the distance between the installation and the European Sites and the lack of direct pathways (surface water or groundwater) connecting the European sites to the installation.*

*Ammonia emissions from this activity are not likely to have a significant impact on sensitive receptors (e.g. lichens, bryophytes etc.) due to the distance from identified European sites.*

**This screening is fundamentally flawed in law as the direct effect of slurry spreading were not assessed.**

Article 6 3. of the Habitats Directive states;

*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. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.*

The CJEU Case C-127/02 has found;

***with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on, falls within the concept of 'plan' or 'project' within the meaning of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Therefore the spreading of organic fertiliser arising from the activity must to be considered under the Habitats Directive.***

The screening decision is also fundamentally flawed in Irish law as Finlay Geoghegan J. in Kelly -v- An Bord Pleanála 2013/802 JR States;

*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.*

*48. The requirement that the effect in question be 'significant' exists in order to lay down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.*

*49. The threshold at the first stage of Article 6(3) is thus a very low one. It operates merely as a trigger, in order to determine whether an appropriate assessment must be undertaken on the implications of the plan or project for the conservation objectives of the site [ . . . ]"*

The inspector found;

*that it can be excluded, on the basis of objective information, that the activity, individually or in combination with other plans or projects will have a significant effect on a European site, and accordingly the Agency determined that an Appropriate Assessment of the activity was not required.*

This finding was made without any knowledge of where the slurry might be spread.

At 16 Environmental Impact Assessment Directive(85/337/EEC) the inspector states;

*It is important to note that the IE licence relates to the site of the activity for which the licence application is made and does not extend to the lands on which organic fertiliser may be used as fertiliser.*

The licence in Irish law may be wrongly implemented as to the above.

**But this is stated under the heading Environmental Impact Assessment Directive (85/337/EEC) as explained previously an Environmental Impact Assessment must cover the direct and indirect effects of the project.**

**The decision of the Environmental Protection Agency to grant a Proposed Decision for this project is fundamentally flawed in European Law and must be overturned.**

Yours faithfully



Peter Sweetman

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## Liz Leacy

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**From:** Licensing Staff  
**Sent:** 08 September 2015 10:21  
**To:** Liz Leacy  
**Subject:** FW: New Third Party objection entered for Reg no: P0956-01. (Reference Number: P0956-01-150907114530)  
**Attachments:** P0956-01 objection.pdf  
**Importance:** High

**From:** Peter Sweetman [mailto:sweetmanplannig@gmail.com]  
**Sent:** 07 September 2015 23:46  
**To:** Licensing Staff  
**Subject:** New Third Party objection entered for Reg no: P0956-01. (Reference Number: P0956-01-150907114530)  
**Importance:** High

**Objection submitted on:** 07/09/2015 23:45

**Title:** Mr

**First Name:** Peter

**SurName:** Sweetman

**Organisation Name:** Peter Sweetman

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**Address Line 2:**

**Address Line 3:**

**County:** Mayo

**Post Code:** 0000

**Email:** [sweetmanplannig@gmail.com](mailto:sweetmanplannig@gmail.com)

**Objector Type:** Third Party

**Oral Hearing:** No

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