



### Submission

Submitter:	Mr. Ian Lumley (An Taisce)
Submission Title:	Submission
Submission Reference No.:	S005544
Submission Received:	12 June 2019

### Application

Applicant:	GCHL LIMITED
Reg. No.:	W0298-01

See below for Submission details.

Attachments are displayed on the following page(s).

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**Noeleen Keavey**

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**Subject:** FW: W0298-01 Applicant: GCHL Ltd  
**Attachments:** EPA waste licence application.docx

**From:** Ian Lumley [REDACTED]  
**Sent:** 12 June 2019 12:58  
**To:** Wexford Receptionist <[REC\\_WEX@epa.ie](mailto:REC_WEX@epa.ie)>  
**Subject:** W0298-01 Applicant: GCHL Ltd

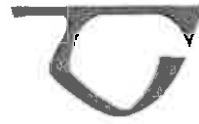
**W0298-01**

**Applicant: GCHL Ltd**

submission attached

An Taisce - The National Trust for Ireland | [www.antaisce.org](http://www.antaisce.org)  
The Tailors' Hall, Back Lane, Dublin 8, Ireland  
Company Reg. No. 12469 | Charity Ref. No. CHY4741 | Charity Regulator No. 20006358  
An Taisce is a membership-based charity  
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**For: EPA Waste Licence Application Section**

**Ref: W0298-01**

**Applicant: GCHL Ltd.,**

**Site Location: Ballinderry, Carbury, County Kildare**

**11<sup>th</sup> June 2019**

Dear Sir/Madam,

An Taisce wishes to make a submission to the Environmental Protection Agency (EPA) in relation to a waste licence application (W0298-01) by the GCHL Ltd. Due to several unauthorised developments, the applicant must now apply to An Bord Pleanála (the Bord) for leave to seek substitute consent in respect of the development, where the applicant is of the opinion that "exceptional circumstances" exist such that it may be appropriate to permit the regularisation of the development through substitute consent."

In a Supreme Court Judgement on 7 November 2018 in *An Taisce v McTigue Quarries Ltd & Ors*

[2018]1ESC 54, Mr. Justice John MacMenamin states at Paragraph 44:

*" The PD(A)A 2010 did set out pathways of regularisation of unauthorised developments which required an EIA, screening for an EIA, or an AA, under the Habitats Directive, but always subject to the caveats laid down by the CJEU in relation to exceptional circumstances, and for achieving substitute consent. One of these is to be found in s.177C(2)(b), which allows*

*a person who has carried out a development where there should have been an EIA, a screening for an EIA, or an AA under the Habitats Directive, to apply to the Board for leave to seek substitute consent in respect of the development, where the applicant is of the opinion that "exceptional circumstances" exist such that it may be appropriate to permit the regularisation*

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+353 1 454 1786 | [info@antaisce.org](mailto:info@antaisce.org)

Company Limited by Guarantee | Company 12469 | Charity CHY 4741 | Charity Regulator No. 20006358

EU Transparency Register No. 89747144047-77

**Directors:** Philip Kearney, Christopher Massi, Patricia Oliver, Judy Osborne (British), John Pierce (Chair), Charles Stanley-Smith (Secretary, British), John Sweeney

*of the development through substitute consent.”*

In order to implement the European Court of Justice judgement in Case C-215/06, Section 23(c) of the Planning and Development (Amendment) Act 2010, was amended by Section 34(12) of the 2000 Act, to allow for a “*substitute consent*’ procedure. This applies to any development prescribed for the purposes of either Annex I or Annex II of the EIA Directive. The proposed waste activity is for an annual intake of 400,000 tonnes per annum, which exceeds the following threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended:

*11. Other Projects: (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.*

Accordingly, it is clear from the legislation transposed into Irish law to give effect to the EU judgement in Case C-215/06 and *An Taisce v McTigue Quarries Ltd & Ors* [2018]1ESC 54, that this is a development which requires substitute consent from the Board.

Yours sincerely,

Ian Lumley, Advocacy Officer