



Submission

Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S005869
Submission Received:	06 November 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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60 St Joseph's Terrace,
Portarlinton,
County Offaly.

Licensing Section,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Wexford.

6th November 2019.

Re: Waste Licence Application W0298-01

Dear Sir/Madam,

On 24 September 2019, the Agency sent An Bord Pleanála (the Board) a notification in accordance with 42(1E) (c) of the Waste Management Act 1996, as amended concerning GCHL Ltd Waste Licence Application Reg. No. W0298-01, requesting the Board to state whether the activity to which the licence application relates is permitted by the grant of permission PL09.205039

On 29 October 2019, the Board in its reply states that any importation of fill for the purposes of quarry restoration going forward, would not be covered by the grant of planning permission under PL 09.205039. That all works associated with PL 09.205039, including the implementation of the Site Restoration Plan, expired on 30 September 2013.

Accordingly, the waste licence application (No. W0298-01) submitted to the Agency is legally flawed as it claims that the application is part of a High Court Order directing the restoration of the site to be completed in accordance with the appropriate waste authorisation in order to comply with Condition 12 of the ABP Planning Permission PL 09.205039.

The Agency, is fully aware of the numerous unauthorised developments taking place at the Ballinderry site. In particular, breaches of conditions 1, 2, 4 and 12 of Planning permission PL 09.205039 and the illegally disposing of over 4,000 tonnes of waste in March 2017 from a development site at Sybil Hill, Raheny, Dublin. There was no Environmental Impact Assessment (EIA) carried out in accordance with Article 3 of the EIA Directive and there was no Appropriate Assessment screening carried out in accordance with Article 6(3) of the Habitats Directive 92/43/EEC for PL 09.205039.

To implement the ECJ judgement in C-215/06, Section 23(c) of the Planning and Development (Amendment) Act 2010 amended section 34(12) of the 2000 Act, to provide that a retention application cannot be accepted by a planning authority for a development which would have required an j.

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The Planning and Development (Amendment) Act 2010, introduced a new type of environmental impact assessment and a “substitute consent” mechanism. This new “*substitute consent*” procedure applies to any development prescribed for the purposes of either Annex I or Annex II of the EIA Directive.

In this regard, had the Agency carried out an EIA Screening determination in accordance with Section 40(2A) of the Waste Management Act 1996, as amended, it would have determined that the proposed project is of a class that requires “substitute consent” because it is listed in Annex II Category II (b) of the EIA Directive 2011/92/EU: “*Installations for the disposal of waste (projects not included in Annex I).*” In addition, the requirement to obtain substitute consent also applies where there has been a failure to carry out an EIA in accordance with Article 3 of the EIA Directive and an appropriate assessment for the purposes of Article 6 (3) of the Habitats Directive.

The Supreme Court judgement on 7 November 2018 in *An Taisce v McTigue Quarries Ltd & Ors* [2018]1ESC 54, Mr. Justice John MacMenamin states:

” 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. ”

On foot of this new information from the Board and in exercise of the powers conferred on it by the Waste Management Acts, 1996 to 2011, the Agency must return the application (W0298-01) and inform the applicant that it relates to a different class of project.

That prior to submitting a new waste licence application GCHL Ltd must apply to An Bord Pleanála for permission to submit a **Remedial** Environmental Impact Assessment Report, which shall be accompanied by **Remedial** Natura Impact Statement undertaken in accordance with Section 177G of the Planning & Development Acts 2000-2011.

A failure by the Agency to take this appropriate action would create an absurdity between the Irish Constitutional Court, the European Treaty and the CJEU judgements in Cases C-215/06 and C-261/18 (the *acquis*).

Yours sincerely,

David Malone
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