Submission	
Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S005890
Submission Received:	12 December 2019
Application	
Applicant:	GCHL LIMITED
Reg. No.:	W0298-01
See below for Submission details. Attachments are displayed on the following page(s).	

EAA-I
Environmental Action Alliance-Ireland
Promoting Sustainable Development through a process of Democracy, Human Rights and the Rule of Law

60 St Joseph's Terrace,
Portarlington,
County Offaly.

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

12th December 2019.

Re: GCHL Ltd Application W0298-01is Legally Flawed

Dear Sir/Madam,

On 24 September 2019, the Agency sent An Bord Pleanála a notification in accordance with 42(1E) (c) of the Waste Management Act 1996, as amended requested the Board to state whether the activity to which the licence application relates is permitted by the grant of permission Pl.09.205039

The Board in its reply dated 29 October 2019, 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.

This means that the application W0298-01 is invalid as it is not related to PL 09.205039. The **"project"** is now of a class 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)."*

However, because of the numerous unauthorised developments taking place at the proposed site and the fact that there was no EIA carried out in accordance with Article 3 of the EIA Directive and no Appropriate Assessment carried out in accordance with Article 6 (3) of the Habitats Directive for PL 09.205039, the proposed waste disposal project requires "**substitute consent**" and not an Environmental Impact Assessment Report. **Note:** For the purposes of the EIA Directive, the term 'disposal' has to be interpreted to include 'recovery' too (Case C-486/04, *Commission v Italy Para 44)*.

Over the past 18 months Environmental Action Alliance-Ireland (EAA-I) has made numerous submissions pertaining to application W0298-01 identifying that the Agency is not correctly implementing the entire body of National or European legislation (the *acquis)* pertaining to an application that involves unauthorised developments.

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A High Court Case judgement (Klaus Balz and Hanna Heubach v An Bord Pleanála) 2013, delivered by Mr Justice Bernard J. Barton on 25 February, 2016, stated that the permission must be quashed after finding that the process under which An Bord Pleanála had decided relevant issues concerning compliance with two European Directives namely, the Habitats Directive and the Environmental Impact Assessment Directive did not comply with European or Irish law.

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.

Despite this, the following **are some** of the judgements and legislation transposed into Irish law under Section 3 of the European Communities Act 1972, in order to give effect to the said judgements in which the Agency has not complied with pertaining to this application:

a) The Supreme Court Judgement on 7 November 2018 (An Taisce v McTigue Quarries Ltd & Ors [2018]1ESC 54), Mr. Justice John MacMenamin ruled that:

> *" 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."*

b) Paragraphs 78,79, 82 and 83 of the CJEU judgement (November 2019) in Case C-261/18:

> ***78*** *"The EIA Directive precludes national legislation which allows the national authorities, where no exceptional circumstances are proved, to issue regularisation permission which has the same effects as those attached to a prior consent granted after an environmental impact assessment carried out in accordance with Article 2(1) and Article 4(1) and (2) of that directive (see, to that effect, judgments of 3 July 2008, Commission v Ireland, C-215/06, EU:C:2008:380, paragraph 61; of 17 November 2016, Stadt Wiener Neustadt, C-348/15, EU:C:2016:882, paragraph 37; and of 26 July 2017, Comune di Corridonia and Others, C-196/16 and C-197/16, EU:C:2017:589, paragraph 39)."*
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> ***79*** *"Directive 85/337 also precludes a legislative measure, which would allow, without even requiring a later assessment and even where no exceptional circumstances are proved, a project which ought to have been subject to an environmental impact assessment, within the meaning of Article 2(1) of Directive 85/337, to be deemed to have been subject to such an assessment (see, to that effect, judgment of 17 November 2016, Stadt Wiener Neustadt, C-348/15, EU:C:2016:882, paragraph 38)." (Para 79)*
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> ***82*** *"According to Section 177 B(1) and (2)(b) of Part XA of the PDAA, where, in particular, by 'a final judgment of … the Court of Justice of the European Union', it is held that a permission for a project for which an environmental impact assessment was required was unlawfully granted, the competent planning authority must give notice in writing directing the project manager to apply for substitute consent. Subsection (2)(c) of Section 177 B of Part XA of the PDAA states that the notice is to require the project manager to furnish a remedial environmental impact statement with the application."*

83 *"Section 177 C of Part XA of the PDAA enables, in those same circumstances, the manager of a project authorised in breach of the obligation to carry out a prior environmental impact assessment to apply itself for the regularisation procedure to be initiated. If its application is allowed, the manager must furnish, in accordance with Section 177 D(7)(b) of Part XA of the PDAA, a remedial environmental impact statement. "*

Accordingly, in exercising its powers conferred on it by the Waste Management Acts, 1996 to 2011, the Agency must return application W0298-01and inform GCHL Ltd that it must apply to An Bord Pleanála for substitute consent. Also, inform GCHL Ltd that any new application for a waste licence must include a remedial environmental impact statement and a remedial nature impact statement undertaken in accordance with Section 177 of the Planning & Development Acts 2000-2011.

Yours sincerely,

David Malone

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