Submission	
Submitter:	Mr. David Malone
Submission Title:	Submission
Submission Reference No.:	S005967
Submission Received:	04 February 2020
Application	
Applicant:	GCHL LIMITED
Reg. No.:	W0298-01
See below for Submission details. Attachments are displayed on the following page(s).	

From: Licensing Staff
To: Noeleen Keavey
Subject: FW: License Application WO298-01
Date: 04 February 2020 13:41:26
Attachments: Letter to EPA concerning Invalid Application.pdf

[redacted]

-----Original Message-----
From: David Malone [redacted]>
Sent: 04 February 2020 13:32
To: Licensing Staff <licensing@epa.ie>
Subject: License Application WO298-01

Please find attached EAA-I's reply to the EPA concerning the letter sent to GCHL Ltd on 23 January 2020

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

GCHL Waste licence Application to EPA is Invalid

(prepared by David Malone Eurolaw Environmental Consultant EAA-I)

The following are some of the reasons why the licence application Ref: W0298-01 submitted by GCHL Ltd to the EPA is invalid:

1. On 17 September 2004, An Bord Pleanála granted permission Ref: 09. 205039, subject to 24 condition to Goode Concrete Ltd to extract 1.6 million tonnes of sand and gravel from the Ballinderry site.

   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.

   Accordingly, this planning permission was invalid because there was no EIA carried out in accordance with Article 3 of the EIA Directive and no Appropriate Assessment screening carried out in accordance with Article 6 of the Habitats Directive.

2. The Company failed to comply with conditions 1, 2, 4 and 12, which resulted in sand and gravel been extracted up to 20 meters below the water table level. Under the Irish planning system, non-compliance with conditions attached to a planning permission is considered as unauthorised development. In March 2016, Kildare County Council took a High Court case under Section 160 of the Planning and Development Acts, 2000 as amended. On the 21 November 2016, the High Court Ordered (App No: 2015/383MCA) that the company cease forthwith the unauthorised use of the lands, at Ballinderry.

   On 2 March 2017, the violated the Order by illegally disposing of over 4,000 tonnes of waste from a development at Sybil Hill Road, Raheny, Dublin 5. The licence application does not include this unauthorised development;

3. In 2018, the EPA accepted and validated a waste licence application from GCHL Ltd which claimed that: *"The site requires restoration as ordered on 21 November 2016 by the High Court under Section 160 of the Planning and development Acts, 2000 as amended (App No: 2015/383 MCA)."*

   The licence application is invalid because the EPA is prohibited by National and European legislation to accept a licence application concerning unauthorised developments which require a Remedial Environmental Impact Assessment.

60 St Joseph's Terrace, Portarlington, County Offaly, Ireland
Email: davmalone@eircom.net
Mobile: 087-7754114 Home 0578623567

Following the judgement in Cases 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 environmental impact assessment (EIA)

In addition, in August 2012, the Department of Environment sent a Circular Letter (PHFPD 06/12 of 27 August 2012) to planning authorities and the EPA stating that for a licence application where EIA is required, the Agency will not in future consider such a licence application unless the development consent process, including EIA, has been concluded or at least the application for the consent lodged with the planning authority/An Bord Pleanála;

The licence application is invalid because there was no planning application submitted to Kildare County Council and the Council in accordance with Section 177B of PDA failed to give a notice in writing to GCHL directing it to apply to An Bord Pleanála for substitute consent.

4. In September 2019, the EPA requested An Bord Pleanála to clarify if the waste activity to which the licence application relates is permitted under the permission granted in 2004. The Board informed the EPA that the proposed disposal activity would not be covered by the 2004, permission. That all works associated with that permission, expired on 30 September 2013.

In this regard, had the EPA carried out an EIA Screening determination in accordance with Section 40(2A) of the Waste Management Act 1996, as amended, it would have concluded 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)."*

5. On 3 July 2008, the European Court of Justice ruled in Case C-215/06 that Ireland failed to fulfil its obligations under the Environmental Impact Assessment Directive, concerning the granting of development consent for unauthorised developments that required an Environmental Impact Statement. To implement the judgement, 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 environmental impact assessment (EIA). The Planning and Development (Amendment) Act 2010, introduced a new type of environmental impact assessment and a "substitute consent" mechanism.

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."

The licence application is invalid because the Council and the EPA fails to ensure compliance with the CJEU judgement 215/06 in relation to exceptional circumstances, and failing to apply for substitute consent.

The European Commission took **Ireland** back to the Court of Justice of the EU for its failure to comply with part of the Court judgement of 3 July 2008.

In November 2019, the Court ordered Ireland to pay the European Commission a lump sum of €5 Million, and also a payment of €15,000 per day from the date of delivery of the judgement in the present case until the date of compliance with the 2008 judgement.

Therefore, for every day that the Council fails to comply with Section 177B of PDA and/or the EPA return the invalid licence application to GCHL, Ireland will have to pay the European Commission €15,000 per day.

Sig…… Dated: 4th February 2020