



Submission

Submitter:	Mr. David Malone
Submission Title:	Submission - Environmental Action Alliance - Ireland
Submission Reference No.:	S006234
Submission Received:	22 December 2020

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.

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

22 December 2020.

Re: Invalid Licence Application W0298-01.

In March 2016, Kildare County Council took a High Court case (App No: 2015/383MCA) under Section 160 of the PDA, against LCP Manufacturing Limited trading as Leinster Aggregates and Goode Concrete Ltd for failing to comply with conditions 1, 2, 4 and 12, of planning permission PL 02/1475 (An Bord Pleanala Ref: PL.09.205039).

On 21 November 2016, the High Court made an Order under Section 160 (1) of the Planning and Development Act 2000, as amended, for the Respondents to cease the quarry development until it had the appropriate Article 27 permission, licence, permit, authorisation, permission, approval or consent, as required by the Agency. The Court made this Order, because the Respondents claimed that the material was a by-product and not a waste.

On 17 February 2017, the EPA received an Article 27 notification from GCHL Limited, (Ref: ART27-0579). On 8 June 2017, the EPA determined, in accordance with Article 27(3)(a) of the European Communities (Waste Directive) Regulations 2011, that the natural soil and stone illegally disposed and proposed to be disposed on the Ballinderry site should be considered as waste.

Accordingly, the EPA determination disclosed that, because the material was not a by-product, as claimed by GCHL Limited in the Court case, the EPA could not grant an appropriate Article 27 permission, licence, permit, authorisation, permission, approval or consent, as required by the Court Order. Despite this, on 2 June 2018, GCHL Limited applied to the EPA for a licence for the restoration of the Ballinderry site claiming that it was ordered by the High Court.

On 23 January 2020, the Environmental Protection Agency (EPA) informed Ms. Ruth Treacy, on behalf of GCHL Limited that the licence application (Reg. No.: W0298-01) refers to a Court Order requiring Remediation in accordance with Condition 12 of planning permission PL09.205039. It appears that Condition requires a plan approved by the planning authority. The licence application does not demonstrate that such approval has been obtained. Accordingly, the Agency will treat your application as an application not governed by the Court Order and Condition 12.

The EPA letter states that *“It should be noted that where there is failure to comply with the above requirements within four weeks of this notice, the EPA may proceed with its consideration of this application in the absence of the information requested.”*

It was over 10 months late that GCHL Limited replied to the EPA further information request. The reply states that the EPA interpretation is not correct as the Court Order does not state that the remediation is in accordance with Condition 12 of the planning permission is required.

GCHL Limited reply then states:

*“As set out in the detailed timeline and planning history is included at Appendix A, a planning permission, planning reference ABP PL09.205039 (“ABP Permission”) was granted for the development of the lands including the restoration of those lands on completion of the quarrying activities on site. **It is that restoration activity which is the subject matter of this Waste Licence Application.**” [emphases added]*

The Licence Application W0298-01 is invalid for following reasons:

1. Article 27 of the European Communities (Waste Directive) Regulations, 2011, was introduced into Irish law to implement Article 5 of the 2008 Waste Framework Directive (2008/98/EU). The EPA decided, that a material was waste and not a by-product. Accordingly, the Court case Order does not relate to a licence for the disposal of waste;
2. The licence application and the Environmental Impact Assessment Report (EIAR) both relates to the restoration of a quarry development project. The EPA determination clearly established that the project to dispose of over 1.2 Million tonnes of waste was a different category of project and not part of the quarry project. The proposed project to dispose of 1,234,335 tonnes of waste is of a class set out in Schedule 5 of the Planning and Development Regulations 2001-2018. It exceeds the threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended, namely installations for the disposal of waste with an annual intake greater than 25,000 tonnes;
3. The application contains an Appropriate Assessment screening for the quarry restoration at the Ballinderry site, which was submitted to the EPA by GCHL Ltd in May 2018. It also contains an Appropriate Assessment screening carried out by the EPA in August 2019, in accordance with Regulation 42(8)(a) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended. Both are legally flawed as they were for the quarry restoration project and not for the disposal of waste that exceeds the threshold in Schedule 5, Part 2, of the Planning and Development Regulations 2001 as amended, namely installations for the disposal of waste with an annual intake greater than 25,000 tonnes;
4. The licence application violates the ECJ judgement in case C-215/06, ruled that *“the processing of a license application before an EIS was submitted to the planning authority was an infringement of Articles 2 to 4 of the EIA Directive 85/337/EEC.”* The ECJ judgment in case C-50/09, ruled that *“It is therefore not inconceivable that the Agency, as the authority responsible for licensing a project as regards pollution aspects, may make its decision without an environmental impact assessment being carried out in accordance with Articles 2 to 4 of Directive 85/337.”* (Para 81);

5. The licence application did not contain a confirmation notice from the EIA portal, which is required to accompany a planning application for development of a class set out in Schedule 5 of the Planning and Development Regulations 2001-2018, which equals or exceeds, as the case may be, a limit, quantity or threshold set for that class of development;
6. Because of the many unauthorised developments that has taken place at the Ballinderry site, GCHL Ltd have to apply in accordance with Section 177C(2)(b) of the Planning & Development Act 2000, as mended to ABP for leave to seek “substitute consent”. This must be done **prior** to GCHL Ltd submitting a licence application to the Agency under Section 40 of the European Union (Environment Impact Assessment) (Waste) Regulations 2012;
7. In September 2018, the Balyna Environmental Action Group registered a CHAP(2018)0335 with the European Commission. The grounds of the complaint were that the Irish planning authorities and the EPA both having decision-making powers pertaining to the proposed waste disposal project, failed to comply with National & European legislation (the *acquis*);
8. The EPA failed to comply with Article 3 (1) of the Aarhus Convention which states:

“Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention”.

Accordingly, EAA-I is requesting the EPA in exercising its powers conferred on it by the Waste Management Acts, 1996 to 2011, to return the licence application and inform GCHL Ltd, that the application relates to a quarry development and not a waste disposal activity. In addition, inform GCHL Ltd that because of the many unauthorised developments that has taken place, the company must apply to ABP for permission to submit an application for substitute consent, prior to making another licence application to the EPA.

Yours sincerely,

David
Malone

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