

Mr Paul Tully
Owner/Manager
Mr Paul Tully
Moate Pig Unit
Ballinakill
Portlaoise, County Laois

Regional Inspectorate
McCumiskey House, Richview,
Clonskeagh Road, Dublin 14, Ireland
Cigireacht Réigiúnach, Teach Mhic Chumascaigh
Dea-Radharc, Bóthar Cluain Sceach
Baile Átha Cliath 14, Éire
T: +353 1 268 0100
F: +353 1 268 0199
E: info@epa.ie
W: www.epa.ie
LoCall: 1890 33 55 99

29 June 2010

Reg No: P0710-03

Dear Mr Tully

I refer to your application for an Integrated Pollution Prevention and Control (IPPC) licence, which was received on 24 February 2010.

I am to advise that in accordance with Article 17(1) of the Environmental Protection Agency (Licensing) Regulations 1994 to 2008, you are requested to supply the following additional information so that the Agency may complete a comprehensive assessment of the IPPC application:

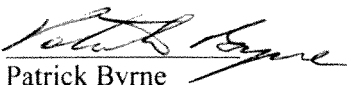
- Confirm if an Environmental Impact Statement (EIS) was required in support of any planning application submitted to the Local Authority in respect of the activity, if an EIS was required in support of a planning application please submit such documentation in accordance with Article 12 of the Environmental Protection Agency (Licensing) Regulations 1994 to 2004.
- Please address, as appropriate, the points raised in the submission received on the 27th May 2010 from Peter Sweetman & Associates (copy attached).

In addition to the above please also provide, as necessary, an updated non-technical summary to reflect the information provided in your reply.

In the circumstances you should make immediate arrangements to have the required information (1 signed original, 1 hardcopy and 2 copies of all files in electronic searchable PDF format on CD-ROM) submitted to the Agency without delay. Your response to this request should be directed to Sonja Smith, Administration Officer, Office of Climate, Licensing and Resource.

It should be noted that where there is failure to comply with the above requirements within one month of this notice, the Agency may proceed with its consideration of this application in the absence of the information requested.

Yours sincerely,



Patrick Byrne
Office of Climate, Licensing & Resource Use

Note: Any *telephone enquiries* in relation to the above should be directed to **Patrick Byrne** at the number above.

All *written communications and replies* should be directed to Sonja Smith, Office of Climate, Licensing & Resource Use, EPA, PO Box 3000, Johnstown Castle Estate, County Wexford.

PETER SWEETMAN & ASSOCIATES
184 LOWER RATHMINES ROAD
RATHMINES
DUBLIN 6

sweetmanplanning@gmail.com

The Environmental Protection Agency
Johnstown Castle
Wexford.

2010-05-27

P0710-03

Applicant Name: Mr Paul Tully

Location of Facility: Moate Pig Unit, Ballinakill, Portlaoise, County Laois,

Dear Sir/Madam,

We have been instructed by the Directors of the Swans and the Snails Ltd. to bring the following to the Directors attention.

No Environmental Impact Statement was submitted with this application.

The requirements for Environmental Impact Assessment are as follows;

Under Annex I of European Directive 85/337/EEC as amended by Directives 97/11/EC and 2003/35/EC states that Environmental Impact Assessment is mandatory for the following projects;

17. Installations for the intensive rearing of poultry or pigs with more than:

(b) 3 000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

The requirement for Annex II as implemented in Ireland projects is at 1999 Article 24 Part II: European Communities (Environmental Impact Assessment) (Amendment) Regulations 1999. S.I. No. 93 of

(ii) Installations for intensive rearing of pigs not included in Part I of this Schedule which would have more than 2,000 places for production pigs (over 30 kg) in a finishing unit, more than 400 places for sows in a breeding unit or more than 200 places for sows in an integrated unit.

The above project exceeds the requirement for Environmental Impact Assessment, therefore the application is invalid.

We wish to draw the attention of the Directors to the declaration of the European Courts of Justice Case 06/66 which states at:

95. It follows from all of the foregoing considerations that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Directive 85/337, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, Ireland has failed to fulfil its obligations under the directive.

*1. Declares that, by not adopting, in conformity with Articles 2(1) and 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, all the measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by point 1(a) to (c) and (f) of Annex II to that directive are made subject to a requirement for development consent and to an assessment with regard to their environmental effects in accordance with Articles 5 to 10 of the directive, **Ireland has failed to fulfil its obligations under the directive;***

As the above case specifically referred to the licensing of a fish farm, it is clear that the judgement refers to licensing, as performed by the Environmental Protection Agency.

We also wish to draw the Directors attention to the following extract from

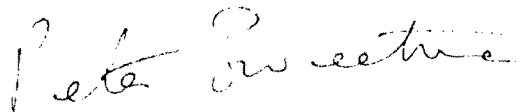
Circular Letter PD 2008/05 from the Minister for the Environment Heritage and Local Government;

It is understood that some planning authorities may have incorrectly taken the view that they must comply with and

*operate the relevant planning legislation as it currently stands, and therefore have to continue to make decisions on EIA/retention applications. The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities and An Bord Pleanála, being emanations of the State, are bound to comply with Community law **and if necessary to disapply national law.***

It is our submission that it is not legally possible for the Environmental Protection Agency to grant a licence for this development.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'Peter Sweetman'.

Peter Sweetman

Please respond by email to sweetmanplanning@gmail.com