

EEC EuroLaw Environmental Consultants

Implementing Community Environmental Laws

Mr. Frank Clinton
Licensing Section
Environmental Protection Agency
PO Box 3000
Johnstown Castle Estate
Co. Wexford

Environmental
Protection Agency

- 7 JUL 2010

60 St Joseph's Terrace
Portarlinton
County Offaly

Re: License Application 61-3

3rd July 2010

Dear Mr. Clinton,

In reply to your letter of 29th June 2010, I wish to remind you that the EPA joined An Bord Pleanála in a High Court Case in (Maher v An Bord Pleanála [1999]) claiming that an EIS was not required for a pig development. On 7th May, 1999 the High Court ruled that an EIS was required for the proposed development. Since this Court Case, I have registered over 20 different complaints against the EPA and the Irish authorities for infringements of the EIA Directive 85/337/EEC as amended by Directive 97/11/EC. It is evident from your letter that the EPA is still not complying with the provisions of the EIA Directive.

On Thursday last the European Court of Justice (ECJ) opened hearings in which the European Commission is claiming that for years, Ireland has been in breach of its obligation to conduct environmental impact assessments properly. If Ireland is found in breach, it will face substantial costs, and the implication will be that state agencies and local authority planning departments have, in effect, sanctioned developments which were contrary to Community law. Accordingly, all such development consents contrary to EU law will be deemed null and void.

In this regard EEC is requesting clarification concerning the following matters:

1. The purpose of the Waste Management (Licensing) Regulations 2004 is to give effect to 9 different European Directives including the Waste Directive and the EIA Directive. Section 94 of the Planning & Development Regulations, 2001 states that an EIS shall contain the information specified in paragraph 1 of Schedule 6.

Is the EPA claiming that the EIS for the Waste Transfer Station, at Luddenmore which is presently processing over 160,000 tonnes of waste per year does not have to contain the information specified under Article 5 of the EIA Directive 97/11/EC or paragraph 1 of Schedule 6 of the Planning Regulations 2001?¹

2. At present Mr. Binman has Waste Collection Permits for Limerick County and City, Kerry and Clare, WCP/LK/069/08(e); Mayo, Sligo, Roscommon, Leitrim and Galway, WCP-MO-09-0562-01; North Tipperary, Longford, Westmeath, Offaly and Laois, WCP-OY-0076-03; Cork, City and County, CK WMC 45/01; Wexford, Carlow, Kilkenny, South Tipperary and Waterford City and County, WCP/KK/070(A)/08. All of these collection permits allow Mr. Binman Ltd to bring waste to the unauthorised Waste Transfer Station, at Luddenmore.

¹ Article 14 Reply Non Technical Summary submitted on 25th January 2010

Has the EPA requested Mr Binman Ltd in compliance with the provisions of the Waste Management (Facility Permit & Registration) (Amendment) Regulation 2008 to furnish such information to the Agency in relation to waste collected from the above collection permits was accepted, sorted, transferred, recycled, recovered, disposed or otherwise managed or treated?

3. On 10th April 2003, the EPA granted Mr Binman Ltd a Waste License 61-2 for 87,500 tonnes per year to possible maximum of 105,000 tonnes per year subject to compliance with Condition 11.4.

Does the EPA acknowledge that this license permission does not entitle the applicant to operate this waste transfer station without first seeking development consent from the planning authority? In this regard, did the EPA inform Mr. Binman Ltd of same?

4. Paragraph 131 of the European Court of Justice Case C-494/01 states that is apparent from paragraphs 118 and 119 of this judgment, the fact that a permit application was, in some cases, submitted in respect of an existing facility does not in any way permit the view to be taken, contrary to the practice followed by the Irish authorities, that the requirements of Article 9 or 10 of the Directive were met or that the activities in question could be allowed to continue during the permit procedure.

Mr Binman Ltd failed to comply with the EPA Waste License (61-1) and on 21st March 2001 applied to the EPA to seeking an increase from 24,000 tonnes per year to 87,500 tonnes and a possible maximum of 105,000 tonnes per year. He also failed to comply with this license as he is processing over 160,000 tonnes and is now applying to increase that to 200,000.

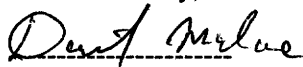
Accordingly, could the EPA clarify why it is violating the ECJ Judgment in allowing Mr. Binman Ltd continue operate the unauthorised Waste Transfer Station, at Luddenmore in breach of Article 4, 9 and 10 of the Waste Directive 2006/12/EC?

5. Paragraph 149 of the European Court of Justice Case C-494/01 states that the establishment of an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs, the network having to enable waste to be disposed of in one of the nearest appropriate installations, in accordance with Article 5 of the Directive, is among the objectives pursued by the Directive (Joined Cases C-53/02 and C-217/02 *Commune de Braine-le-Château and Others* [2004] ECR I-0000, paragraph 33).

Accordingly, could the EPA clarify why it is violating the ECJ Judgment and the Limerick, Clare, Kerry Regional Waste Management Plan in failing to ensure that Mr. Binman Ltd disposes the waste collected in these areas in one of the nearest appropriate installations, in accordance with Article 5 of the Directive?

6. Could the EPA identify if Mr. Binman Ltd has complied with Article 12 Compliance Requirement requested by the EPA on 27th April 2010. If so could the EPA send EEC a copy of Mr. Binman Ltd reply as it is not on the EPA website?
7. Because the EIS submitted is not in compliance with Articles 5 to 10 of the EIA Directive there is presently insufficient relevant or credible information for EEC to make a submission on the present license application 61-3. Accordingly, could the EPA notify EEC when it has received all the information that it will be requesting under Articles 12, 14 and 16 of the relevant Waste Management (Licensing) Regulations?

Yours sincerely,



David Malone

Environmental Development Officer EEC