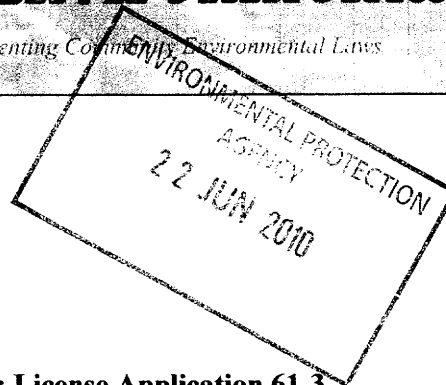


# EEC EuroLaw Environmental Consultants

Implementing Community Environmental Laws

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

60 St Joseph's Terrace  
Portarlinton  
County Offaly



## Re: License Application 61-3

(Waste Transfer Station, at Luddenmore Grange, Kilmallock, Co Limerick)

19<sup>th</sup> June 2010

Dear Sir/Madam,

EuroLaw Environmental Consultants (EEC) has over twenty years experience in Community Environmental Law. I have drafted and registered over 200 complaints with the European Commission with regard to infringements of European Directives. The European Court of Justice (ECJ) has successfully prosecuted Ireland over 6 times as a result of the detail and scope of these complaints.

On 3<sup>rd</sup> July 2008, the ECJ in Case C-215/06 ruled that Ireland has failed to fulfil its obligations under Articles 2, 4 and 5 to 10 of the EIA Directive 85/337/EEC as amended by Directive 97/11/EC. Following the Judgement in Case 215/06, the Department for Environment and Local Government issued a Circular Letter (PD 6/08) to the Minister and all Planning Authorities stating:-

*“The case law of the European Court of Justice makes it clear that administrative bodies such as planning authorities and An Bord Pleanala, being emanations of the State, are bound to comply with Community law and if necessary to disapply national law.”*

An Bord Pleanala Inspector concerning PL 13.131005 stated that:-

Whether or not an EIS is a mandatory requirement in accordance with the legislation is to some extent academic as an EIS has been submitted to the EPA in association with the application for the revised waste licence. However, it is my opinion that the EIS is analytically weak with regard to the planning implications resulting from the excess of throughput.

- The EIS was submitted to the EPA in February 2000. It is not altogether clear whether the EIS has been revised to take account of increases in throughput.
- The EIS carried out baseline studies in relation to the existing operation on site, including mitigation and remedial measures in accordance with Article 25 of the EIA Regulations, 1999.
- The EIS indicates that up to 90,000 tonnes would be processed at these premises at a future date.
- The EIS, however, fails to critically assess many of the planning implications resulting from such an increase.

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- In terms of traffic, the EIS merely states that the additional traffic resulting from the operation of Mr. Binman may have an effect on the character of the area but it is thought that this effect will not be significant.
- The baseline studies carried out as part of the EIS do not indicate the extent of waste being processed at the facility at the time these studies were carried out.
- The EIS gives no indication of existing trip generation to and from the development in terms of HGV trips (Appendix 1 of the EIS indicates that a HGV passes each noise sensitive location between every one and two minutes).
- Detailed figures in relation to existing traffic levels and future traffic levels resulting from the increase in throughput as a result of the successful waste licence application are not indicated in the EIS.
- A description of the likely significant effects resulting from the increase in throughput as a result of the revised waste licence are also not adequately addressed in the EIS.
- Furthermore, the EIS does not appear to incorporate a nontechnical summary in accordance with the regulations.

The Inspector recommended that if the Board are disposed towards granting planning permission he consider it appropriate that a revised EIS be requested under Article 56(1) of the Local Government (Planning and Development) Regulations, 1994, be requested any grant of planning permission be adjudicated upon.

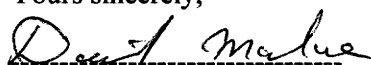
Article 10a of the Directive 2003/35/EC is based on Article 9 of the Århus Convention and concerns 'access to justice' where it is alleged that the right to participate in the EIA procedure has not been respected by the relevant competent authority/ authorities.

The Irish authorities failed to introduce legislative measures in order to give effect to the ruling in Case C-427/07 and on 5<sup>th</sup> May 2010 the Commission sent Ireland a final warning for failing to comply with a Court of Justice ruling.

Accordingly, it is evident that the EIS submitted to the EPA fails to comply with the provisions of 5 to 10 of the EIA Directive 85/337/EEC as amended by Directive 97/11/EC. The European informed me (in writing) that the information provided for in Article 5(2) of Directive 85/337/EEC is the minimum that a developer must provide. A failure to provide this information would mean that the overall environmental impact assessment would be legally flawed.

Accordingly, could the EPA identify if it intends to request the applicant (Mr. Binman Ltd) to submit a revised EIS that complies with the provisions of the said EIA Directive. Thanking you

Yours sincerely,



David Malone  
Environmental Development Officer EEC