

ARTHUR COX

Our Reference: DS/pb/WE071/002/

6 February 2013

Sonja Smith
Administration Officer
Office of Climate, Licensing & Resource Use
EPA
Regional Inspectorate
McCumiskey House
Richview
Clonskeagh
Dublin 14

Re: Our Client: Mr. Mark Hamill / Westland Horticulture - Reg. No: P0914-01

Dear Ms Smith,

Mr. Mark Hamill of Westland Horticulture has passed your correspondence of 18th January 2013 to us for our information, and to formally request on his behalf an extension of time within which to complete an EIA exercise and lodge an EIS.

Mr. Hamill is most anxious to comply with the requirements of the EPA so that the IPPC licence application which has been in hand for some time now can be progressed, to hopefully what will be a very positive conclusion.

1. We note that a decision has been taken by the EPA to request our client to complete an Environmental Impact Assessment (“EIA”) and as a result of that exercise, submit an Environmental Impact Statement within a period of three months of the date of the correspondence of 18th January 2013. As no EIA exercise has been carried out on this site before, in order to respond to this request in a meaningful way, our client will require more than three months within which to respond. Having discussed the matter with our client’s environmental consultant, it appears to us that a minimum period of nine months from now, to allow the seasonal aspects, in particular in respect of hydrogeology and ecology to be assessed, would need to be afforded to our client.
2. We request therefore that an extension of nine months from now be granted and we would greatly appreciate hearing from you in writing in response to this request as soon as possible, as time is clearly not on our client’s side. We believe that our client’s environmental

Eugene McCague, Donogh Crowley, John S Walsh, Michael Meghen, William Johnston, Nicholas G Moore, Declan Hayes, David O'Donohoe, Colm Duggan, Carl O'Sullivan, Isabel Foley, John Meade, Conor McDonnell, Patrick McGovern, Grainne Hennessy, Séamus Given, Colin Byrne, Caroline Devlin, Ciarán Bolger, Gregory Glynn, David Foley, Stephen Hegarty, Declan Drislane, Sarah Cunniff, Kathleen Garrett, Pádraig Ó Riordáin, Elizabeth Bothwell, William Day, Andrew Lenny, John Menton, Patrick O'Brien, Orla O'Connor, Brian O'Gorman, Mark Saunders, Mark Barr, John Matson, Deborah Spence, Kevin Murphy, Cormac Kissane, Raymond Hurley, Kevin Langford, Eve Mulconry, Philip Smith, Kenneth Egan, Bryan J Strahan, Conor Hurley, Alex McLean, Glenna Butt, Níav O'Higgins, Fintan Clancy, Rob Corbet, Rachel Farrell, Siobhán Hayes, Pearse Ryan, Ultan Shannon, Dr Thomas B Courtney, Orla Keane, Aaron Boyle, Rachel Hussey, Colin Kavanagh, Kevin Lynch, Garrett Monaghan, Geoff Moore, Fiona McKeever, Chris McLaughlin, Maura McLaughlin, Joanelle O'Leirigh, Paul Robinson, Richard Willis, Tim Kinney, Deirdre Barrett, Cian Beecher, Ailish Finnerty, Louise Gallagher, Conor O'Dwyer, Jerny Fisher, Robert Cain, Brendan Cooney, Connor Manning, Gary McSharry, Keith Smith, John Donald, Dara Harrington, David Molloy, Stephen Randalow, Jonathan Sheehan, Brendan Slattery, Gavin Woods, Simon Hannigan, Claire McGrade, Colin Monaghan, Susan O'Reilly, Niamh Quinn, Colin Rooney

Consultants: James O'Dwyer, Daniel E O'Connor, John V O'Dwyer, John Glackin, Dr Mary Redmond, Dr Yvonne Scannell, Dr Robert Clark

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consultant will provide greater detail of the scope of the exercise to your Mr. McEntagart, who he would hope to meet very shortly to consult on a draft scoping document in that regard. He would also want to discuss AA with you, and the Report already completed in that regard.

3. Without prejudice to point no. 1 we note that you refer to Section 83(2A) of the EPA Acts 1992-2012 as the provisions under which you have assessed information submitted previously by our client, and have formed the view that the application must be made subject to EIA. Reference is then made to Section 87(1)(b) of the EPA Acts 1992 to 2012, and by footnote to the European Union (environmental Impact Assessment) (Integrated Pollution Prevention and Control) (No. 2) Regulations 2012. We are not entirely convinced that this is the correct provision to call in aid, and indeed, it appears to us, that without An Bord Pleanála having made any decision yet in relation to whether planning permission is required/ EIA should be carried out, the EPA is not entitled to exercise its discretion in that regard. In short, the legislation relied upon by the EPA in their references seems to us to cover the situation where (1) planning permission/EIA is required for a development, and (2) planning permission/EIA is not required for a development. But in this particular – and unusual-set of circumstances, no decision has yet been made under the S.5 reference (not a planning application) as to whether or not planning permission/EIA is required. Of course, these are very recent Regulations and we could perhaps be wrong in our interpretation. We would therefore appreciate if you could set out the basis upon which this decision has been taken, i.e. the rationale or particular reasons for making the decision to seek EIA and the precise provisions entitling the EPA to do so.

We look forward to hearing from you as soon as possible, and should you wish to discuss the matter, please do not hesitate to contact the writer, Deborah Spence.

Yours faithfully



ARTHUR COX

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