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Ms. Ruth Treacy  
On behalf of GCHL Limited

04 August 2021

Reg. No.:W0298-01

**Re: Application by GCHL Limited for a waste licence (Ref W0298-01)**

Dear Madam,

We refer to the above matter and to the letter received from Golder Associates Ireland (Golder) dated 3rd December 2020 ("the December Letter"). We understand that Golder was instructed to respond to the Agency on your behalf.

The proposed works which are the subject of the licence application appear to be development or proposed development. In our letter of 23 January 2020, we had sought confirmation from you pursuant to Section 42(1B) of the Waste Management Act 1996 ("the 1996 Act"). In summary, the Agency requested either:

- Confirmation in writing from a planning authority or An Bord Pleanála that an application for permission comprising or for the purposes of the activity to which the application for a licence relates is currently under consideration, together with the EIA Report already submitted; or
- A letter from the planning authority confirming the proposed activity is approved in accordance with Condition 12 of the original permission.

The Agency indicated that in the absence of such confirmation, we would be precluded by Section 42(1C) of the 1996 Act from further considering your application.

The December letter indicates that "The order requires a plan for remediation, rehabilitation and restoration and details the steps to be taken by the Applicant to make a proposal and application to the EPA." Further, it indicates that "A copy of the ABP Permission has been provided to the EPA, in accordance with the requirements of Section 42(1B)(b) 1996 Act".

The ABP Permission Ref. PL09.205039 ("the Permission") does not, however, authorise the remediation works the subject of your waste licence application unless said works are in compliance with Condition 12 of the Permission. Condition 12 requires prior agreement from the Council and we understand such

agreement has not been obtained. Therefore, the Permission does not satisfy the requirements of Section 42(1B)(b) as it does not permit the remediation activity that is the subject of the waste licence application. We note that in response to the Agency's request for comments on the waste licence application, An Bord Pleanála provided a response dated 29th October 2019 which stated, inter alia, "On the basis of information made available, it would appear that any importation of fill for the purposes of quarry restoration going forward, would not be covered by the grant of planning permission under PL 09.205039..."

We have considered the Court Order dated 21st November 2016 made following proceedings taken by Kildare County Council against LCP Manufacturing Ltd T/A Leinster Aggregates and Goode Concrete Ltd (in Receivership). The Court Order provides, inter alia, at paragraph 2, "An Order directing the unauthorised use of the property, consisting of the excavation and processing of quarry material on the property, together with the importation of subsoil and inert material into the property to cease forthwith pending the Respondents their successors and assigns being in receipt of the appropriate Article 27 permission, licence, permit, authorisation, permission, approval or consent, as required by the EPA."

The licence application that has subsequently been applied for contains, in the Agency's view, activity that involves *prima facie* development or proposed development for which a grant of permission is required. The Agency has not been provided with a copy of any such permission.

We note the Council's response to the Agency's request for comment on the waste licence application was that, inter alia, "in this instance the High Court Order is the 'de facto' permission with the original 2002 permission now withered". In the Agency's view, the Court Order does not authorise the proposed works which are the subject of the licence application. If that was the case, there would be no direct planning oversight of the proposed development and the Agency cannot supplant the role of a planning authority.

The Agency is precluded by Section 42(1C) of the 1996 Act from considering an application where the requirements under Section 42(1B) have not been satisfied.

If you are of the view that the proposed development does not require planning permission we invite you to request and thereafter provide to us a declaration under section 5(1) of the Planning and Development Act 2000 (as amended) from Kildare County Council to confirm that the proposed work the subject of the waste licence is or is not development or is or is not exempted development.

Please confirm within 28 days that such a request has been made. If we do not hear from you within this period we will proceed to deal with your application pursuant to Section 42(1C).

Yours sincerely

Environmental Licensing Programme  
Office of Environmental Sustainability