Submission	
Submitter:	Mr. David Malone
Organisation Name:	Environmental Action Alliance - Ireland
Submission Title:	Rec'd by email
Submission Reference No.:	S011775
Submission Received:	11 November 2024
Application	
Applicant:	GCHL LIMITED
Reg. No.:	W0298-01

See below for Submission details.

Attachments are displayed on the following page(s).

[redacted]

Licence Department,
Environmental Protection Agency,
PO Box 3000,
Johnstown Castle Estate,
Wexford.

10 November 2024

Re: GCHL Waste Licence Application W0298-01

On 31 October 2024, the Commission requested clarification of the Agency's breaches of EU Law and treaties concerning GCHL Waste Licence Application W0298-01.

The following was my reply to the Commission on 5 November 2024:

The substantive EU law issue in Malone v. GCHL Ltd [2024] IEHC 336 was that GCHL and Environmental Protection Agency (the Agency) failure to implement legislation adopted by EU institutions under Article 288 of the TFEU or the legislation transposed into Irish law by the Oireachtas under Section 3 of the European Communities Act 1972 to implement the CJEU judgements in Cases C-50/09, C-215/06, and C-494/01.

National courts are responsible for interpreting and applying EU law that falls within the scope of "fields covered by EU law," as outlined in Article 19(1) TEU. According to this article, national judges are considered judges of EU law. All national courts function as decentralised EU courts and must provide the remedies necessary to ensure effective legal protection in areas governed by Union law.

In my case, the Agency wrongfully took a domestic case under Order 19, Rule 28 of the RSC, leading the High Court to dismiss a part of my substantive EU law issues. Now, the Agency is demanding €80,000 in costs from me.

I am seeking clarification from the Commission concerning the rights of European citizens as outlined in Article 19(1) of the TEU. Specifically, I would like to understand whether these rights can be disregarded using domestic law, which could result in the dismissal of key substantive issues related to EU law. This inquiry aims to ascertain the extent to which individual rights under EU law are protected in the context of national legal proceedings.

The following is a clarification of issues raised in your correspondence dated 31 October 2024

Issue 1:

It appears that your concern is that the site is applying for a waste permit, but currently, the site does not have planning permission. It would be of assistance to understand the details of your concerns about the quarry site in Ballinderry and how you feel it does not comply with EU law, in particular in the context of case C-215/06.

Response:

The CJEU ruled in Case C-215/06 that Ireland failed to correctly transport Articles 2(1), 4(1) and (2) of the EIA Directive. The Planning and Development (Amendment) Act 2010 (Act 2010) was enacted in July 2010 to give further effect to the CJEU judgement against Ireland in case 215/06.

GCHL Ltd **has not** applied to An Bord Pleanála to establish in accordance with section 177D (2) of the 2010 Act if they qualify under exceptional circumstances to submit a remedial environmental impact statement seeking substitute consent from the Board. Despite this, the Agency, in 2018, accepted and validated an EIAR instead of a remedial environmental impact statement. For the past 6 years, the Agency has been processing a waste license (Ref: W0298-01) for the disposal of 1.2 million tonnes of waste at the Ballinderry quarry site.

Article 17 of the TEU clearly mandates that Member States are required not only to incorporate European Directives into their national laws but also to ensure that these provisions are fully implemented by their governmental bodies. The Irish authorities have unequivocally failed to enact the legislation that was supposed to be transposed into Irish law by the Oireachtas under Section 3 of the European Communities Act 1972. This legislation was specifically designed to comply with the judgment of the CJEU in case C-215/06 against Ireland.

Issue 2:

It is not clear if assessments under the EIA Directive or Habitats Directive have been undertaken or deemed necessary or not. It would be helpful if you could clarify this in particular in light of compliance of the process with the judgment in case C-215/06.

Response:

The Planning and Development (Housing) and Residential Tenancies Act 2016 was established to further implement the CJEU judgment C-215/06.

On 30 June 2017, the European Commission informed me concerning complaint Ref: CHAP (2015) 1424 that: -

"More specifically, Chapter 2 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act 2016 amended the Planning and Development Act 2000, as amended, by inserting new sections 176A to 176C into that Act. As the Irish competent authorities have explained the Chapter provides for a determination, in advance of and separate to the making of a planning application, as to whether an EIA is required in respect of a proposed development of a class specified in regulations made under section 176 of the 2000 Act. Finally, the Irish authorities noted that it also provides for EIA screening and screening in respect of appropriate assessment to be carried out together".

No environmental impact assessment or appropriate assessment screening was conducted as required by sections 176A to 176C of the Planning and Development Act 2000, as amended.

Issue 3:

It would be of assistance to understand if the substitute consent is being considered to regularise the quarry operations that took place in the past and/or the waste disposal operations that are now proposed?

In 2002, Goode Concrete Ltd. was granted permission (PL02/1475) to extract 1.6 million tonnes of sand and gravel from the Ballinderry site. However, they failed to comply with conditions 1, 2, 4, and 12, and in March 2016, Kildare County Council took a High Court case (No: 2015/383MCA) under Section 160 of the Planning and Development Acts, 2000, as amended, concerning the unauthorised developments.

On March 7, 2017, the Council issued a Section 55 Notice (Reference: 47/2017) to GCHL Ltd in accordance with the Waste Management Act 1996 (as amended) regarding unauthorized developments. GCHL Ltd did not comply with the Section 55 Notice, or the High Court Orders (No: 2015/383MCA). On March 16, 2017, Colm Lynch, an Executive Engineer with the Council, prepared an affidavit related to High Court Case Record No. 2017/2085P.

Mr. Lynch's affidavit indicates that, based on his observations, he believes the Court Order is not being followed. Specifically, he notes that waste material is being brought onto the property without the necessary permission, license, permit, or authorisation. Therefore, substitute consent is required to regularise past quarry unauthorised developments.

Yours sincerely,

David Malone
Eurolaw Environmental Consultant EAA-I