

**To:** Office of the Commissioner for Environmental Information

**From:** Pat Swords BE CEng FICChemE CEnv MIEMA

**Date:** 21-11-2010

**Re:** CEI/10/0016

**Attached:**

(1) CHAP (2010) 00645 / FB11.242/09 Access to Information on the Environment Request related to Foreshore Licence for Dublin City Waste to Energy Plant

(2) AIE/2010/015 Department of the Environment, Heritage and Local Government

(3) Charter of Fundamental Rights

As I highlighted in my request, see (1) attached, the Poolbeg Project is linked to the requirements under EU Legislation related to waste and renewable energy. S.I. No. 133 of 2007, which implements Directive 2003/4/EC, is clear in Section 3 (1) that environmental information is related to factors, such as energy and waste, and measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect elements and factors, such as energy and waste, as well as measures or activities designed to protect those elements. The current political delay in processing the Foreshore licence, referred to in attachment (1), is clearly an activity affecting Ireland's ability to meet existing and future targets set under the Environmental Acquis, such as the Landfill Directive 1999/31/EC<sup>1</sup>, for which there already has been a Reasoned Opinion issued under Article 226 against the Irish State.

Furthermore the investment community and those that make their livelihood in industrial development, such myself and thousands of others, can simply not tolerate political interference in the implementation of legislative requirements. The EU Charter of Fundamental Rights, which became legally binding in December 2009 as part of the Lisbon Treaty, see attachment (3), is clear in that when the Member State is implementing the legislation and policies of the Union, which clearly is the case in this circumstance, that there is the Right to Good Administration and the Right to have the Union make good any damages caused by its institutions or by its servants in the performance of their duties in accordance with the general principles common to the laws of the Member States.

In their reply AIE/2010/015, attachment (2), the Department of the Environment, Heritage and Local Government failed to address the two requests asked. With their refusal to provide access to the documentation, which was never requested, I can only point out that this is certainly not in keeping with the spirit of the legislation, see Section 13.4 Guidance Notes on the Access to Information on the Environment Regulations<sup>2</sup>. Furthermore if this is the only documentation that is available relating to this Foreshore Licence, all of which was submitted by the Developer in February 2008, then what has the Department of the Environment, Heritage and Local Government been doing to progress the matter since then? Clearly nothing!

With regard to Section 3 (2) of the regulations:

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<sup>1</sup> [http://www.epa.ie/news/pr/2010/name\\_30263.en.html](http://www.epa.ie/news/pr/2010/name_30263.en.html)

<sup>2</sup> [http://www.environ.ie/en/AboutUs/AccessToInformationOnTheEnvironment/RHLegislation/FileDownload\\_2481.en.pdf](http://www.environ.ie/en/AboutUs/AccessToInformationOnTheEnvironment/RHLegislation/FileDownload_2481.en.pdf)

- “Public authority” does not include any body when acting in judicial or legislative capacity.

Clearly the processing of a Foreshore Licence is an administrative capacity, for which the principles outlined in the two elements of my Request (Attachment (1)) apply, and is neither a judicial or legislative capacity. See Article 4 of Directive 2003/4/EC.

Finally I would like to record in writing to your office that the behaviour of the Department of Environment, Heritage and Local Government has been an outrageous breach of the Principles of the Aarhus Convention<sup>3</sup> and a clear example of blatant corruption in the manner in which a Foreshore Licence is being administered, with clearly the aim of obstructing an essential Infrastructure Project.

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<sup>3</sup> In September 2007 the EU had to draft a note setting down in writing certain explanations given verbally, such that Ireland will be obliged to respect the commitments arising from the Convention where they concern provisions falling within the competence of the Community. Nevertheless, this obligation has an impact solely on Community legal order. Directive 1999/31/EC is clearly part of the Environmental Acquis and the EU and the Member States have joint competencies for the area of Environment under the Lisbon Treaty.