

To: Commissioner of Environmental Information

From: Pat Swords BE CEng FICChemE CEnv MIEMA

Subject: Clarifications related to An Bord Pleanala Appeal to Commissioner for Environmental Information CEI/10/0002

Date: 4-3-2010

Attached: (1) Clarifications related to An Bord Pleanala Appeal to Commissioner for Environmental Information Feb 2010. (2) Submission from Pro Gas Mayo.

With regard to your e-mail of today and your acceptance of appeal and notification that Submissions can be made, as I highlighted in previous correspondence in February (attached), there is extreme misgivings among the public in the manner in which An Bord Pleanala is conducting its regulatory function with seemingly unlimited powers. In fact the conduct of An Bord Pleanala is regulated by the Environmental Acquis. The Environmental Acquis is clear in that both the planning and the Integrated Pollution Prevention and Control (IPPC) process are subject to Access to Environmental Information, Public Participation and Access to Justice, i.e. the requirements of the United Nations Economic Commission for Europe's (UN-ECE) Aarhus Convention. The situation in Ireland is that Directive 2003/4/EC is on the Statute Book and the State is claiming that Directive 2003/35/EC providing for public participation in respects of the drawing of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61, is addressed by current legislation.

With regard to the request to An Bord Pleanala originally made on 22nd September 2009, the first two sections related to:

- The legislative basis for the recent Oral Hearing of circa 19 days on the Corrib pipeline rerouting.
- The procedures for conducting an Oral Hearing to this legislative basis, such as choice of staff, training of staff, specific areas of legislation to be addressed, areas outside of the legislation that should not be addressed, recommended time frame for oral hearing, relationship to competent authorities for Environmental, Safety, etc.

The Corrib development was a project for which an Environmental Impact Assessment process according to Directive 85/337/EEC (as amended) was required. The purpose of an Oral Hearings is to act as a clarification exercise to the public. The authorities should be competent in the relevant subject matter, the requirements of the legislation and their duties in disseminating this information to the public. After all this is what is specified in the legislation, namely Directives 2003/4/EC and 2003/45/EC, in which environmental information has to be actively and systematically disseminated to the public to achieve the widest possible systematic availability. In particular with regard to projects involving an Environmental Impact Assessment procedure the main reports and advice issued to the competent authority have to be made available to the public.

With regard to the reply I received from An Bord Pleanala on 20th January 2008 relating to items 1 and 2 of my request I would point out that the legislative basis includes the requirements of the Environmental Acquis specifically as highlighted above related to Directives 2003/4/EC and 2003/35/EC. When I reviewed what I

received as a reply from An Bord Pleanála I was shocked. Not only was there no proper training and selection requirements for inspectors demonstrated but there is no mention of the requirement of the Authorities to actively and systematically disseminate the specific environmental information, such as is specified in Article 2 of Directive 2003/4/EC and includes administrative measures, policies, legislation, plans, programmes, environmental agreements, measures or activities designed to protect environmental elements. In addition there was no mention of the requirement under Directive 2003/35/EC that the main reports and advice issued to the competent authority have to be made available to the public, rather an arbitrary statement about documentation submitted to the Bord in which there is no clarification as to what are the main reports and advice under which the decision is being made. Note the Guidelines on Procedures on Oral Hearings as provided as a reply to item 2 were last modified on the 12th December 2007.

Therefore I can only conclude unless additional information is presented by the Office of the Commissioner for Environmental Information related to the planning legislation and An Bord Pleanála procedures for Oral Hearings that there are serious non-compliances with the Environmental Acquis in relation to the conduct of these Oral Hearings. Indeed the Submission to yourselves from Pro Gas Mayo (attached) clearly demonstrates how there was a complete failure at the Corrib Oral Hearing to disseminate information on the environment relating to safety legislation and there was no main report or advice related to risk and land use planning presented at this 19 day hearing, indeed my request for this documentation met a clear refusal. This is despite the fact that these issues were the core of the relevant decision. The unfortunate controversy that has arisen over this simple development has resulted in enormous costs to both the developer and the taxpayer and has been fuelled by the complete failure of the Irish State to actively and systematically disseminate the information on the environment relevant to this project.