

To: Aarhus Compliance
From: Dean Blackwood
Date: 11/26/2016 11:55AM
Subject: Re: ACCC/C/2013/90 (United Kingdom) - letter to the communicant

Dear Fiona,

I am not sure why, but I have no record of ever having received your letter of 27 September 2016 and was, until last night, unaware of your correspondence. Certainly, had I received this I would have initiated, at least an up-date on where I am with addressing the UK Member State's submission.

Current position

I have prepared a detailed response to the UK Member State's submission, but am still waiting on the Northern Ireland Environment Agency to provide me with answers which will help me better understand and address some of the points of contention, particularly around Article 6 of the Convention. This has become rather protracted as I uncover and piece together contradictions and potential masking of significant errors on the part of the Department.

For example, in relation to the significant unauthorised land filling and construction of settlement lagoons at this site, the Department has made the following contradictory statements.

On 27 April 2015 Minister for the Environment, Mark H Durkan officially informed the Northern Ireland Assembly that:

"NIEA neither agreed to the infilling of land nor advised the operator on the construction of settlement lagoons."

Yet the evidence presented by his Department to the High Court in 2013 stated:

"The [unauthorised] lagoons are an important element in the running of the business and were originally constructed on the recommendation of NIEA in order to prevent run off into the River Faughan."

In relation to the infilling of the site, on 19 August 2015 the Minister, also contradicted his statement to the NI Assembly on 27 April 2015, when he informed me in writing that in 2002 NIEA had given consent for infilling of the site with *"inert process waste"*.

Subsequent protracted correspondence failed to provide any clarity in regard to these contradictory statements, culminating in the Permanent Secretary of the Department of the Environment stating on 22 April 2016 that:

" I do not consider it would be appropriate of in the public interest to respond further..."

Presently, I cannot ascertain whether the Department's NIEA did (unofficially) sanction the construction of these lagoons (outside of the planning and EIA process), as it claimed to the

court in 2013 (this is also claimed by the site owner), given that the Minister is now officially denying this on NI parliamentary record.

Additional information

On 28 August 2016, under EIR 2004, I requested a copy of file granting consent in 2002 for the infilling referred by the Minister on 27 April 2015 and which the Permanent Secretary refused to clarify in April 2016.

On 10 October 2016 I received the file, the content of which goes some way to explaining why the Department is so reticent to clarify its position. The consent granted was one to discharge to the river from the ongoing unauthorised land filling which was taking place, not a consent to landfill, per se. The map used by the Department was highly inaccurate and no quantity of land fill was specified, nor any restriction placed on the quantity of unauthorised land fill taking place. The file also highlighted a number of breaches, including dumping of non-inert waste at the site. Also, that the consent to discharge to the river was granted in the knowledge that there was no planning permission or EIA determination for the landfilling that was taking place, contrary to the checklist required to be completed on file.

Also, I was informed by the Minister of the Environment's office on 19 August 2015 that a report on the structural integrity of the settlement lagoons had been commissioned and would be made available to me in due course.

On 23 August 2015 I asked under Environmental Information Regulations 2004 for the Terms of Reference for this review.

It took the Minister until 28 January 2016 to reply to this EIR 2004 request. He confirmed there was no Terms of Reference, although he did set out in broad terms what the engineer's report was to cover. Indeed, his letter gave the impression that the review was already under way.

On 28 August 2016, under EIR 2004, I requested a copy of the engineer's report.

On 10 October 2016 I was informed by the Department for Agriculture, Environment and Rural Affairs (formerly Dept of the Environment) that it had decided that no engineer's report was to be undertaken.

On 21 October 2016 I lodged a formal complaint seeking an explanation as to what exactly was going on.

Under that Department's statutory complaints procedure I was informed that I could expect a response by 11 November 2016.

On 11 November 2016 I received an interim holding response.

On 25 November 2016 I have received another interim holding response from the Department say it was still working on my complaint.

Presently, because of the obfuscation and delays within the Department, I remain confused and uninformed as to exactly how significant amounts of land filling, the nature of that landfilling

(though I have gathered some evidence that it could not be considered to be inert) and the unauthorised construction of the settlement lagoons were permitted to take place at this sensitive site. I am painstakingly trying to piece this together.

I have no expectation that I will get a response from the Department to my complaint within a reasonable time that would allow me to finalise my response to the ACCC by the end of next week, as requested by you.

I would, therefore, request that in light of me being unaware of your correspondence of the 27 September 2016, my ongoing inquiry and the difficulties I am encountering with the Department in providing me with the clarification I need, you accept this as an acceptable reason for delay.

Helpfully, your letter sets out the questions to address which i will endeavour to focus on. That is much appreciated.

Please acknowledge receipt of this e-mail so as I can be sure it has been received.

Best
Dean