fda Fons de Defensa Ambiental

Communication to the Aarhus Convention's Compliance Committee

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I. INFORMATION ON CORRESPONDENT SUBMITTING THE COMMUNICATION

1. This communication is submitted by Fons de Defensa Ambiental (Legal Defense Fund), Barcelona, (Catalonia, Spain), hereinafter FDA. FDA is a registered non-governamental environmental public interest law organization founded in 2004. FDA aim is to provide legal assistance to NGOs and citizens in order to protect the environment.

2. Contact Information

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II. PARTY CONCERNED

1. This communication concerns the non-compliance of the Aarhus Convention by Spain. Specifically the institution not complying with the Aarhus Convention is the Land and Sustainability Department of the Catalan Government (*Departament de Territori i Sostenibilitat de la Generalitat de Catalunya*), previously called the Environment and Housing Department (*Departament de Medi Ambient i Habitatge*). Hence, considering that the Generalitat de Catalunya is the Government of Catalonia –one of the Spanish Autonomous Communities (region/state) which has Barcelona city as its capital- this Catalan Government, according also by the Spanish law- is constrained by such Convention as well. Spain signed the Convention on the 25th of June 1998 and ratified it on the 29th of December 2004.

III. FACTS

2. UNILAND CEMENTERA SA company (hereinafter, "the company") has a cement plant in the municipality of Santa Margarida i els Monjos and is located in Catalonia, Spain (65 km away from Barcelona). The main activity of this company is to produce cement and rock (aggregates).

3. On the 24th of November of 2009 a request for an environmental permit was presented by the company to the Environment and Housing Department of the Catalan Government for the use of urban solid waste (CDR) and dried sewage sludge (EDAR) in the aforementioned plant. This request concerned the substantial modification of the plants' activity, since it substituted 33% of petroleum coke by the use of urban solid waste (90.000 t/year - 24%-) and dried

sewage sludge (50.000 t/year -9%-). Please find attached the following documents that show that this new activity that was going to take place in the plant --and that actually was carried on—and that were submitted by the company with the application for the environmental permit request:

a) The request for "environmental permit to use urban solid waste (CDR) and dried sewage sludge (EDAR) as a combustible in the cement plant of UNILAND CEMENTERA SA in Santa Margarida i els Monjos" *(document 1)*.
b) The "partial substitution of conventional combustible by urban solid waste (CDR) and dried sewage sludge (EDAR)" project (November 2009) *(document 2)*.
c) The Environmental Impact Study of this project (September 2009) *(document 3)*.

4. This combustible substitution by waste is very important quantitatively (33%) and also qualitatively, since it implicates a real transformation of the authorized activity. Since then, they do not only produce cement, but they also carry out, in a large scale, another activity like waste management. The activity substitution is crucial qualitatively since it implies a strong impact on people's health and the environment. For this reason, it was rated as a substantial modification and it needed a new environmental permit. Under art. 4.1. g of the 3/1998 Catalan Act, a "substantial modification or change" is "any change in the authorized activity that can have significant negative effects on safety, human beings or the environment". Also European and Spanish environmental law on Integrated Pollution Prevention Control state the same (art. 3.10.b of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control and art. 3. e of Spanish Act 16/2002 on integrated pollution prevention and control).

5. All the administrative proceeding of the environmental permit was logically centered on this substantial change to use urban solid waste (CDR) and dried sewage sludge (EDAR) in this plant.

6. However, during the public information procedure the public was not informed about this substantial change. The only activity which was submitted to public information regarding the environmental license was another different activity: "a project of cement production and the rock extraction done by the UNILAND company". As one can see in the public information notice which was published in the Oficial Bulletin of Generalitat of Catalonia the 18th of March of 2010 *(document 4)*.

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d'informació pública sobre la sol·licitud d'autorització ambiental del Projecte d'una activitat de fabricació de ciment i extracció de roca al terme municipal de Santa Margarida i els Monjos (BA20090192).

Public notice

Public information about environmental permit application of the Project of a activity to produce cement and rock aggregates in the municipality of Santa Margarida i els Monjos (BA20090192)

Undoubtedly, cement production and rock (aggregates) are the main activities of such plant. They have done such process for decades. Therefore, as we've seen, these activities are absolutely different from the use of urban solid waste (CDR) and dried sewage sludge (EDAR). For this reason, a new license permit was necessary, since it constituted a significant change.

7. The Environmental and Housing Department (currently Land and Sustainability Department) of the Generalitat of Catalonia conducted this waste management procedure and requirement but, surprisingly, during the public information procedure it changed the object of the environmental permit request. If the Department would have submitted this procedure correctly and would have informed of such new hazardous activity the results would surely have been

different due to the social conflict that such activity --to burn waste in cement plants-- generates since it is an activity that most likely will produce likely risks to the heath and the environment. These likely risks have been accepted by the cement plant and the Catalan Government when they qualify this modification as substantial for possible damages to health and the environment in their own documents.

8. However, the public did not know anything about this modification. The public knowledge of the harm to the environment would have made a bigger response concerning the outcome of the procedure and would have substantially changed the result. They avoided public participation by not informing the public about the modification. The result was clear: there was not any single participation from the public.

9. Finally on the 3rd of June of 2010, the Environment and Housing Department counselor of the Generalitat de Catalunya issued to the company the environmental permit for substantial change to use urban solid waste (CDR) and dried sewage sludge (EDAR) in this plant *(document 5)*.

IV. NATURE OF THE ALLEGED NON COMPLIANCE

10. This communication concerns a case in which the public was not given the opportunity to early and effective public participation The cause of this is that the party concerned did not apply at any time the articles of the Aarhus Convention that state how the public shall be informed. The public was not informed about the new activity. Consequently, it could not participate during the proceeding of the environmental permit for the activity of burning waste that was going to take place in the plant.

11. This non information and non-participation of the public has resulted in these proceedings being processed for the general failure of the public's right to participate. So this communication alleges the violation of the Aarhus

Convention in the specific case of this plant because the public was not informed accordingly despite national legislation exists on the public information procedure which was not applied by the Department.

V. PROVISIONS OF THE CONVENTION RELEVANT FOR THE COMMUNITACION

Lack of public participation

12. It's important to note that the object of the activity for the environmental permit is included in the first part of article 6 that is established in the annex 1.

13. First, in Annex I.5 dealing with waste management, states: "Installations for the incineration, recovery, chemical treatment or landfill of hazardous waste; installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour and installations for the disposal of non-hazardous waste with a capacity exceeding 50 tons per day". As we see (page 12 of the project--*document 2*- and page 24 of Environmental Impact Study-*document 3*), environmental permit is to use 90.000 t/year of solid urban waste (European Waste Code 191210) and 50.000 t/year of dried sewage sludge (European Waste Code 190805). The same page specifies 247 t/day of solid urban waste and 127 t/day of dried sewage sludge. Then, this installation for the disposal of waste will have a capacity of 374 t/day (more than 50 t/day). And also this installation will incinerate 15, 58 t/hour (more than 3 t/hour).

14. Secondly, Annex I.3, which deals with the mineral industry, states: "Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tons per day". In this case, page 24 of Environmental Impact Study establishes that this plant produce cement clinker in rotary kilns with a production capacity of 5.000 t/day. And annex I.22 establishes that: "Any change to or extension of activities, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities

shall be subject to article 6, paragraph 1 (b) of this Convention". And Spanish and Catalan law on environmental permit (art. 9 and 10 of Spanish Act 16/2002 and 11 and 14 of Catalan Act 3/1998) states that any substantial change of any activity in annex I is included also and it needs an environmental permit. As it is shown in this case, a substantial modification of the activity of the production of cement has taken place and then this paragraph affects this environmental permit.

15. **Violation of article 6 paragraphs 2 and 3** of the Aarhus Convention that state that:

*"(2) The **public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner**, inter alia, of:*

*(a) **The proposed activity and the application on which a decision will be taken**;*

*(b) **The nature of possible decisions or the draft decision;***

(c) The public authority responsible for making the decision;

*(d) **The envisaged procedure**, including, as and when thins information can be provided:*

(i) The commencement of the procedure;

(ii) The opportunities for the public to participate;

(iii) The time and venue of any envisaged public hearing;

(iv) An indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) An indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

(vi) An indication of what environmental information relevant to the proposed activity is available; and

(e) The fact that the activity is subject to a national or transboundary environmental impact assessmend procedure

(3) The public participation procedures shall include reasonable time-frames for the different phases, ***allowing sufficient time for informing the public in accordance with paragraph 2 above*** *and for the public to prepare and participate effectively during the environmental decision-making."*

16. For this type of activity the most relevant procedural requirement is the public information. This public participation is compulsory for environmental permits and it has to be carried on during 30 days (art 16 of Spanish Act 16/2002 and art. 16 of Catalan Act of 3/1998). As we said, Catalan Government didn't do this public information procedure for the environmental activity permit such as substantial change to use urban solid waste (CDR) and dried sewage sludge (EDAR) in this plant. In short, this activity was authorized without public participation.

17. Nor complies with which is stated in **article 6 paragraph 4 on public participation**:

"Each Party shall provide for early public participation, when all options are open and effective public participation can take place"

18. Public participation was not carried out before the activity was authorized. Only, after the environmental permit was issued on 3rd June 2010 *(document 5)*, a member of the Environmental NGO Col·lectiu Bosc Verd (Green Forest Group) had access to some information related with the permit and other documents of the administrative record in 20th June of 2011. It is obvious that this participation after the permit violates art. 6.4 because it should be carried at the beginning of the procedure when all the options and solutions are still possible and when the public can have a real influence on the case.

19. Consequently, this lack of participation also violated what is stated in **article 6 paragraphs 8 and 9 on public participation**. These paragraphs state that the results of the public participation need to be take into acount and that the public must be informed about the decision following the correct procedure.

20. All these articles on public participation have been violated in this present case because there was not any public information about the new activity of waste management in the cement plant.

Access to justice (a preliminary administrative review procedure)

21. The last violation is **art. 9.2 on access to justice**:

"What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law".

And art. 2.5 states: "*The public concerned*" means "*the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.*"

22. The resolution of the counselor of the Land and Sustainability Department of the Generalitat de Catalunya of September 17, 2012 rejected the administrative preliminary review procedure as inadmissible by finding lack of standing of the NGO Col·lectiu Bosc Verd – Green Forest Association- (hereinafter, the NGO) and 16 neighbors *(documents 6, 7 and 8)*. The key reasoning was the lack of standing of the NGO because it has not been demonstrated that the environment (specially, woodland and fauna) can be affected by the new activity authorized. And also the lack of standing of the 16 neighbors because the *actio popularis* in Spanish and Catalan waste law are not applicable in this case which is about environmental permit and not about waste management.

23. The resolution considered lack of standing of the NGO and found that it does not have any right or interest in the environment because it has not been proved that the main aim of such group (to protect woodland and the fauna) can be affected by the permit. This is a clear violation of the art. 9.2 Aarhus Convention of the objective of giving the public concerned wide access and also that NGO promoting environmental protection shall be deemed to have an interest.

24. Environmental NGOs standing requirements of Aarhus Convention (art. 2.5 and 9.2) are also in European and Spanish environmental law: 2003/35 EU Directive, which modifies the 85/337 EU Directive on environmental impact evaluation (arts. 1.2 and 10bis) and the 96/61 EU of the pollution integrated control (arts. 2.13, 2.14 and 15bis); also Spanish Act 1/2008 on environmental impact evaluation (arts. 2.6.a) and Spanish Act 16/2002 of prevention and integrated control of pollution (art. 3.p.a).

25. It's important to remark that, under Spanish law, standing for environmental NGO is also provided in the following three cases: a) legal empowerment of environmental NGOs according with the following main requirements: it has the primary stated objective of promoting environmental protection and it has existed for more than two years and is actively pursuing the objective referred (art. 31.2 of the Spanish

Act 30/1992, 26 november, on administrative procedure and art. 2.2.b and 22 of the Spanish Act 27/2006, 18 july, on access to information, public participation and access to justice on environmental matters); b) collective interest to environment (art. 24.1 of the Spanish Constitution; art. 31.1.c of the Spanish Act 30/1992 and art. 2.2.a of the Spanish Act 27/2006); and c) *actio popularis* in waste law (art. 106 Catalan Act 1/2009, 21 july, on waste).

26. The NGO has legal empowerment because it has the primary stated objective of promoting environmental protection and it has existed for more than two years (it was created in 1986) and is actively pursuing the objective referred. You can see it in its web http://boscverd.org/bv/index.php where you can find a protest walking against to burn waste in this cement plant on 20th October 2013.

27. Moreover, the NGO does have standing to protect collective interest to environment. According to many Spanish Constitutional Court decisions, any non-lucrative environmental organization is entitled to stand up for environmental protection to the Courts and to Public Administration. Thus, the Spanish Constitutional Court in 1991 stated that "it is evident that an association that has as one of its aims to protect nature and the animal world has a legitimate and personal interest to ensure the correct exercise of the administrative power" (Spanish Constitutional Court decision 34/1994, of 31 of January).

28. It is clear that the woodland and the fauna of the area can be strained by this newly authorized activity to burn waste in a cement plant as the NGO alleged to the Administration and it was eventually recognized by the same Administration in different official documents. It is also evident that the change from cement production to waste treatment activities is also significant and has a huge impact on the environment; and, definitely on the woodland and its fauna. Aright, such new impacts require and qualify for a new environmental license. In this sense, as we've seen, art. 4.1.g of the 3/1998 Catalan Act defines substantial change as "any modification of the authorized activity that can have adverse or relevant effects on the security, health of persons or on the environment". It was also stated that

Chapter 3 of the environmental impact report scope (hence, as the scope affected by the activity) is very large since affects 280km2 and different municipalities including woodland and fauna. Moreover, it was reminded that chapter 5 points that the study ambit it was included inside of the Air Quality Zone 3 (Penedès-Garraf) of the Atmosphere Pollution Prevention and Watch Net (Xarxa de Vigilància i Previsió de la Contaminació atmosfèrica). Furthermore, the environmental impact report foresees the increment of the following emissions: d'HCl, HF, Cd, Tl, Hg, Pb, Cr, Co, Mn, Ni i V,. And also of the following immissions: *HCl, Cd, Ni i Pb* . See *document 3.*

29. Finally, it has to be reminded that the NGO is entitled to stand by *actio popularis* on waste law. Surprisingly, the resolution considers that the NGO is not entitled because any specific article of the waste regulation is related. Here, we state – according to the Aarhus Convention and the Spanish Constitutional Court—that this is a restrictive interpretation of the procedural regulations that can be qualified as too formalist and arbitrary. Actually, the automatic review request did show up that the infringement of one of the key aspects of the waste law which is the need of a clear authorization to carry on waste treatment and, particularly, the requirement of public participation on it. Specifically, this implies the contravention of some articles referred to at the waste treatment authorization such as art. 24.1.a of Catalan Act 1/2009 on waste which state that the ones treating waste are the ones that are obliged to obtain all the required licenses and compulsory authorizations for the plant construction and the activity itself. Also articles 74.a and 75.b of Catalan Act 1/2009 on waste qualify as a very serious or serious infraction, depending on the environmental harm, to carry on such activities without a previous license, an authorization, permit, concession, and environmental impact report or without complying the imposed condition when required if environmental harm is proved.
30. The resolution considered that the 16 neighbors were not entitled to submit a claim any specific article of the waste regulation is related. Regarding this aspect please refer to the previous point.

31. Finally, it has to be reminded that a restrictive interpretation of such regulation is contrary to article 9.2 of the Spanish Constitution which binds all the public powers to really and effectively promote the participation of all the citizens and groups. Such article implies that Spanish Public Administration cannot --by no means-- do a restrictive interpretation of citizen's participation regulations. In a similar way Aarhus Convention (art. 9.2 and 9.4) about the requirement of effectiveness of a preliminary review procedure before an administrative authority.

VI. USE OF DOMESTIC REMEDIES

32. On May 17 and 25, 2012, the NGO and 16 neighbors (with the help of FDA, the communicant) made two administrative claims *(documents 6 and 7)* to void the resolution of the counselor of the Environment and Housing Department of the Generalitat de Catalunya of June 3, 2010 which issued to the cement company the environmental permit. The main reason for such claims was the lack of the compulsory public participation procedure. It has to be noted that this was not an administrative appeal for any violation which must be filled in one month. This was an administrative claim for relevant violations and there is no time limit to file this kind of complaints (art. 102 of Spanish Act 30/1992, 26 November, on administrative proceedings). This shows that the lack of public participation is a relevant violation as it is considered as such by the Spanish Courts.

33. The resolutions of the counselor of the Land and Sustainability Department of the Generalitat de Catalunya of September 17, 2012 rejected the claims stating that they were not admissible *(document 8)*. The key reasoning was the lack of standing and clear groundless. As we've explained before the counselor decision based the lack of standing of the NGO allege that it had no right or interest to environment. And the clear groundless is at least peculiar since the resolution had to spend 15 pages to sustain it.

34. For this reason the NGO and 16 neighbors (with the help of FDA, the communicant) made two administrative appeals the 5th November of 2012 *(document 9)*.

35. This second appeals were also denied by the counselor resolutions of January 25, 2013 *(document 10)*. Such resolutions merely reproduced what he stated before in the previous ones.

36. So far the NGO and 16 neighbors have not been able to start a case in front of the Spanish Court due to the economical high cost. And also its ineffective for this case because the plant is burning the waste from 2010 and the final decision in the courts would take most provably, at least eight years. Nonetheless, the NGO and the 16 neighbors have exploded all the domestic remedies available for them.

37. However the NGO and the 16 neighbors (with the help of the FDA, the communicant) have also made on November 23, 2012 a complaint in front of the the Catalan Ombudsman (called Sindic de Greuges) to give support to the completed administrative actions so far. They accepted to look through this case and the resolution of the Ombudsman of April 23, 2013 have suggested to the Land and sustainability department of the Generalitat de Catalunya to judge the appropriateness to approve and make public some guidelines in the DOGC (Diari oficial de la Generalitat de Catalunya) or in any other official publications for the public information announcement related for environmental matters, particularly to include in the title of the announcement the term "substantial modification" when the process has this relevance. Also, the title should include the term "evaluation of environmental damage" when the process requires for a new environmental permit. They have done this suggestion to promote the rights of the citizens for the public participation in environmental matters. But the resolution of the Ombudsman didn't analyze any violation of Aarhus Convention by the permit in this case.

VII. CONFIDENTIALITY

38. This communication is not confidential.

VIII. SUPPORTING DOCUMENTATION

1) Request for environmental permit to use urban solid waste (CDR) and dried sewage sludge (EDAR) as a combustible in the cement plant of UNILAND CEMENTERA SA in Santa Margarida i els Monjos .
2) "Partial substitution of conventional combustible by urban solid waste (CDR) and dried sewage sludge (EDAR)" project (November 2009) (page 1).
3) Environmental Impact Study of this project (September 2009): page 1, 24, chapter 3 of the environmental impact report scope, chapter 5.
4) Public information notice which was published in the Oficial Bulletin of Generalitat of Catalonia the 18th of March of 2010.
5) Resolution of the counselor of the Environment and Housing Department of the Generalitat de Catalunya of June 3, 2010 which issued to the cement company the environmental permit.
6) Administrative claim of the NGO on May 17, 2012.
7) Administrative claim of 16 neighbours on May 25, 2012.
8) Resolutions of the counselor of the Land and Sustaibility Department of the Generalitat de Catalunya of September 17, 2012 rejected the claims stating that they were not admissible.
9) Administrative appeals of the NGO and 16 neighbours on November 5, 2012.
10) Resolutions of the counselor of the Land and Sustaibility Department of the Generalitat de Catalunya of January 25, 2013 which denied the administrative appeals.
11) Complaints of the NGO and the 16 neighbours to the Catalan Ombudsman on November 23, 2012.
12) Resolution of the Ombudsman of April 23, 2013.
13) Authoritzation of Francesc Espinal i Trias, as a President of Fons de Defensa Ambiental, to Alexandre Peñalver i Cabré, secretary of this association, to represent it in connection with the communication

IX. SUMMARY

39. This communication addresses a project of a cement plant called UNILAND SA located in the municipality of Santa Margarida i els Monjos in Catalonia, Spain. The main activity of this company is the production of cement and rock (aggregates). On the 24th of November of 2009 the company submitted an application for environmental authorization to use and treat waste (urban solid waste and dried sewage sludge) in this plant to the Environment and Housing Department of the Catalan Government.

40. Hence this change implicates a real transformation in the previously authorized activity (which was to produce cement). Since then, the company, not only produced cement, but also carried out, in a large scale, another activity like waste management. But this substitution also is very relevant quantitatively because of its impacts on the health of the people and on the environment. For this reason, it was clear that it should be rated as a substantial change and it clearly needed a new application for a new environmental permit.

41. The information on the substantial change and on the use of urban solid waste and dried sewage sludge was not submitted to the essential procedure of public information.

42. We see that the Environmental and Housing Department of the Generalitat of Catalonia surprisingly carried out this procedure on a substantial change of the waste management, but in the procedure of public information the Department changed the object of the environmental authorization application to the production of cement. If the Department had public information correctly (substantial change to use urban solid waste and dried sewage sludge) the result would surely have been different due to the social conflict that this activity generates. The public knowledge of the harm to the environment would have made a bigger response concerning the outcome and would have substantially changed the result.

43. Finally on the 3rd of June of 2010, the counselor of Environment and Housing of the Department of the Generalitat de Catalunya issued to the company the environmental permit for the substantial change to use urban solid waste and dried sewage sludge.

44. The NGO and 16 neighbors (with the help of FDA, the communicant) filed two administrative claims to override this resolution, which issued to the company the environmental permit. The main reason was the lack of the compulsory public participation procedure required by Aarhus Convention and EU, Spanish

and Catalan regulations. These claims were rejected by the Catalan counselor decision as inadmissible pleading lack of standing.

45. The NGO and 16 neighbors made two administrative appeals against the inadmissibility. But two more resolutions of the counselor denied them again.

46. So far the NGO and the 16 neighbors have not been able to start a case in front of the Courts due to the high economic cost and its probable not effective result since this plant is burning the waste since 2010 and the final decision in the courts would take almost eight years. Nonetheless, they have now used up all the domestic remedies that they are entitled to so far.

47. Finally, the NGO and the 16 neighbors (with the help of FDA, the communicant) have also made a complaint to the Catalan Ombudsman (it's called Sindic de Greuges). The resolution of the Ombudsman has suggested to the Land and Sustainability Department of the Generalitat de Catalunya to make some recommendations for the public information announcement related to environmental matters, specially to include in the title of the announcement the term "substantial modification" when the process has this relevance. Also, the title should include the term "evaluation of environmental impact" when the process requires for a new environmental permit. They have done this suggestion to promote the rights of the citizens for the public participation in environmental matters. But the resolution of the Ombudsman didn't analyze any violation of Aarhus Convention in this case.

48. Last, it has to be underlined that Spain violated its obligations regarding public participation (article 6 paragraph 3, paragraph 4 and in consequence paragraph 8 and 9) and access to justice (art. 9 paragraph 2) of Aarhus Convention, according with the Spanish Constitution.

49. In particular we claim that Public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for

informing the public and for the public to prepare and participate effectively during the environmental decision-making. The public participation procedure must be of the activity object of the environmental permit and not of a different one. The public must be informed of the actual activity. In this case, the party has conducted this proceeding on a substantial change in a cement plant for waste management, but in the procedure of public information the party changed the object of the environmental procedure permit to the production of cement. So Spain is not in compliance with article 6 paragraphs 2 and 3.

50. Also Each Party shall provide for early public participation, when all options are open and effective public participation can take place as it is established under article 6 paragraph 4.

51. Accordingly, each Party shall ensure that in the decision due account is taken of the outcome of the public participation and also shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in agreement with the appropriate procedures. Each Party shall make accessible to the public the text of the decision along with the reasons and considerations on which the decision is based. As it is established under article 6 paragraph 8 and 9, therefore, Spain is not in compliance with theses paragraphs either.

52. Here it is also upheld that the party also violated art. 9.2 on access to justice since is rejected the administrative preliminary review procedure as inadmissible by lack of standing of the NGO and the 16 neighbors.

X. SIGNATURE

Barcelona, 17th of January of 2014.

Francesc Espinal Trias
President of FDA

Alexandre Peñalver i Cabré
Secretary of FDA