

# COMMUNICATION ACCC/2014/99



JULY 2015

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- UNILAND CEMENTERA
- PUBLIC PARTICIPATION
- ACCESS TO JUSTICE





# **UNILAND CEMENTERA**

- **GROUP CEMENTOS PORTLAND VALDERRIBAS**
- **DATE OF THE AEI 2007**
- **PRTR COD CENTER: 3036**
- **CAPACITY OF CLINKER PRODUCTION  
1.8000.000 T/YEAR**
- **CAPACITY OF CIMENT PRODUCTION  
2.000.000 T/YEAR**

# FIRST CONCLUSION



- ACCORDING TO THE AUTHORISATION, THE ACTIVITY OF THIS PLANT IS “THE PRODUCTION OF CEMENT OR CLINKER IN ROTARY KILNS”.
- NON SUBSTANTIAL CHANGES IN THE EIA TO INTRODUCE NEW ENERGY RESSOURCES
- 2010: SUBSTANTIAL MODIFICATION OF THE WASTED USED IN ENERGY **RECOVERY**

# RECOVERY



- According to Directive 2008/98
- 'recovery' means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations;
- According to Annex II: **RECOVERY OPERATIONS**
- R 1
- Use principally as a fuel or other means to generate energy (1)



## SUBSTANTIAL MODIFICATION

- ENERGY RECOVERY TO PARTIALLY REPLACE THE PETROLEUM COKE THAT WAS USED (A MAXIMUM OF 33%) WITH ALTERNATIVE NON HAZARDOUS FUELS IS NOT IN THE 5 PHARAGRAF OF ANNEX I TO THE AARHUS CONVENTION

# PUBLIC PARTICIPATION



- Application of the substantial modification: 24/11/2009
- Public consultation notice: DOGC 18 /3/2010
- The announcement complies with the requirement of art. 6. Identify:
  - The activity of cement production
  - The name of the company
  - The municipality
  - The substantial character of the modification
  - The procedure for public consultation

# PUBLIC PARTICIPATION



- The project was available for public consultation during a period of 30 days.
- No pleadings. Furthermore:
- The City Council of the area where the plant is located notified individually the local residents of the area granting them a period of 10 days to submit any pleading or claim.
- No pladings were submitted.



# PUBLIC PARTICIPATION CONCLUSION



- 1. The activity undertaken by Uniland in Santa Margarida dels Monjos is the production of cement or clinker in rotary kilns of the type contained in paragraph 3 of Annex 1 to the Aarhus Convention.
- As part of this process, since 2009, energy has been recovered from certain non-hazardous waste, subject to the proper environmental controls and safeguards.

# PUBLIC PARTICIPATION CONCLUSION



- 2. The site of Uniland in Santa Margarida i els Monjos cannot be classified as a facility for the disposal of the type of waste described in paragraph 5 of Annex 1 to the Aarhus Convention, since the activity undertaken is energy recovery to substitute a conventional fuel.

# PUBLIC PARTICIPATION CONCLUSION



- 3. During the proceedings it was clearly indicated that the permit that was being processed was for a plant engaged in the production of cement.
- public participation was enabled by means of the public consultation notice published in the *Official Journal of the Government of Catalonia*. The published notice did clearly indicate that it related to an activity of cement production with an environmental impact and granted all citizens access to the file and participation in the process.



# PUBLIC PARTICIPATION CONCLUSIONS

- the public consultation phase was further complemented by an additional phase of local consultation for the immediate local residents in the area surrounding the facility, with full description of the scope of the authorised activity.
- It cannot be deemed that the participatory process has been omitted.

# ACCESS TO JUSTICE ART 9.2

- Spanish legal system provides access to justice in the sense of the Aarhus convention.
- Since the NGO had notice of the license (.....) it had two months to present an appeal to an independent authority .
- The NGO missed this opportunity.
- To amend its mistake, it presented an extraordinary administrative appeal which is reserved to very restricted cases in the Spanish legal system.



## ACCESS TO JUSTICE ART. 9.2

- In any case, this appeal was analysed by administrative authorities and the NGO had a new opportunity to appeal to an independent judge.
- The NGO did not use its right to access justice.

# ACCESS TO JUSTICE ART. 9.2

## CONCLUSIONS

- 1. The convention aims to warrant the access to an appeal to an independent judge
- 2. Administrative appeal is only a previous requirement to judge appeal.
- 3. The Spanish system allowed the NGO the appeal to an independent judge in the delay of two months since it was aware of the administrative license.
- 4. The NGO could also appeal the act of the administrative authority before a judge.
- 5. The NGO did not use the appeals provided by the Spanish law.

# Access to justice Art. 9.4



- The Decision IV/9(f) on compliance by Spain with its obligations under the Aarhus Convention welcomed the progress made by Spain particularly with regard to access to information and public participation, while recognized the need for further efforts in the area of access to justice, with a view to overcome the obstacles to fully implement Articles 9.4 and 9.5 of the Convention.



# Access to justice



- In this regard, the Meeting of the Parties invited Spain, as Party concerned, to thoroughly examine, with appropriate involvement of the public, the relevant legislation and in particular the court practice with regard to: I. Injunctive relief in cases of environmental interest; II. **Award of legal aid to environmental NGOs**; and III. The rule of dual representation (Abogado and Procurador) in environmental judicial procedures.

# Access to justice



- As required by the Meeting of the Parties, the preparation of the study was made with appropriate involvement of the public.
- A questionnaire was distributed among a variety of representative and qualified stakeholders, including the Communicants themselves,. Responses to the questionnaire were conveniently collected, studied and taken into account in the elaboration of the first draft of the study.

# LEGAL AID FOR ENVIRONMENTAL NGOS



- The right to free litigation in the Spanish legal system is enshrined in article 119 of the Spanish Constitution, according to which “The justice will be free of charge when the law so provides and, in any case, for those who have insufficient means to litigate”.
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- Law 1/1996 (to be modified Parliament)
- Law 27/2006: art. 23

# LEGAL AID FOR ENVIRONMENTAL NGOS

Law 27/2006: art. 23. Requirements



- 1. Their bylaws must include as the association's goal the protection of the environment or of any of its elements
- 2. The association must be legally constituted at least 2 years before the date in which the action is initiated; it must remain active in achieving its goals.
- 3. A geographical connection (established in their bylaws) with the area affected by the act or omission.

# LEGAL AID FOR ENVIRONMENTAL NGOS

## Benefits



- Free assistance and guidance prior to the commencement of the judicial process.
- Assistance by Lawyer to the arrested or prisoner.
- Legal defence and representation by Lawyer and Procurator during the judicial procedure.
- Free publication of edicts or announcements that must be compulsory published in official journals during the process.
- Exemption of any judicial fee or payment of any deposit to trigger the appeal.

# LEGAL AID FOR ENVIRONMENTAL NGOS

## Benefits



- Free expert evidence according to the relevant legislation.
- Free access to copies, testimonies, instruments and public notary certificates.
- 80% reduction of public notary fees.
- 80% reduction of public property or commercial registry fees.
- Finally, it is important to note that, once the legal aid is granted, the right is also extended to second instance or appeal instance (article 7 of Law 1/1996).

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