

RECHTSANWÄLTE
SIMONFAY & SALBURG
WIEN – BUDAPEST - VILNIUS

To the
Commission of the
European Communities
Att. Generalsekretary
Rue de la Loi, 200
B-1049 Brussels
Belgium

Vienna, on May 24th, 2005
04217/B-Commission2/US/BS

**RE: complaint to the Commission of the European Communities
concerning failure complaint with Community Law
regarding the Republic of Lithuania
Reference-Number: SG(2005)A/1201**

Dear Madams, dear Sirs,

With complaint dated January 31st, 2005, received by the European Commission on February 4th, 2005 and registered under SG(2005)A/1201 the residents of the village Kazokiskes/Lithuania, the public organisation Kazokiskes community and Mr. Gediminas Gruodis, lodged a complaint to the European Commission in respect of a intended landfill, which the Lithauanian authorities, especially the Ministry of Environment and the UAB VAATC, a Lithuanian company, owned by Lithuanian municipalities intend to establish.

In respect of this complaint the complainants would like to submit the following additional information, respectively would like to summarize the main points of the complaint.

1.) Summary

As described in the complaint of January 31st, 2005 the Lithuanian authorities intend to establish a landfill with the capacity of 250 tonnes of waste per year and a total capacity of 6,8 million tonnes of waste over a period of 20 years.

The complainants are strongly convinced that for the operation for this landfill a permission according to directive 96/61/EC is required, because according to annex I of this directive, landfills with a capacity over 10 tonnes per day or a total capacity exceeding 25.000 tonnes fall under the activities for which a permission according to directive 96/61/EC is required.

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The intended landfill falls under this directive irrespective of the fact that the plans for this landfill were drafted before Lithuania joined the European Union and irrespective of the fact that the Ministry of Environment of the Republic of Lithuania approved the establishment of this landfill with decision of June 12th, 2002, because according to directive 96/61/EC, which became applicable for Lithuania with May 1st, 2004, the member states are under duty to ensure that no new installations are operated without a permit issued in accordance with directive 96/61/EC (Art. 4).

The intended landfill in Kazokiskes is a new installation irrespective of the above decision to establish the landfill by the Ministry of Environment of the Republic of Lithuania at 2002, because Art. 2, chapter 4 of directive 96/61/EC defines existing installations (and therefore not new installation) as those installations, which were in operation on the day directive 96/61/EC came into force or were put in operation no later than one year after this directive was brought into effect.

This one year period in respect of the Republic of Lithuania expired with May 1st, 2005, because the directive came into effect for Lithuania with the day of joining the European Union. The intended landfill in Kazokiskes is still not operating, especially was till now not even established. Therefore there can be no doubt that directive 96/61/EC is applicable to this intended landfill and therefore the intended landfill can not be operated without a permission according to this directive.

For the complainants it is of high importance that the Lithuanian authorities follow the procedure required for issuing a permission according to directive 96/61/EC, because such a procedure would require according to directive 2003/35/EC that all the important information about the landfill, especially regarding the technical details to avoid pollution and emissions, is available for public, further the public and therefore the complainants have the possibility to request that a court reviews the legality of a permission issued under directive 96/61/EC in substance and regarding procedure.

In this respect it has to be noted as described in our complaint of January 31st, 2005 that the complainants are highly convinced that the landfill does not fulfil the requirements according to directive 96/61/EC, because the technique used in respect of the intended landfill is not at all the best available technology, especially because it is foreseen as confirmed by the Ministry of environment of the Republic of Lithuania (information to the public, annex 6 of the complaint of January 31st, 2005) that the waste is just dumped in the intended landfill, but no waste treatment like sorting, burning or anything similar is carried out.

Till recently the position of the Lithuanian authorities was, that no further permissions for the intended are needed.

Evidence: English translation of the letter of the Ministry of Environment of January 27th, 2005 to Mrs. Virginia Staziokiene and Mr. Viktors Gruodis Annex 13

2.) Additional information

In the meanwhile - probably due to the activities of the complainants - it seems that the Ministry of Environment agrees that an IPPC permission is required for the establishment and the operation of the intended landfill in Kazokiskes. With letter of April 21st, 2005 the Ministry

of Environment of the Republic of Lithuania stated towards to the complainants advocate in Lithuania that no IPPC permission was issued in respect of Kazokiskes landfill, because the Ministry of Environment as competent authority did not receive any application for an IPPC permission.

It is unclear, if the Ministry of Environment confirms thereby, that a “IPPC permission” is requested before any activities can start in respect of the intended landfill in Kazokiskes or not.

At least the Ministry of Environment is not stating anymore, that no permission is needed.

The complainants requested a clarification from the Ministry of the Environment on this issue and will inform the Commission as soon as possible on the Ministry’s response.

The complainants kindly ask the Commission services to await the response of the Ministry of Environment in respect of the IPPC permission, before further dealing or continue to deal with the complaint of the applicants.

Further the complainants would like to inform the European Commission that not only the complainants are concerned about the intended landfill in Kazokiskes. The Ministry of Health of the republic of Lithuania, established with order of January 27th, 2004 a work group with the task to review, whether the impact of the intended landfill on public health was properly assessed.

This work group came to the conclusion that the environmental impact report, which was the base for the decision of the Ministry of Environment of June 2002 to establish the landfill in Kazokiskes was absolutely incorrect and superficial.

As the work group states in its conclusion, the environmental impact report is lacking impact forecasting and assessment methods.

As the work group further states the environmental impact report does not take into account the background air pollution, the limit value for solid particles was wrongly specified and further did not take into account the emission of formaldehyde.

The work group comes to the conclusion, population health impact assessment is not sufficient and proposes that the impact of the intended landfill on public health should be reassessed.

Further the work group noted that the environmental impact report states that 330 m³ hourly uncontrolled emissions are expected from Kazokiskes landfill.

In the complainants view it can not be in line with EU legislation, especially directive 96/61/EC that such an amount of uncontrolled emission is produced by a landfill.

Further the work group noted that the environmental report did not take into account that not just municipal waste is dumped at the landfill, but also waste water treatment sludge.

The report of the work group established by the Ministry of Health confirms once more, that the intended landfill is not in line with the relevant EU legislation. It is therefore absolutely important that the procedure for a permission according to directive 96/61/EC is followed,

which requires that all technical details are properly reviewed and that the public has the chance to get the decision on the establishment of the landfill reviewed by a court.

Evidence: Certificate of the work group formed by Ministry of Health of the Republic of Lithuania
Annex 14

If any further information needed, please do not hesitate to contact the advocates of the complainants.

The complainants respectively their advocates would highly appreciate, if there would be a possibility to discuss this issue with the competent officials from the European Commission personally.

Best regards,

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Ulrich Salburg

.....
Ramune Duleviciene