

**UNITED NATIONS
ECONOMIC COMMISSION FOR EUROPE**

ENVIRONMENT AND HUMAN SETTLEMENTS DIVISION

SECRETARIAT TO THE AARHUS CONVENTION

AARHUS CONVENTION COMPLIANCE COMMITTEE

COMMUNICATION

**from Alexandr Alexandrovich Lapin, citizen of Ukraine,
concerning non-compliance with the obligations undertaken by Ukraine
under Articles 4 and 6 of the Convention on Access to Information, Public Participation in
Decision-making and Access to Justice in Environmental Matters
(Aarhus Convention)**

**The Communication is in Russian, which is one of the Aarhus Convention's working languages.
A copy of the Communication, with attachments, is being sent by the Communicant to the Committee's electronic
mail address at the same time**

I. Information about the Communicant

Full name (family name first): Lapin, Alexandr Alexandrovich, citizen of Ukraine.

Address:

Telephone:

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II. Party to the Convention to which the Communication relates.

Ukraine

III. Facts of the Communication.

On 15 June 2009, a Memorandum of Understanding concerning the construction of biofuel plants and waste incineration plants was signed between representatives of local government bodies in Ukraine and the company EcoEnergy Scandinavia. The Memorandum was originally signed by the mayors of the following cities: Lutsk; Myrhorod, Poltava Oblast; Novohrad-Volynskiy, Zhytomyr Oblast; Nova Kakhovka, Kherson Oblast; Konotop, Sumy Oblast; Shostka, Sumy Oblast; Starokostiantyniv, Khmelnytskyi Oblast; Volodymyr-Volynskiy, Volyn Oblast; Bucha, Kyiv Oblast.

The Memorandum was subsequently supposed to have also been signed by the Mayor of Donetsk; but be that as it may, the participation of the City of Donetsk in the programme to build waste incineration plants was not initially planned.

On 23 June 2010, Donetsk Oblast Centre for Hydrometeorology, in letter Ref. No 534, informed EcoEnergy Donetsk, a limited liability company (referred to throughout this text as 'EcoEnergy Donetsk OOO') of the volume of background concentrations of pollutants in the atmospheric air and indicated that the Centre does not carry out observations of most of the requested indicators.

On 21 July 2010, the Executive Committee of Donetsk City Council, in its Decision No 193/3, tabled a motion to Donetsk City Council to grant authorization for drawing up a Detailed Area Plan for the construction of a waste incineration plant in the Proletarskyi District.

On 23 July 2010, Donetsk City Council, in its Decision No 46/162, authorized EcoEnergy Donetsk OOO to draw up a Detailed Area Plan for the construction and operation of a waste incineration plant.

On 11 October 2010, Tebodin Ukraine, an enterprise with foreign investors, commissioned by EcoEnergy Donetsk OOO, carried out an Environmental Impact Assessment ('the EIA') and a Feasibility Study ('the TEO').

In the EIA itself, in the 'Social environment' section, it is stated directly that public hearings should be held during the development phase of this project.

On 11 October 2010, EcoEnergy Donetsk OOO agreed a Statement of Intent with the Ministry for Environmental Protection and signed a statement about the environmental consequences of the construction and operation.

On 9 December 2010, the State Sanitary and Epidemiological Service of the Ukraine Ministry of Health accepted the conclusion of State sanitary and epidemiological expertiza (review) No 05.03.02-07/97370, according to which the TEO complies with legislative requirements and may be approved; however, in Protocol to the expertiza (review) of building project No 1.1.3.9303 of 9 December 2010, it indicated that:

- 1) the plant is not a waste-processing plant, but specifically a waste incineration plant;
- 2) no provision has been made for a waste-sorting stage, even though this must be an essential element of the production process.
- 3) no mechanisms have been worked out for handling waste treatment facilities;
- 4) no volumes have been defined for emissions of highly toxic substances which form as a result of the plant's activities, such as dioxins, furans, or benzo[a]pyrene;

5) no specific types of gas-cleaning equipment have been defined for the plant.

However, at the date of writing, these deficiencies have not been remedied.

On 20 January 2011, the Commission for Review of matters connected with Approval of Spatial Planning Documents gave its Conclusion on approval of the spatial planning application for allocation to the project of land registered as Plot No 525/01.

On 22 January 2011, a public meeting was held at the Jubilee Palace of Culture in the Proletarskyi District, on the theme 'Discussion of the Detailed Area Plan for construction and operation of a plant to produce energy from waste (on an area in the historic Chulkivka district, which is a former explosives handling and storage site and bounded by the Donetsk motorway ring road) in the Proletarskyi District'.

According to the record, the majority of residents of the district spoke out strongly against the construction of a waste incineration plant.

The meeting resulted in Mayoral Instruction No 106 of 3 February 2011 creating a Working Group to familiarise itself with and study materials concerning the siting of a waste incineration plant in the City of Donetsk ('the Working Group').

A meeting of the Working Group took place on 15 March 2011, at which questions to EcoEnergy Scandinavia were drawn up.

On 28 January 2011, a round-table meeting was held by Donetsk Press Club, an NGO based in Donetsk Oblast, on the theme 'The economic effect and environmental safety of municipal solid waste recovery'.

The next meeting of the Working Group took place on 12 May 2011, and discussed EcoEnergy Scandinavia's responses and the company's proposal that community representatives should visit a waste incineration plant in Sweden; this was rejected on the basis that EcoEnergy Scandinavia, according to Article 5 of the Articles of Association of EcoEnergy Donetsk OOO, was only the co-founder of that company and owned only 0.01% of EcoEnergy Donetsk OOO's registered capital (by means of a cash investment in the sum of 10 Hrv, or 10 hryvnias 00 kopyky), so that, de facto, it will not be answerable for EcoEnergy Donetsk OOO's liabilities, including in the case of environmental damage, and also because operating conditions and environmental standards in Ukraine and Sweden differ and therefore there would be no sense in making such a journey.

After this, the Working Group in effect ceased its activities.

The opinion of residents of the Proletarskyi District of the City of Donetsk, expressed by them during the meeting of 22 January 2011, was not in any way taken into account by Donetsk City Council with regard to the sale of a parcel of land for the construction of a waste incineration plant.

In addition, no public hearings on this issue have ever been held.

On 22 July 2011, Donetsk City Council, in its Decision No 7/310, agreed to sell a parcel of land, designated 'non-agricultural', to EcoEnergy Donetsk OOO for the construction and subsequent operation of a waste incineration plant in the Proletarskyi District.

On 23 November 2011, Donetsk City Council, in its Decision No 10/25, recognised the loss of force of the previous Decision, and renewed the agreement to sell a parcel of land, designated 'non-agricultural', to EcoEnergy Donetsk OOO for the construction and subsequent operation of a waste incineration plant in the Proletarskyi District.

On 19 December 2011, a contract of sale was concluded between EcoEnergy Donetsk OOO and Donetsk City Council for a parcel of land, designated 'non-agricultural', under which the land was sold for 5,088,527.46 Hrv (in words, five million, eighty-eight thousand, five hundred and twenty-seven hryvnias, 46 kopyky) of which the greater part (specifically, 4,823,038.11 Hrv; in words, four million, eight hundred and twenty-three thousand and thirty-eight hryvnias 11 kopyky) has still not been paid at the time of writing this Communication.

Despite the protests of local residents, including my own, EcoEnergy Donetsk OOO is currently constructing a waste incineration plant in our district.

In the context of Article 2 of the Aarhus Convention, I am 'the public concerned', while Donetsk City Council and EcoEnergy Donetsk OOO are 'public authorities'.

IV. Nature of alleged non-compliance with the Convention.

Ukraine has not observed the provisions of the Aarhus Convention in this particular case and has impaired my rights to:

- access to environmental information (Article 4 of the Aarhus Convention), since it took more than 1 year for my request to EcoEnergy Donetsk OOO for information to be fulfilled;
- public participation in decisions on specific activities (Article 6 of the Aarhus Convention), since no public hearings were conducted by Donetsk City Council on the matter of selling a parcel of land for the construction and operation of a waste incineration plant, and the opinions of the public concerned were not taken into account when this decision was made.

V. Provisions of the Convention which are relevant to the Communication.

Article 4

Access to environmental information

...

2. The environmental information referred to in paragraph 1 above **shall be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant shall be informed of any extension and of the reasons justifying it.**

...

Article 6

Public participation in decisions on specific activities

1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;

...

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:

...

(d) The envisaged procedure, including, as and when this information can be provided;

...

(ii) The opportunities for the public to participate;

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

...

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.

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

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. ... The relevant information **shall include at least, and without prejudice to the provisions of article 4:**

(a) A description of the site and the physical and technical characteristics of the proposed activity, including an estimate of the expected residues and emissions;

(b) A description of the significant effects of the proposed activity on the environment;

(c) A description of the measures envisaged to prevent and/or reduce the effects, including emissions;

...

(e) An outline of the main alternatives studied by the applicant;

...

7. **Procedures for public participation shall allow the public to submit**, in writing or, as appropriate, **at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.**

8. Each Party shall ensure that **in the decision due account is taken of the outcome of the public participation.**

9. Each Party shall ensure that, **when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance 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.

...

List of activities referred to in Article 6, paragraph 1 (a)

1. Energy sector:

...

- Thermal power stations and other combustion installations with a heat input of 50 megawatts (MW) or more;

...

5. Waste management:

...

- Installations for the incineration of municipal waste with a capacity exceeding 3 tons per hour;

...

VI. Use of domestic remedies or other international procedures.

I. Regarding the right of access to information under Article 2 of the Aarhus Convention:

On 1 August 2011, having learned of the planned construction of a waste incineration plant in the district where I live with my family, I sent a request to EcoEnergy Donetsk OOO's address, asking for information under the procedure laid down in Article 19 of the Law of Ukraine on Access to Public Information.

Receipt of my request was acknowledged by a representative of EcoEnergy Donetsk OOO on 3 August 2011.

On 4 August 2011, I repeated my request orally to a representative of EcoEnergy Donetsk OOO.

On 16 August 2011, receipt of my repeated request was acknowledged by a representative of EcoEnergy Donetsk OOO.

In a telephone conversation on 23 August 2011, a representative of EcoEnergy Donetsk OOO informed me that the text of my request had been translated into Swedish and sent to the head office in Sweden, and that the reply would be ready at the end of September 2011.

In a telephone conversation on 26 September 2011, a representative of EcoEnergy Donetsk OOO informed me that the reply to my request was not ready.

On 28 September 2011, I sent a reminder to EcoEnergy Donetsk OOO's e-mail address.

In a telephone conversation on 30 September 2011, a representative of EcoEnergy Donetsk OOO informed me that Swedish experts would be preparing the reply to my request, and that they should contact me by telephone on 3 or 4 October 2011.

Since no member of staff from EcoEnergy Donetsk OOO contacted me within the specified period, on 7 October 2011 I sent another reminder by post.

In a telephone conversation with me on 24 October 2011, a representative of EcoEnergy Donetsk OOO informed me that the reply to my request was still not ready and that he did not know when it would be ready.

In the light of the impairment of my right to obtain information on the environment, on 27 October 2011 I filed an administrative claim for recognition that lack of action, in the form of an information provider's failure to reply to a request for information, was unlawful and for the information provider to be obliged to reply to a request for information.

Court hearings took place on 16 November 2011, 8 December 2011, and 21 December 2011 and 11 January 2012; however, consideration of the case was postponed THREE times because of the failure of a representative of EcoEnergy Donetsk OOO to appear as respondent.

On 11 January 2012, Donetsk District (Circuit) Administrative Court, in Ruling № 2a/0570/20657/2011, found partly in favour of my administrative claim and ordered EcoEnergy Donetsk OOO to provide a reply to my request.

On 22 February 2012, I put a written communication into EcoEnergy Donetsk OOO's post box, which is situated at its premises in the Proletarskyi District of the City of Donetsk, advising them to comply voluntarily with the Court's Ruling.

I received no reply to my communication.

On 19 June 2012, I received by post an enforcement order issued on 23 April 2012 under the above-mentioned Court Ruling.

On 25 June 2012, I applied to the Department of the State Executive Service of Ukraine, Voroshylovskiy District Office of Justice in the City of Donetsk (the Voroshylovskiy District Bailiffs' Service) to initiate the enforcement process.

On 6 July 2012, the Senior State Executive Officer at the Voroshylovskiy District Bailiffs' Service initiated the enforcement process by issuing Order No VP 33281288.

As a result of enforcement actions, on 21 August 2012, EcoEnergy Donetsk OOO sent me a reply, Ref. No 29, to my request for information, which I received on 30 August 2012.

In other words, it took MORE THAN 1 YEAR for me to obtain information about the environmental impact of a waste incineration plant in the district where I live!

II. Regarding the right to participate in decision-making under Article 6 of the Aarhus Convention:

I found out about the existence of Donetsk City Council's Decision No 7/310 of 22 July 2012 in mid-February 2012, when I saw a notification, dated 30 January 2012, on EcoEnergy Donetsk OOO's official web site, announcing that they had concluded the process of acquiring a parcel of land.

On 22 February 2012, I sent a request for information to Donetsk City Council and on 27 February 2012, I received a certified copy of that Decision.

On 1 March 2012, I filed an administrative claim before the Voroshylovskiy District Court in Donetsk City to have Donetsk City Council's Decision recognised as unlawful and have it set aside.

Court hearings were appointed for 12 April 2012, 11 May 2012 and 14 June 2012; however, they were postponed TWICE because of the failure of a representative of EcoEnergy Donetsk OOO to appear.

At the court hearing of 14 June 2012, a representative of Donetsk City Council indicated in his counter-arguments that on 23 November 2011, Donetsk City Council had taken Decision No 10/25 on the sale of a parcel of land, designated 'non-agricultural', to EcoEnergy Donetsk OOO for the construction and subsequent operation of an enterprise for producing energy from waste in the Proletarskiy District, and that point 7 of that decision recognised the loss of force of the previous Decision.

As a consequence of this, my claim was dismissed without consideration of my statement.

On 15 June 2012, I sent a request for information to Donetsk City Council and on 12 July 2012, I received a copy of the City Council's second Decision.

On 18 July 2012, I filed an administrative claim before Voroshylovskiy District Court in Donetsk City to have Donetsk City Council's Decision No 10/25 of 23 November 2011 annulled.

Court hearings in the case were appointed for 25 September 2012, 30 October 2012, 4 December 2012, 16 January 2013, 22 February 2013 and 2 April 2013.

The case was postponed FOUR TIMES because the representative of EcoEnergy Donetsk OOO failed to appear.

By a ruling of Voroshylovskiy District Court in Donetsk City of 2 April 2013 (delivered in full on 8 April 2013) in Case No 2/255/18/2013, my claim was dismissed.

The chief basis for that legal judgment was the fact that no duty to conduct public hearings in such cases exists under Ukraine's national law.

On 17 April 2013, I filed an appeal against the ruling in question. At the time of writing, the appeal case is continuing in the Appellate Administrative Court for the Donetsk Circuit. Proceedings in this case have already lasted TEN MONTHS.

And after three years, no public hearings on the issue of the construction of a waste incineration plant have been held!

I have made no use of any international procedures.

VII. Confidentiality.

I request that all the information presented in this Communication be considered non-confidential, since it is also known to the competent authorities in Ukraine and to EcoEnergy Donetsk OOO.

VIII. Supporting documents (supplied as photocopies)

1. Memorandum of Understanding of 15 June 2009 (2 pages).
2. Letter from Donetsk Oblast Centre for Hydrometeorology of 23 June 2010, Ref. No 534 (1 page).
3. Donetsk City Council Decision No 46/162 of 23 July 2010 (1 page).
4. Environmental Impact Assessment (EIA) (24 pages).
5. Feasibility Study (TEO) (18 pages).
6. EcoEnergy Donetsk OOO's Statement of Intent of 11 October 2010 (1 page).
7. EcoEnergy Donetsk OOO's statement about the environmental consequences of the construction and operation (4 pages).
8. Conclusion of State sanitary and epidemiological expertiza (review) No 05.03.02-07/97370 of 9 December 2010 (1 page).
9. Protocol to the expertiza (review) of building project No 1.1.3.9303 of 9 December 2010 (2 pages).
10. Conclusion on approval of the spatial planning application for allocation to the project of land registered as Plot No 525/01, 20 January 2011 (1 page).
11. Record of public meeting on 22 January 2011 (1 page).
12. Record of the meeting of the Working Group of 15 March 2011 (2 pages).
13. Record of the meeting of the Working Group of 12 May 2011 (1 page).
14. Extract from EcoEnergy Donetsk OOO's Articles of Association of 21 December 2009 (2 pages).
15. Donetsk City Council Decision No 7/130 of 22 July 2011 (1 page).
16. Donetsk City Council Decision No 10/25 of 23 November 2011 (1 page).
17. My request for information to EcoEnergy Donetsk OOO of 1 August 2011 (3 pages).
18. My request for information to EcoEnergy Donetsk OOO of 3 August 2011 (3 pages).
19. My reminder of 28 September 2011 (1 page).
20. My reminder of 7 October 2011 (1 page).
21. My administrative claim of 27 October 2011 (3 pages).
22. Determination by Donetsk District (Circuit) Administrative Court appointing the case for consideration on 16 November 2011 (1 page).
23. Court summonses for: 23 November 2011, 8 December 2011 and 21 December 2011 (on 1 page).
24. Ruling of Donetsk District (Circuit) Administrative Court of 11 January 2012 (2 pages).
25. My letter to EcoEnergy Donetsk OOO's address, 22 February 2012 (1 page).
26. Enforcement order of 23 April 2012 (1 page).
27. Application of 25 June 2012 to initiate enforcement process (1 page).
28. Order of 6 July 2012 initiating enforcement process (1 page).
29. EcoEnergy Donetsk OOO's reply, Ref. No 29, of 21 August 2012, to my request (8 pages).
30. Envelope indicating the date of delivery, 30 August 2012, on the back (on 1 page).
31. My administrative claim of 1 March 2012 (5 pages).
32. Determination by Voroshylovskiy District Court in Donetsk City of 16 March 2013 appointing the case for consideration on 12 April 2012 (1 page).
33. Court summonses for 11 May 2012 and 14 June 2012 (on 1 page).
34. Donetsk City Council's counter-arguments to my claim, 14 June 2012 (1 page).
35. My administrative claim of 18 July 2012 (5 pages).
36. Determination by Voroshylovskiy District Court in Donetsk City of 30 July 2012 appointing the case for consideration on 25 September 2012 (1 page).
37. Court summonses for 30 October 2012, 4 December 2012, 16 January 2013, 22 February 2013, 2 April 2013 and 14 May 2013 (on 1 page).
38. My supplementary clarifications in the case, 11 February 2013 (1 page).
39. Ruling of Voroshylovskiy District Court in Donetsk City of 2 April 2013 (2 pages).
40. My appeal of 17 April 2013 (3 pages).

If further documents become necessary for consideration of my Communication, please inform me and I will provide the Committee with copies of such documents.

IX. Signature.

Alexandr Alexandrovich Lapin

13 May 2013