



2017 No. 132721/01.

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER of an application by [REDACTED] for leave to apply for Judicial Review.

AND IN THE MATTER of a decision of [REDACTED], the Northern Ireland Environment Agency.

DOCKET FOR EX PARTE APPLICATION

[REDACTED] as a personal litigant to move on a date to be fixed on behalf of herself as the applicant

For an order that (a)

1. Leave be granted to the applicant, pursuant to Order 53, rule 3 of the Rules of the Supreme Court (Northern Ireland) 1980 to apply for judicial review of a decision dated 29/09/17 of [REDACTED] the Northern Ireland Environment Agency in granting a discharge consent to Dalradian Gold Limited.

Readings

1. Order 53 statement dated 28th December 2017.
2. Affidavit of the applicant sworn 28th December 2017.

Dated this 28th day of December 2017

Signed: [REDACTED]

[REDACTED]

[REDACTED]

Omagh,

Co Tyrone

BT79 9AF

To: [REDACTED] & Northern Ireland Environment Agency

Water Regulation Team,

17 Antrim Road,

Lisburn,

Co Antrim

BT28 3AL

To: The Solicitor,

Department of Finance and Personnel

Departmental Solicitor's Office

Centre House

79 Chichester Street

Belfast

BT1 3JE

2017 No.



IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER of an application by [REDACTED] for leave to apply for Judicial Review

AND IN THE MATTER of a decision dated 29th September 2017 by [REDACTED]
Northern Ireland Environmental Agency (NIEA)

STATEMENT PURSUANT TO THE RULES OF THE SUPREME COURT (NI) 1980 ORDER 53
RULE 3(2)(A)

1. The applicant is [REDACTED], a retired person, of [REDACTED] Omagh, Co Tyrone BT79 9AF.

2. The relief sought is:

(a) an order of Certiorari to quash a decision of [REDACTED], NIEA, dated 29th September 2017 which granted a Discharge Consent to Dalradian Gold Ltd (Consent no. 068/12/3) allowing dangerous substances and chemical compounds to be discharged into a waterway at Irish Grid Reference H5707 8690.

(b) a declaration that the said decision was unlawful, ultra vires and void.

(c) a Protective Costs Order

3. The grounds on which the said relief is sought are as follows:

(i) The decision is unlawful in that it affords discharge amounts in excess of the maximum limits for pollutants set down in the Water Framework Directive

(Classification, Priority Substance and Shellfish Waters) Regulations (Northern Ireland) 2015.

(ii) The decision is unlawful in that it is contrary to Article 6 of the Habitats Directive 92/43/EEC which requires that member states avoid damaging activities that could significantly disturb these species (fresh water pearl mussels and Atlantic salmon) or deteriorate the habitats of the protected species or habitat types.

(iii) The decision is unlawful in that the application should have been treated as refused since the timeframe set down in Schedule 1, paragraph 2(2) of The Water (Northern Ireland) Order had expired.

(iv) The decision is unlawful because Article 4 (1) of the Departments (Northern Ireland) Order 1999 requires that the functions of a department shall at all times be exercised subject to the direction and control of the Minister. There was no Minister in place at the time of this decision; therefore Richard Coey did not have the requisite authority.

(v) The decision is unlawful and irrational in that it provides for Dalradian Gold Ltd to monitor the discharge itself. Articles 4 and 5 of the Water Framework Directive (Classification, Priority Substances & Shellfish Waters) Regulations (Northern Ireland) 2015 require NIEA to apply the water quality standards. Articles 9, 11, 13, 14, 15 and 17 contain details of the mandatory monitoring to be carried out by NIEA.

(vi) The decision is irrational in that it refers to adhering to pollution limits in respect of a number of substances under the Water Framework Directive (Classification, Priority Substance & Shellfish Waters) Regulations (Northern Ireland) 2015, but it is in breach of the limitations within these same Regulations in respect of zinc, mercury, cadmium, iron and copper.

(vii) The decision fails to comply with European Communities, Natural Habitats (etc) Regulations (Northern Ireland) 1995 insofar as areas with special environmental designation: Special Area of Conservation (SAC); Area of Special Scientific Interest (ASSI) and Area of Outstanding Natural Beauty (AONB) on the Owenkillew / Foyle River basin have not been given any or adequate consideration. The decision breaches the Habitats Directive 1992 in failing to take the European designations into account and afford them special protection.

(viii) The decision is contrary to Environment (Northern Ireland) Order 2002 as NIEA failed to apply its own requirements to review a discharge consent where the discharge effects an area under European designation.

- (ix) The decision is unlawful and irrational in that it is contrary to the obligations on NIEA under Article 4 of the Water (Northern Ireland) Order 1999.
- (x) The decision is unreasonable as it breaches the 2010 United Nations recognition of access to clean water as a fundamental human right, since water is abstracted from the river downstream (at Newtownstewart) for the public water supply.
- (xi) This discharge consent is a matter of public interest.
- (xii) The apparent ability of NIEA to act outside the limits of the Water Framework Directive (Classification, Priority Substance & Shellfish Waters) Regulations (Northern Ireland) 2015 and outside the scope of the Habitats Directive 1992, the European Communities Natural Habitats Regulations (Northern Ireland) 1995, the Water (Northern Ireland) Order 1999 and outside the Environment (Northern Ireland) Order 2002 as well as outside the United Nations 2010 Resolution on the right to safe, clean drinking water, require clarification.
- (xiii) I, the applicant, have no private financial interest in the outcome of the case.
- (xiv) I, the applicant, am a retired person in receipt of pension.
- (xv) I, the applicant, rely on the Aarhus Convention on Access to Information, Public Participation and Decision Making, and Access to Justice in Environmental Matters 1998, and in particular Article 9 thereof.

Dated this 28th day of December 2017

Signed:.....





Omagh
Co Tyrone.
BT79 9AF

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AND IN THE MATTER of a decision of [REDACTED] the Northern Ireland Environment Agency dated 29th September 2017.



[REDACTED]

APPLICANT

AND

THE NORTHERN IRELAND ENVIRONMENT AGENCY

RESPONDENT

I, [REDACTED] of [REDACTED], Omagh, Co Tyrone BT79 9AF, being 18 years and over, hereby make oath and say as follows:

1. I read in the local press (Tyrone Constitution) on 18/05/17 that Dalradian Gold Ltd had applied for a discharge consent for "site drainage" into a local waterway, Curraghinalt Burn (Irish Grid reference H 5707 8690). I refer to the exhibited bundle marked 'FOK1' and signed by me (document 1 in the Index). Dalradian Gold Ltd's application for a discharge consent of "dangerous substances" and "significant chemical compounds" was received by NIEA on 20/04/17. I refer to document 2 in the Index.
2. Curraghinalt Burn joins the nearby Owenkillew River which is an EC designated Special Area of Conservation due to the presence of fresh water pearl mussels (*margaritifera margaritifera*), Atlantic salmon (*salmo solar*) and otters (*lutra ultra*). The Owenkillew River joins the Glenelly, the Strule, the Mourne,

the Derg and the Finn rivers to become the River Foyle, which is designated as an ASSI (Area of Special Scientific Interest).

3. On 28/06/17 I sent a letter of objection about the proposed discharge consent to NIEA. I refer to document 3 in the Index. I received an acknowledgement email from NIEA on 06/07/17. I refer to document 4 in the Index.
4. On 03/10/17 I received an email from NIEA confirming that discharge consent had been granted to Dalradian Gold Ltd on 29/09/17 and a copy of the discharge consent was attached. I refer to documents 5 and 6 respectively in the Index.
5. On 10/10/17 I requested from NIEA a copy of the discharge consent file as well as asking two questions relating to how such a decision was made. I refer to document 7 in the Index.
6. NIEA replied on 01/11/17 stating that it would cost £4,175 to process my request and that this was 'manifestly unreasonable'. I refer to document 8 in the Index. The responses provided by NIEA to my two questions did not explain how the decision was arrived at. At that stage, I took it that there was nothing more I could do.
7. Through my own research, I learned on 11/12/17 that I had a right to view the discharge consent working file under the Environmental Information Regulations 2004. On 12/12/17 I emailed NIEA requesting to view the file. I refer to document 9 in the Index.
8. On 14/12/17 I received an email from NIEA offering the earliest date of Monday 08/01/18 from 9.30am to 12.00 noon to view the files (nine volumes). I refer to document 10 in the Index.
9. On 20/12/17, I sent a pre action protocol letter to ██████████, NIEA and a copy to Dalradian Gold Ltd. I refer to document 11 in the Index. At the time of swearing, I have received no response.
10. The Water Framework Directive (Classification, Priority Substances & Shellfish Waters) Regulations (Northern Ireland) 2015 sets down maximum limits in respect of priority substances and specific pollutants; yet the Discharge Consent granted by NIEA allows these limits to be exceeded in respect of zinc, mercury, cadmium, iron and copper.
11. Article 6 of the Habitats Directive 92/43/EEC requires member states to avoid damaging activities that could significantly disturb these species (fresh water pearl mussels or Atlantic salmon) or deteriorate the habitats of the protected species or habitat types.

12. Under Schedule 1, Paragraph 2 (2) to the Water (Northern Ireland) Order 1999, an application for discharge consent is to be treated as refused if it is not given approval within a period of 4 months from the date when the application is received. Dalradian Gold Ltd's application was received on 20/04/17 and the decision was issued on 29/09/17 (over 5 months later).
13. According to Articles 4 & 5 of the Water Framework Directive Regulations 2015, NIEA is required to apply the environmental quality standards (EQS). Cadmium is referenced at substance 6 in Table 47 of Part 2 of Schedule 1 to the Regulations. Articles 9, 11, 13, 14, 15 & 17 contain details of mandatory monitoring to be carried out by NIEA. Yet the Discharge Consent granted by NIEA provides for Dalradian Gold Ltd to monitor the water itself.
14. The Environment (Northern Ireland) Order 2002 requires protection for designated ASSI sites. The River Foyle and its tributaries are designated thus. The Owenkillew river is a SAC and the whole area is an AONB (Area of Outstanding Natural Beauty).
15. Under Article 4 of the Water (Northern Ireland) Order 1999, NIEA are duty bound to promote the conservation of water resources and cleanliness of water. Article 4(2) lists five considerations in pursuance of these obligations.
16. In 2010 the United Nations recognised access to clean water as a fundamental human right. Water is abstracted from the waterway, downstream of the discharge point, at Newtownstewart for the Castlederg reservoir which provides water for the people of Castlederg.
17. An incomplete application for discharge consent was received from Dalradian Gold Ltd on 20/04/17 in that the concentration of dangerous substances and chemical compounds was omitted.
18. Dalradian Gold Ltd's planning permission (K/2013/0072/F) granted on 21/01/14, for three years for an exploratory mine at this site, had already expired at the time the decision to approve this discharge consent was taken. According to the planning approval and conditions, no work should have been taking place and the site should have been reinstated to its prior condition. I refer to document 12 in the Index.
19. Article 4 (1) of the Departments (Northern Ireland) Order 1999 requires that the functions of a department shall at all times be exercised subject to the direction and control of the Minister. There was no Minister in place at the time of this decision; therefore ██████████ did not have the requisite authority.

20. ██████████ and his colleagues from NIEA / DAERA had numerous meetings with Dalradian Gold Ltd prior to the issuing of this discharge consent. Given the records available to me at present, I believe that ██████████ failed to remain independent in this decision making process. I refer to document 13 in the Index.

Save as where otherwise appears, I depose to the foregoing from my own knowledge, information and belief.

Sworn at 14 Old Market Place, Omagh, BT78 1BT, Co. Tyrone

██████████
██████████
██████████

on the 28th day of December 2017

Before me a solicitor empowered to administer oaths.

██████████
██████████
██████████

Solicitor, Omagh.

This affidavit is filed by and on behalf of the Applicant ██████████
██████████, Omagh, Co Tyrone BT79 9AF as a personal litigant.

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[REDACTED]

APPLICANT

AND

THE NORTHERN IRELAND ENVIRONMENT AGENCY

RESPONDENT

This is the exhibit marked 'FOK1' referred to in the affidavit of [REDACTED] sworn
before me on 28th December 2017.

[REDACTED]

[REDACTED]

.....;

Signature

A Solicitor (or Commissioner for oaths)

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